

DISCLOSURE TRAINING - Ethics Conflicts of Interests

- A. PUBLIC.** Disclosure of potential conflicts of interest must be made publicly. Discussing your interest with a colleague beforehand, but it is not a substitute for public disclosure. SUGGESTION: discuss complex disclosures with Chairs prior to the meeting.
- B. DUTY OF DISCLOSURE.** Your duty is to disclose. If you are concerned with whether you should disclose, you should be disclosing. You do not decide whether you have a conflict. Disclosure helps protect you and the matter you are working on from subsequent challenge.
- C. TIMING OF DISCLOSURE.** Disclosure must be made prior to official action, which is defined by the Ethics Code to mean participation in a process, including deliberation, in which a decision or recommendation is reached. Official action includes more than the vote or recommendation, it includes the process up to the final action. If an item is on the consent agenda, pull that item to make the disclosure.
- D. FAILURE TO DISCLOSE.** In addition to the MOA ethics code duty to disclose, the state court can invalidate legislation for failure to disclose.
- E. LEGAL CHALLENGE.** Once the disclosure is made, the body votes (or follows the ruling of the chair). The body's vote is not generally subject to review by the Ethics Board or successful legal challenge, and the discloser can rely on the ruling of the body to participate.
- F. FORUM FOR DISCLOSURE.** Meetings of the assembly and boards and commissions, but what about assembly committees? (Meg's road through neighborhood, members with nonprofit ties in homelessness committees)

Underlying Policies and Competing Interests

- Public right to know, public confidence in process, optics.
- Small World – board members and elected officials are elected/appointed for their contacts in the community, business involvements, and knowledge.
 - [T]he representatives are drawn from society and, therefore, cannot and should not be without personal and financial interest in the decisions and policies of government. Standards of ethical conduct need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts that are substantial and material. AMC 1.15.060A.
- Elected officials right to express opinions.
- Duty to vote and not to avoid difficult and controversial votes. AMC 2.20.070A. All assembly members shall vote on each question before the assembly for determination unless excused by the chair or quorum for a substantial financial or private interest.

Steps in Adequate Disclosure

1. Identify Official Action (generally agenda item including consent agenda).
2. Determine and identify your "interest" – **does the matter before the assembly affect you or any member of your household, immediate family, or an entity in which you are owner, employee, director, officer IN ANY WAY differently than as a member of the public** or a large segment of the public (all taxpayers, all first responders, parents of school age children, veterans). If so, disclose: (1) you do not decide if your interest presents a conflict or whether it is substantial, and (2) disclosure is for the public/optics.
 - a. Is the interest financial; or

b. Is the interest personal to you or a group associated with you (neighbors, family, employer, non-profit board). Examples of personal interests might include:

- (1) A benefit to your employer or a business partner (unrelated to your partnership)
- (2) Detriment or benefit to neighbor – proximity matters (close proximity to your property vs. in your district)
- (3) Zoning affecting parents' property

c. Is it both financial and personal?

3. Identify how the official action impacts that interest – if the official action is approved, how is your interest immediately affected, or are there significant steps between the official action and impact on the interest.

4. EVALUATION OF THE CONFLICT BY CHAIR AND BODY. New balancing standard in determining whether conflict of interest is a **SUBSTANTIAL** conflict of interest:

Size: significance of the private interest in financial amount or personal importance

Connection: the link between the official action and the private interest

Low significance, indirect- not substantial conflict (\$20,000 grant to childcare umbrella organization, you have kids in child care)

Low significance, direct – for body to evaluate (\$20,000 grant to your childcare provider)

High significance, indirect – for body to evaluate (\$100,000 grant to childcare organization)

High significance, direct – substantial conflict (\$100,000 grant to your childcare provider)

Training Examples

A. **Facts:** an assembly member's spouse works for the school district and the ASD budget is before the Assembly.

1. Action – voting on the ASD budget.
2. Interest – both the assembly member and the spouse have an interest in spouse's compensation which may be affected by the budget.
3. Impact of official action on interest – the Assembly votes on the whole budget, not line items. The Assembly's up or down approval of the school budget has little or no direct impact on teacher compensation.

NO FURTHER QUESTIONS, CHAIR RULES – but who states for the public the rationale (and new member may not know).

B. **Facts:** An assembly member subleases property for his business from a general contractor. The contractor's professional services contract to the MOA is up for assembly approval.

