Introduction

Potential conflicts of interest occasionally arise in legislative work. This memo is intended to help Senators understand how the law defines a potential conflict of interest, how to determine if there is a potential conflict of interest, and what to do if there is a potential conflict of interest.

What is a potential conflict of interest?

A potential conflict of interest occurs when a Senator, in the discharge of official duties, is required to take an action or make a decision that would substantially affect his or her financial interests or those of an associated business, unless the effect on the Senator is no greater than on other members of the same business classification, profession, or occupation. Minn. Stat. § 10A.07.[1] The potential conflict of interest provisions apply only to the financial interests of the Senator (or an associated business) and do not extend to the financial interests of a Senator's relative. Camp. Fin. Bd. Op. 355 (2004). A potential conflict of interest may arise in a committee setting or while the Senate as a whole is deliberating on a particular matter.

An "associated business" is defined as "an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of $250, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth more than $10,000 at fair market value." Minn. Stat. § 10A.01, subd. 5. "Financial interest" is defined as "any ownership or control in an asset that has the potential to produce a monetary return." Minn. Stat. § 10A.07, subd. 1.

The Campaign Finance and Public Disclosure Board has determined that a governmental entity acting in a governmental capacity is not a business and therefore cannot be an associated business. Camp. Fin. Bd. Op. 431 (2012). The Board has also held that if a Legislator does not receive compensation from an entity and does not own securities in that entity, then it is not an associated business because there is no financial interest. Camp. Fin. Bd. Op. 264 (1997).

[1] The statutory conflict of interest provisions do not address whether a person may simultaneously hold two positions. The proper analysis for determining whether a person may hold both positions is to look at whether the two positions are compatible. The issue of compatibility is not addressed in this memo.

How does a Senator determine if they have a potential conflict of interest?

In order for there to be a potential conflict of interest, the following must all be true:

1) a Senator is called on to vote or take action in an official capacity;
2) the vote or action is on a matter which will substantially affect the Senator's financial interests or those of an associated business; and
3) the effect on the Senator or the associated business must be greater than the effect on other members of the same business classification, profession, or occupation.

See Minn. Stat. § 10A.07; Camp. Fin. Bd. Ops. 439 (2015); 345 (2002); and 267 (1997); Eth. Prac. Bd. Op. 119 (1992).

One aspect of the analysis is whether the effect on a Senator is greater than other similarly situated individuals or businesses. Simply stated, this means that there is no potential conflict of interest when the issue at hand involves legislation of general application to the Senator's business or profession. Common examples of this type of situation include attorneys who vote on changes to legal procedures, teachers who vote on education policy bills, and property owners who vote on the omnibus tax bill.

One common area discussed in Campaign Finance and Public Disclosure opinions is employment outside of the legislature. The general rule is that employment, by itself, is not a potential conflict of interest because there is no specific official action or decision at issue. However, employment may give rise to a particular situation that could result in a potential conflict of interest when a senator votes or takes an official action. Camp. Fin. Bd. Ops. 439 (2015); 325 (2001) and 237 (1996); Eth. Prac. Bd. Op. 119 (1992). Similarly, service on a board or association does not, by itself, create a potential conflict of interest because there is no official action or decision at issue. Camp. Fin. Bd. Op. 368 (2005).

If a Senator has a potential conflict of interest, what should they do?

A Senator who has a potential conflict of interest in a matter where the specific benefit to the Senator is greater than for others in the same business classification, profession, or occupation must "disclose the potential conflict of interest to the presiding officer of the body that is about to decide the question and ask to be excused from voting on the question." Senate Rule 56.4; Senate Policy 1.35. To disclose the potential conflict of interest, the Senator must prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest and deliver a copy of the statement to the President of the Senate. Minn. Stat. § 10A.07. If there is not enough time to take these actions, the Senator must orally inform the committee or body of the potential conflict. Minn. Stat. § 10A.07.

The Senator asking to be excused from voting must make the request before the issue is voted on or the action is taken. Senate Rule 41.2; Senate Policy 1.35. The Senate may, at the member's request, excuse the member from taking part in the action or decision in question. Minn. Stat. § 10A.07, subd. 2, paragraph (c). If the Senator is not permitted or is unable to abstain from action in connection with the matter in question, the Senator must file a statement with the Campaign Finance and Public Disclosure Board that describes the

potential conflict of interest and the action taken. Minn. Stat. § 10A.07; Senate Policy 1.35. This statement must be filed within one week of the action taken.

Additionally, a Senator should not chair a meeting or offer motions or discussion where the question of the potential conflict of interest is at issue. Senate Policy 1.35.

What should a Senator do if they are uncertain about whether there is a potential conflict of interest?

The first step is to discuss the issue with someone knowledgeable on the subject. There are several sources you may contact to discuss potential conflicts of interest. Alexis Stangl in Senate Counsel, Research, and Fiscal Analysis is available to assist Senators and Senate employees in discussing potential conflicts of interest. Supervisors, managers, or caucus leaders are also valuable resources when considering these issues.

You may also contact the Campaign Finance and Public Disclosure Board at (651) 539-1180 or toll free (800) 657-3889 or cf.board@state.mn.us. The Board also has advisory opinions on conflicts of interest that may provide guidance. Advisory opinions are available online on the Campaign Finance and Public Disclosure Board's website. You may search for opinions relating to the gift ban by selecting "Conflict of Interest" from the "Program" drop down menu.

The Senate Subcommittee on Ethical Conduct serves in an advisory capacity to Senators and Senate employees on potential conflict of interest situations. A Senator may submit a written request to the subcommittee asking the subcommittee to provide its advice on a potential conflict of interest. The subcommittee must then issue recommendations to the Senator or employee. The request may ask that the advice be made in private; if so requested, the subcommittee must conduct its proceedings on the advisory opinion in private and the request and any advice given in response to the request must also remain private. However, a member may not use an advisory opinion from the subcommittee as a defense to a complaint unless the opinion has been adopted by the subcommittee at a public meeting. Senate Rule 55.2.

Always keep in mind that while there may be no potential conflict under the law and Senate policies, there may be a public perception that there is a potential conflict of interest in a particular situation. In situations where there is no potential conflict of interest under the law or policy, the decision on what to do is personal to the member or employee and the decision will be based on their personal perception of the situation. It may be helpful to consult the resources listed above to talk about possible perceptions and concerns.

For more information, please contact Alexis Stangl at alexis.stangl@mnsenate.gov.