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**ETHICS IN GOVERNMENT AND
COMMISSIONERS PERSONAL LIABILITY**

by

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I. GENERAL COMMENTS

- A. There are a number of laws and Court decisions dealing with ethics in government. Many deal with Conflicts of Interest, see Minn. Stat. §§ 382.18 and 471. 87, and with prohibitions on the acceptance of gifts, see Minn. Stat. § 471.895. They range from the Ethics in Government Act, Minn. Stat. Chapter 10A, to the Codes of Ethics for executive branch employees, Minn. Stat. 43A.38, to court cases dealing with common law conflicts of interest. All of these laws have one basic aim: to insure that public confidence in elected officials is not eroded by improper conduct and/or undue influence on or by elected officials.

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions, legislative amendments rule changes and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2015 Rupp, Anderson, Squires & Waldspurger, P.A.

- B. As a County Board member, you must expect to be the subject of regular and constant public scrutiny. County Board members must not only avoid impropriety but also any appearance of impropriety.
- C. A County Board member should insure that no conflicts of interest exist in matters that come before that Board for official action. A County Board member must not appear to trade on his or her position for any personal advantage.
- D. The Ethics in Government Act, 10A.01, at et seq. applies primarily to state officials, but does apply to some local officials of metropolitan governmental units and counties. However, many of the provisions set forth therein, such as conflicts of interest under section 10A.07, are specifically made non-applicable to those local officials with respect to a matter governed by Minn. Stat. § 471.87 and 471.88. But you can look at these provisions as a guide to the type of conduct you should or should not engage in. Officials holding positions with any of the seven counties making up the metropolitan area, need to refer more carefully to Minn. Stat. § 10A.01, et seq., for specific rules and regulations that apply to them. Statements of economic interest may be required under section 10A.09.
- E. The Minnesota Campaign Finance and Public Disclosure Board provides advisory opinions on matters dealing with ethics. Selected advisory opinions may be found on-line at www.cfboard.state.mn.us\ao.

II. PROHIBITED CONDUCT: ACCEPTANCE OF GIFTS

- A. A county board member may not accept gifts from a person or a representative of a person or association that has a direct financial interest in decisions that the county board member is authorized to make. Minn. Stat. §§ 479.895, 10A.071.
 - 1. A gift is defined to be money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.
 - a. Bribery is not allowed. Minn. Stat. § 375.09 provides that no commissioner shall receive any money or other valuable thing as a condition of voting or inducement to vote for any contract or other thing under consideration by the board. If you violate this rule you are guilty of malfeasance in office. Malfeasance in office is grounds for removal.

B. Exceptions to the prohibition on accepting gifts. A county board member may accept the following:

1. A contribution as defined in Minn. Stat. § 211A.01, subd. 5. (Anything of monetary value given or loaned to a candidate or committee for a political purpose).
2. Services to assist the county board member in the performance of official duties, including but not limited to providing advice, consultation, information and communication in connection with legislation and services to constituents.
3. Services of insignificant monetary value.
4. A plaque or similar memento recognizing individual services.
5. A trinket or memento costing \$5 or less.
6. Informational material of unexceptional value.
7. Food or a beverage given at a reception, meal, or meeting away from the county board member's place of work by an organization before whom the board member appears to make a speech or answer questions as part of a program.

C. The prohibitions against gifts do not apply if the gift is being given by a family member (unless the family member's gift is in fact given on behalf of someone else). They also do not apply if you receive the gift because you are a member in a group, the majority of whose members are not local officials, and an equivalent gift is given to the other members of the group.

III. ACCEPTANCE OF GIFTS: PROBLEM SOLVING EXERCISES

A. My law firm makes a DVD of zoning issues and answers to zoning questions. We give each of you a copy of it. It costs us \$1.50 for each copy. Costs of the DVD to the public would be between \$4.00 and \$6.00 per DVD. May you accept the DVD without charge?

B. A county commissioner's spouse is a sales employee of a health care provider. The provider sells health care insurance to the county. The employer awards trips to employees who attain high sales. Can you, as a county commissioner, take part in the trip if your spouse is awarded one?

1. Let's change this up a bit. Now you attend a health care forum sponsored by the county health care provider, to which potential and current clients are invited, and which your wife is required to attend. A reception, bar and dinner are part of the event. Can you attend with her and accept free drinks and a free meal?
- C. After hearing the presentation today, your county decides to hire the law firm of Rupp, Anderson, Squires & Waldspurger to provide legal services to your county. Scott T. Anderson makes a gift to you of a coffee mug, with his face on it and the phrase "The Defender". May you accept this gift? If you can, must you accept this gift? If you accept it, are you required to ever show it to anyone else?
- D. The local Veterans of Foreign Wars branch sponsors a dinner for county commissioners as a way to stay in touch with citizens. It includes informal discussions, questions and answers, and open dialog. May you accept free food and beverage in attending this event?
 1. Does it make a difference to your answer to this question if make a formal presentation to the gathering?

IV. CERTAIN CONFLICTS OF INTEREST PROHIBITED

- A. Minnesota Statute § 382.18 states that no county official, deputy or clerk or employee of such official shall be directly or indirectly interested in any contract, work, labor or business to which the county is a party or in which it is or may be interested or in the furnishing of article to, or the purchase or sale of any property, real or personal, by the county or of which the consideration, price or expense is payable from the county treasury. Arguably, since Chapter 382 deals specifically and with the elected county officials of auditor, treasurer, sheriff, county recorder, and coroners, this section does not apply to county commissioners. However, Attorney General Opinions dealing with ethics questions involving county commissioners have applied § 382.18 to the analysis.
- B. Minn. Stat. § 471.87, another conflict of interest statute, also applies to county commissioners. That section specifies that a public officer who is authorized to take part in any manner in making any sale, lease, or contract in that officer's official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract, or personally benefit financially therefrom.
 1. The key words and phrases here are "voluntarily," "personal financial interest," and "authorized to take part". All elements set forth in the statute must be present. In other words, the interest must be "voluntary". The

interest must be “financial.” And we must be dealing with a sale, lease or contract.

2. This includes contracts involving the purchase or sale of any property by or to the county. This constitutes a direct conflict of interest.
3. Minn. Stat. § 471.87 does not specify that abstention from voting by the involved commissioner does away with what would otherwise be a conflict of interest. This is because of the language “who is authorized to take part in any manner in making . . .”
4. Examples of transactions that have been held to be prohibited:
 - a. County may not contract with newspaper in which one commissioner was an interested party.
 - b. Member of county welfare board may not be compensated for services as appraiser.
 - c. Veterinarian who was a county commissioner could be barred from testing cattle under county contract.
5. There is a distinction between Minn. Stat. §§ 382.18 and 471.87. A contract is required under § 471.87. There is no requirement of a contract under § 382.18. Its reach is therefore broader.
6. A violation of these provisions is a gross misdemeanor.
7. Minnesota Statute § 471.88 lists exceptions to the prohibition on having an interest in contracts. The statute states that the governing body of a county, by unanimous vote, may contract for goods and services with an interested officer of the County in a number of specific instances. Some of those exceptions are as follows:
 - a. A contract for which competitive bids are not required by law. Minn. Stat § 471.88, subd.5.

However, a contract made pursuant to this provision is void unless the procedure prescribed § 471.89 is followed. That statute specifies that the Board must authorize the contract prior to performance by adopting a resolution setting out the essential facts, such as the nature of the Commissioner interest and that the

contract price is as low as or lower than it could be found elsewhere.

- b. The designation of an official newspaper that a county commissioner has an interest in, if it is the only newspaper complying with statutory requirements relating to publication.
- c. A contract with a cooperative association of which the officer is a shareholder or stockholder but not an officer or manager.
- d. Dealings with a bank or savings association as an authorized depository for public funds.
- e. A contract for renting space in a public facility, as long as it is as a rate commensurate with that paid by other members of the public.
- f. Loans or grants to an officer from a local development organization.

C. Under what we refer to as the common law (meaning law fashioned by courts versus the legislature), a public official is disqualified from voting on a matter if the official has a “direct interest” in the outcome of the matter. The significant cases dealing with the common law doctrine of conflict of interest are Lenz v. Coon Creed Watershed District, 153 N.W.2d 209 (1967); E.T.O. v. Town of Marion, 375 N.W.2d 815 (Minn. 1985); and Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. App. 2000).

- 1. The Court in Lenz v. Coon Creed Watershed District stated that the purpose of this rule is to ensure that a decision will not simply be an arbitrary reflection of an official’s own selfish interests.
- 2. There is no hard and fast rule on when a common law conflict of interest exists. Instead, each situation must be examined and decided on the basis of the specific facts present. The court cases referenced above determine whether a common law conflict of interest exists by considering the following factors:
 - a. the nature of the decision being made;
 - b. the nature of the pecuniary interest;
 - c. the number of officials making the decision who are interested;
 - d. the need, if any, to have interested persons make the decision; and

- e. the other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their own selfish interests.
- 3. Common law conflicts may exist where statutory conflicts do not exist. The statutory prohibition on conflicts of interest applies only when a public official is authorized to participate in "making any sale, lease, or contract in official capacity." The common law is broader than the statute.
- 4. Unlike a statutory conflict of interest, when a common law conflict of interest exists, it can be avoided by abstaining from the vote. See Attorney General Opinion, December 5, 2002.

V. CONFLICT OF INTEREST: PROBLEM SOLVING EXERCISES

- A. May a county issue to a county board member a license for a public dance hall, or any other facility requiring a license? What about a Conditional Use Permit allowing a certain use on land owned by the Commissioner?
- B. A county commissioner sells highway and maintenance equipment as an employee of an implement dealer in the county seat. May that dealer sell the county equipment?
- C. A county commissioner is a stockholder in a corporation which operates a commercial garage that sells, repairs and stores vehicles. The county did frequent business with that corporation prior to the election of the commissioner in question. May the county continue to do business with the commercial garage?
- D. The county enters into a contract with an architectural firm to design buildings for the county. The county commissioner is employed by the firm on a salary basis. His compensation is not affected in any way by the contract with the county. Is there a conflict?
 1. Does it matter whether he shares in the profits of the firm?
- E. Prior to a commissioner being elected, he had, for several years, done roadwork for townships in the county on an hourly contract basis. A number of townships for which this commissioner does roadwork have petitioned the county to grant financial assistance in reference to snow removal on those township roads. Would the Board violate any law in voting an appropriation, the funds from

which might ultimately be paid to the Board member in question through his work for the township?

F. A county commissioner is associated with two other court reporters in a firm. The firm is utilized by courts in the county. Payment for these court reporting services is made by the county from the general revenue fund. There is no formal contract for the service, and the service is rendered at the pleasure of the particular court judge. Each associate of the court reporting firm receives a percentage of the monies paid to the firm. This service is not otherwise available in the county. Is there a conflict?

G. A county commissioner works for a contractor who does a limited amount of work for the county each year. May the county commissioner work for the contractor?

VI. INCOMPATIBLE OFFICES

A. As a county commissioner you may not hold another elected office during tenure as a board member. Minn. Stat. § 375.09

B. As a County Commissioner you may not be employed by the county. Minn. Stat. § 375.09.

C. There is a common law that has been developed through Minnesota court decisions regarding incompatibility of offices. Government officials cannot hold more than one position if the functions are incompatible or if the job creates a conflict between two different interests. Thus, if the holder of one position hires or appoints the other, sets the salary for the other, performs functions that are inconsistent with the other, and/or makes contracts with the other, the offices or positions may be incompatible.

VII. AVOIDANCE OF CONFLICT OF INTERESTS AND THE APPEARANCE OF IMPROPRIETY

A. Do not use non-public information which could provide an unfair economic advantage or adversely affect the competitive position of an individual or business.

B. Do not accept outside employment or involvement in a business or activity that might require the disclosure or use of such confidential or non-public information.

- C. Do not use or allow the use of county time, supplies, or county owned or leased property and/or equipment for private interest or for any other use not in the interest of the county, except as provided by law.
- D. When you believe the potential for a conflict of interest exists, it is your duty to attempt to avoid the situation. When in doubt, seek the advice of the county attorney to determine if an impermissible conflict of interest exists.
- E. Under the Ethics and Government Act, section 10A.02, a state ethical practices board has been created. That board may provide advisory opinions upon request of an individual or association that wishes to use the opinion to guide the individual's or the association's own conduct.

VIII. PERSONAL LIABILITY OF COUNTY COMMISSIONERS

The activities of Counties may give rise to lawsuits. Those may be civil lawsuits seeking damages. They may be criminal lawsuits seeking a penalty for conduct in office. Regardless of whether the lawsuit has merit or succeeds in proving a commissioner liable for the alleged conduct, the costs of defending the claim may be significant.

- A. The Municipal Tort Liability Act provides that a county must defend and indemnify any of its officers and employees, whether elective or appointive, for claims for damages, including punitive damages, provided that the officer or employee was acting in the performance of the duties of the position and was not guilty of malfeasance in office, willful neglect of duty, or bad faith. See Minnesota Statute § 466.07.
 - 1. The purpose of this provision is to ensure that public employees and officers are free to act in good faith in the performance of their duties without the risk of being burdened with the costs of litigation and damage awards.
 - 2. Indemnification is required both for any awards made against the county commissioner and the costs of defending the action.
 - 3. A civil penalty or a fine does not constitute "damages" within the meaning of the Municipal Tort Liability Act.
 - i. An example is the fine or penalty imposed under the Open Meeting Law for an intentional violation of that act. Minn. Stat. § 13D.06, subd. 1.

- ii. No other statute has been specifically found by a court to be a fine or penalty that is not within the meaning of the word damages in the Municipal Tort Liability Act. Many statutes that set up penalties award such a penalty to the person bringing the lawsuit, and call them exemplary or punitive damages. Those type of damages are specifically within the indemnification provision of § 466.07.

IX. EXCEPTIONS TO INDEMNIFICATION

A. Malfeasance in Office

- 1. As applied to elected county commissioners, malfeasance has been defined to mean the willful commission of an unlawful or wrongful act in the performance of a public official's duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity. Minn. Stat. § 351.14, subd. 2.
- 2. Even with this definition, malfeasance has no technical meaning. However, the statutory definition refers to "official duties" and courts have noted that malfeasance, also called "misconduct in office" does not include acts affecting an individual's personal character as a private individual. Instead it is said to amount to a misadministration, or willful and intentional neglect and failure to discharge the duties of the office at all. State ex. rel. Martin v. Burnquist, 170 N.W. 201 (Minn. 1918). The conduct must have a direct relationship to and be connected with the performance of duties. The conduct must be of a substantial nature, directly affecting the rights and interests of the public.
- 3. Simply being ignorant does not constitute malfeasance. State v. Emerhart, 116 Minn. 313, 133 N.W. 857 (Minn. 1911).
- 4. Malfeasance is not the same as negligently performing duties or failing, even willfully, to perform duties. The most recent case discussing what is meant by malfeasance stated that while it is not susceptible to an exact definition, it refers to evil conduct or an evil deed, or the performance of an act by an officer in his official capacity that is wholly illegal and wrongful. Claude v. Collins, 518 N.W.2d 836 (Minn. 1994).
- 5. The type of conduct in question is exemplified by the case of Queen v. Special School District No. 1, Minneapolis, 481 N.W.2d 66 (Minn. App. 1992). A teacher, found to have engaged in a sexual relationship with a student in the school district, was guilty of malfeasance, and thereby not

entitled to any defense or indemnification under the Municipal Tort Liability Act. See also Horace Mann Insurance Co. v. ISD No. 656, 355 N.W.2d 413 (Minn. 1984).

B. Willful Neglect of Duty

1. This would be what is defined in statutes as nonfeasance. Nonfeasance is defined to mean the willful failure to perform a specific act which is a required part of the duties of the public official. See Minn. Stat. § 351.14, subd. 3.
2. The Supreme Court of Minnesota has stated that neglect of duty, in pertinent part, would be an intentional failure to exercise due diligence in the performance of an official duty. In Re. Olson, 211 Minn. 114, 300 N.W. 398 (Minn. 1941). In the Olson case, the sheriff of Scott County was found to have been guilty of neglect of official duty when there was an open and notorious use of slot machines in the county that went without any legal action, where there was evidence that the sheriff was advised by members of the public of the places where the slot machines were being operated, and the sheriff failed to make any investigation.

C. Bad Faith

1. There are no reported decisions in this area dealing with bad faith. In other areas, case law defines bad-faith conduct as the commission of a malicious, willful wrong.
2. Malice is a term used throughout the law, in many different contexts and with different but related meanings. It is, like the idea of malfeasance, not subject to one specific, technical meaning. Malice can mean an intentional act, or can mean an act that is done with some wrongful motive. Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature or (b) the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result.

X. REIMBURSEMENT FOR CRIMINAL DEFENSE EXPENSES

A. A county may reimburse an officer or employee for costs and reasonable attorneys' fees incurred by the person to defend charges of a criminal nature that arose out of the reasonable and lawful performance of duties for the county. Minn. Stat. § 465.76.

- B. The statute requires that any reimbursement only be done after consultation with the county's legal counsel.
- C. If less than a quorum of the governing body is disinterested in the matter, the reimbursement must be approved by a judge of the district court.

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471.87 PUBLIC OFFICERS, INTEREST IN CONTRACT; PENALTY.

Except as authorized in section 123B.195 or 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

History: 1951 c 379 s 1; 1955 c 41 s 1; 1986 c 444; 2015 c 21 art 1 s 77

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471.88 MS 1957 [Repealed, 1961 c 651 s 2]

471.88 EXCEPTIONS.

Subdivision 1. **Coverage.** The governing body of any port authority, seaway port authority, economic development authority, watershed district, soil and water conservation district, town, school district, hospital district, county, or city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

Subd. 2. **Bank or savings association.** In the designation of a bank or savings association in which the officer is interested as an authorized depository for public funds and as a source of borrowing, no restriction shall apply to the deposit or borrowing of any funds or the designation of a depository by such authority or governmental unit in any bank or savings association in which a member of an authority or officer of a governmental unit shall have an interest if such deposited funds are protected in accordance with chapter 118A; provided, however, that any member or officer having such an interest shall disclose that the member is a director or employee of the bank or savings association, which disclosure shall be entered upon the minutes of the authority or governmental unit, such disclosure shall be made when such bank or savings association is first designated as a depository or as a source of borrowing, or when such member or officer is elected whichever is later, and such disclosure shall serve as notice of such interest and need not be made with each successive transaction.

Subd. 3. **Official newspaper.** The designation of an official newspaper, or publication of official matters therein, in which the officer is interested when it is the only newspaper complying with statutory or charter requirements relating to the designation or publication.

Subd. 4. **Cooperative association.** A contract with a cooperative association of which the officer is a shareholder or stockholder but not an officer or manager.

Subd. 5. **Contract with no bids required.** A contract for which competitive bids are not required by law.

Subd. 6. **Contract with volunteer fire department.** A contract with a volunteer fire department for the payment of compensation to its members or for the payment of retirement benefits to these members.

Subd. 6a. **Contract with volunteer ambulance service.** A contract with a volunteer ambulance service for the payment of compensation to its members or for the payment of retirement benefits to these members.

Subd. 7. **Contract with municipal band.** A contract with a municipal band for the payment of compensation to its members.

Subd. 8. [Repealed, 1992 c 380 s 8]

Subd. 9. **Import, export, trade; port commissioner.** When a port authority commissioner or economic development authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users of the terminal facility, said commissioner shall not vote thereon.

Subd. 10. **Import, export, trade; seaway port.** When a seaway port authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users of the terminal facility, said commissioner shall not take part in the determination of, except to testify, nor vote thereon.

Subd. 11. **Bank loans or trust services.** When a commissioner of any public housing, port authority, or economic development authority is employed by a bank engaged in making loans or performing trust services involving real or personal property affected by any plan or such housing or port authority, no restriction shall apply to any such loans made or trust services performed by said bank if the commissioner shall

disclose the nature of such loans or trust services of which the commissioner has personal knowledge, which disclosure shall be entered upon the minutes of such authority.

Subd. 12. Population of 1,000 or less. An officer of a government unit may contract with the unit to provide construction materials or services, or both, when the sealed bid process is used and the unit has a population of 1,000 or less according to the last federal census. The officer may not vote on the question of the contract when it comes before the governing body for consideration.

Subd. 13. Rent. A public officer may rent space in a public facility at a rate commensurate with that paid by other members of the public.

Subd. 14. Local development organization. (a) For the purposes of this subdivision:

(1) "local development organization" means a housing and redevelopment authority, economic development authority, community action program, port authority, or private consultant; and

(2) "government unit" has the meaning given in section [471.59, subdivision 1](#).

(b) When a local development organization administers a loan or grant program for individual property owners within the geographical boundaries of a government unit by an agreement entered into by the government unit and the local development organization, an officer of the government unit may apply for a loan or grant from the local development organization. If an officer applies for a loan or grant, the officer must disclose as part of the official minutes of a public meeting of the governmental unit that the officer has applied for a loan or grant.

Subd. 15. Franchise agreement. When a home rule charter or statutory city and a utility enter into a franchise agreement or a contract for the provision of utility services to the city, a city council member who is an employee of the utility is not precluded from continuing to serve as a city council member during the term of the franchise agreement or contract if the council member abstains from voting on any official action relating to the franchise agreement or contract and discloses the member's reason for the abstention in the official minutes of the council meeting.

Subd. 16. [Renumbered [123B.195](#)]

Subd. 17. Federal or state grant programs. The governing body may apply for and accept a state or federal grant for housing, community, or economic development in which a public officer may benefit, if the public officer abstains from voting on measures related to the grant.

Subd. 18. Small cities in St. Louis County; certain federal funding programs. If a city with a population of 5,000 or less in St. Louis County administers a loan or grant program with community development block grant funds or federal economic development administration funds for property owners within the geographic boundaries of the city, the city may make a grant or loan from these funds to a public officer of the city who applies, if the public officer first discloses, as part of the official minutes of a meeting of the city, that the public officer has applied for the funds and the public officer abstains from voting on the public officer's application.

Subd. 19. Loan for HRA officer, if disclosed. If a city or county housing and redevelopment authority, or an agency having the powers of a city or county housing and redevelopment authority, administers a loan or grant program with state or federal funds, the authority may make a grant or loan from these funds to a public officer of the authority who applies, if the public officer first discloses, as part of the official minutes of a meeting of the authority, that the public officer has applied for the funds and the public officer abstains from voting on the public officer's application.

Subd. 20. Township supervisor is employee of contractor. A township may enter into a contract governed by section [471.345](#), even if a township supervisor is an employee of the contractor as long as the supervisor had no role in preparing the contractor's bid or negotiation for the contract with the township. The supervisor is not precluded from continuing to serve as a township official during the term of the contract if the township supervisor abstains from voting on any official action relating to the contract and discloses the supervisor's reason for the abstention in the official minutes of the township meeting.

Subd. 21. Contract with no bids required. Notwithstanding subdivision 1, a local school board may contract with a class of school district employees such as teachers or custodians where the spouse of a school board member is a member of the class of employees contracting with the school board and the employee spouse receives no special monetary or other benefit that is substantially different from the benefits that other members of the class receive under the employment contract. A school board invoking this exception must have a majority of disinterested school board members vote to approve the contract, direct the school board member spouse to abstain from voting to approve the contract, and publicly set out the essential facts of the contract at the meeting where the contract is approved.

History: 1961 c 651 s 1; 1965 c 806 s 1-4; 1969 c 26 s 1; 1973 c 123 art 5 s 7; 1977 c 55 s 1-3; 1978 c 651 s 1; 1979 c 20 s 1; 1986 c 399 art 2 s 38-40; 1986 c 400 s 38-40; 1986 c 444; 1Sp1986 c 3 art 2 s 41; 1991 c 65 s 1,2; 1992 c 380 s 7; 1992 c 522 s 42,43; 1993 c 224 art 9 s 43; 1996 c 471 art 7 s 18; 1998 c 269 s 1; 2001 c 7 s 90; 2001 c 132 s 1,2; 2002 c 356 s 1; 2003 c 119 s 1; 1Sp2003 c 23 s 27; 2004 c 139 s 1; 2005 c 80 s 1; 2008 c 176 s 1

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471.89 CONTRACT, WHEN VOID.

Subdivision 1. **Procedure followed.** A contract made pursuant to section 471.88, subdivision 5, is void unless the procedure prescribed by subdivisions 2 and 3 is followed.

Subd. 2. **Resolution by governing body.** Except in an emergency making such procedure impracticable, the governing body of the governmental unit shall authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere. In case of an emergency when the contract cannot be authorized in advance, payment of the claims shall be authorized by a like resolution in which the facts of the emergency are also stated.

Subd. 3. **Claims, affidavits filed.** Before such a claim is paid, the interested officer shall file with the clerk of the governing body an affidavit stating:

- (1) the name of the officer and the office held by the officer;
- (2) an itemization of the commodity or services furnished;
- (3) the contract price;
- (4) the reasonable value;
- (5) the interest of the officer in the contract; and
- (6) that to the best of the officer's knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.

History: 1951 c 379 s 3; 1965 c 45 s 64-66; 1967 c 125 s 1,2; 1978 c 651 s 2,3;
1986 c 444

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471.895 CERTAIN GIFTS BY INTERESTED PERSONS PROHIBITED.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" has the meaning given it in section [10A.071](#), subdivision 1.

(c) "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

(d) "Local official" means:

(1) an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city; and

(2) an elected or appointed member of a school board, a school superintendent, a school principal, or a district school officer of any independent school district.

Subd. 2. **Prohibition.** An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Subd. 3. **Exceptions.** (a) The prohibitions in this section do not apply if the gift is:

(1) a contribution as defined in section [211A.01](#), subdivision 5;

(2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento costing \$5 or less;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not local officials, and an equivalent gift is given or offered to the other members of the group;

(2) by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family; or

(3) by a national or multistate organization of governmental organizations or public officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization, if the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

History: [1994 c 377 s 6](#); [2001 c 93 s 1](#); [2005 c 156 art 6 s 66](#); [2014 c 279 s 13](#)

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2016 Minnesota Statutes

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382.18 OFFICIALS NOT TO BE INTERESTED IN CONTRACTS.

No county official, or deputy or clerk or employee of such official; and no commissioner for tax-forfeited lands or commissioner's assistants, shall be directly or indirectly interested in any contract, work, labor, or business to which the county is a party or in which it is or may be interested or in the furnishing of any article to, or the purchase or sale of any property, real or personal, by, the county, or of which the consideration, price, or expense is payable from the county treasury. Nothing in this section shall prevent a person from receiving reimbursement from a county for providing licensed or tribally approved family foster care. This section does not prevent a coroner, deputy coroner, coroner's investigator, or medical examiner from receiving compensation for professional services from a professional corporation or medical provider under contract to provide coroner services to a county. Any violation of the provisions of this section shall be a gross misdemeanor.

History: (990) RL s 617; 1947 c 360 s 1; 1985 c 444; 1997 c 107 s 18; 2000 c 360 s 1

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