1. Action – voting on approval of professional services contract for services to be provided to the MOA by the contractor.

2. Interest – the assembly member has an interest in subleasing property from the contractor.
3. Impact of Official Action on Interest. The approval/denial of the professional services contract has no relationship to or impact on the assembly member's interest in the sublease with contractor.

NO FURTHER QUESTIONS, CHAIR RULES.

- C. **Facts:** An assembly member works for Drug, Inc., a drug treatment provider. The assembly is considering purchasing a property for the possible use of a drug treatment center in the future.
 1. Action – approving the purchase of a specific property, perhaps with stipulations as to use for a drug treatment facility.
 2. Interest – the assembly member is an employee of an entity that provides drug treatment.
 3. Impact of official action on Interest – if the assembly approves the purchase, at some point in the future the municipality would likely put out an RFP (request for proposal) under a competitive procurement process to select an operator that meets criteria identified by the MOA with a request for a detailed plan of operation.

Questions by the assembly (or better if part of the disclosure)

- What is member's position or relationship to Drug, Inc. (owner, employes, management)
- Has Drug, Inc. been active or taken a position with respect to the purchase of this *particular* property?
- Does Drug, Inc. hold any type of competitive advantage in terms of selection as an operator for this particular property as a result of this official action (purchasing the property)
- What are the steps between the official action and benefit to Drug, Inc. i.e., competitive RFP procurement process, operating agreement, renovations, budget impact on Drug, Inc.

RESULT: impact on the interest on the drug treatment service provider is not immediate and known but is dependent on factors beyond the official action. Not a substantial conflict.

- D. **Facts:** An assembly member is an unpaid member on the board of the Parks Foundation, a non-profit entity that facilitates park and trail improvement projects driven by neighborhood initiatives. The Foundation relies on private and public funding, with occasional grant funding from the MOA. The MOA budget is before the Assembly.
 1. Action – approval of the MOA annual budget, which includes the Parks and Recreation Department. No direct funding to the Parks Foundation.
 2. Interest – the assembly member is a member of the board for the foundation closely associated with the MOA Parks and Recreation Department.
 3. Impact of official action on interest – approval of the budget, including overall funding for the Parks and Rec. Department, does not directly impact the Parks Foundation. Query when funding to Parks and Rec may affect Foundation projects: line item of \$800,000 for yearly camp abatement that may include park that Foundation is improving.
- E. **Facts:** An assembly member lives in an area in which a state road project may lead to the member's neighbors losing their properties by State action if the project is approved and completed.

1. Action – the assembly is being asked to support or not support the State project by resolution.
2. Interest – relationship to neighbor and possible effect on value of member's nearby property.
3. Impact: resolution may add support or negate support for State plans.

RESULT: does it matter that is it a resolution; is it indirect because lots of steps between current status of State project and actual project, or is resolution immediate and therefore direct support?

F. **Facts:** An assembly member belongs to a church that may receive a \$50,000 grant to provide food to the neighborhood. Member is not in a leadership position at the church.

1. Action – approval of grant to church.
2. Personal Interest – membership in church, friends, good cause, neighborhood.
3. Impact - church receives \$50,000

RESULT:

G. **Facts:** Your employer is before the assembly for a \$50,000 contract for research, one of many contracts with the city. You are not in management or owner, and you will not work on the contract.

1. Action – approval of \$50,000 contract.
2. Interest – employed by group receiving financial benefit
3. Impact on interest – you will be employed whether or not contract is approved.

RESULT:

H. **Facts:** You own a 10% interest in a restaurant – an update to the food and serving code is before the assembly.

1. Action – code update on restaurant operations.
2. Interest – minority interest in restaurant.
3. Impact on interest – this is where additional information in disclosure (or subsequent questions) is important – what is the impact of the code change on the restaurant – small, routine, or significant change (perhaps with respect to alcohol or closing hours); does it matter if only small ownership interest with limited share of revenue?

RESULT:

I. **Facts:** You belong to a church which opposes same sex marriage. Legislation is before the assembly which expands the equal rights code. Church has taken a strong position.

1. Action: expanding equal rights.
2. Interest: personal, member of church, share beliefs.

3. Impact of official action on interest:

NOTE: You are elected by constituents based on your positions (both position in church and position on issues)Do you have a duty to vote on controversial issues. But some may say what about BIAS – don't you all have bias on certain issues? Are there any parameters to this?

RESULT: