GUIDANCE FOR COUNCIL MEMBERS ON CONFLICT OF INTEREST

Occasionally, a Council Member may find himself/herself in a situation which requires that Council Member remove himself/herself from participation in the decision making process and from voting on a matter before the Council. This situation exists when the Council Member has a “conflict of interest” as defined by applicable laws. These laws establish minimum standards for the conduct of public officers and employees who, in their official capacity, are, or may become involved with, a decision which might unduly affect their personal interests or those of their close relatives. Arizona law to include a "spouse, child, grandchild, parent, grandparent, brother or sister of whole or half blood and their spouses, and the parent, brother, sister or child of a spouse" defines those relatives.

PURPOSE OF CONFLICT OF INTEREST LAWS

The purpose of Arizona’s conflict of interest laws is to prevent self-dealing by public officials. The financial interest of public officers or employees must not conflict with the unbiased performance of their public duties. The object of the statutes is to remove or limit any improper influence, direct or indirect, which might bear on an official’s decision, as well as to discourage deliberate dishonesty.

THE ARIZONA CONFLICT OF INTEREST LAW

Section 38-503, A.R.S., states in pertinent part:

1. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

2. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

WHAT IS A SUBSTANTIAL INTEREST?

The preceding subsection tells us that disqualification is required where a Council Member has a “substantial interest” in the pending matter. But, what is a “substantial interest?" The law tells us that a “substantial interest” is basically any financial interest of the Council Member or relative, which is not a “remote interest."

The Legislature has determined that certain economic interests are so remote that they do not unduly influence a person’s decisions or actions. These “remote interests” are discussed below. Unless the interest is one of the nine remote interests described in the following subsection, the interest is substantial and creates a conflict of interest.

To determine whether a substantial interest exists, a Council Member should ask the following questions:

A. Will the decision affect, either positively or negatively, an interest of the Council Member or a relative?

B. Is the interest a pecuniary or proprietary interest, i.e. does it affect a financial or property interest?

C. Is the interest other than one of the nine remote interests described below?

If the answer to each of these questions is yes, then a substantial interest exists which requires disclosure and disqualification by the public officer or employee.

Although public officers or employees may not themselves have a substantial interest in a decision in which they are about to participate, if one of the relatives described above has a substantial interest in the decision, the public officer or employee must disclose the interest and refrain from participating in the decision.

REMOTE INTERESTS

Arizona law excludes from the definition of a substantial interest certain enumerated remote interests. Any interest in a decision or contract not falling within the following remote interests is a substantial interest requiring withdrawal from participation:

1. Non-Profit Corporations. If the Council Member or relative is a non-salaried officer of a nonprofit corporation, he or she has a remote interest in any decision affecting that corporation.

2. Landlord/Tenant of a Contracting Party. If a Council Member or a relative is a landlord or tenant of a party contracting with FTF, the Council Member has a remote interest in a decision regarding the contract.

3. Attorney of a Contracting Party. If the Council Member or relative represents a client contracting with FTF, he/she has a remote interest in a decision affecting the client's contract. For example, if the Council is considering awarding a contract to a contractor which is represented by an attorney who is related to the Council Member, that Council Members interest in the awarding of the contract is remote.

4. Nonprofit Cooperative Marketing Associations. If a Council Member or a relative is a member of a nonprofit cooperative marketing association, he/she has a remote interest in any decision affecting that association.

5. Insignificant Stock Ownership. If a Council Member or a relative owns less than three percent of the shares of a corporation for profit, and if the income from those shares does not exceed five percent of the person's total annual income, he/she has a remote interest in any decision affecting that corporation.

6. Reimbursement of Expenses. If a Council Member or a relative is being reimbursed for actual and necessary expenses incurred in the performance of official duties, he/she has a remote interest in any decision affecting that reimbursement.

7. Recipient of Public Services Generally Available. If the Council Member or relative is a recipient of public services provided by FTF, and if those services are available to the general public, the Council Member has a remote interest in any decision affecting those services.

8. Class Interests. If the Council Member or relative is a member of a trade, business, profession or other class of persons, and the interest is no greater than the interest of the other members of the class, the public officer or employee has a remote interest in any decision affecting the class. For example, if the Council was considering a wage enhancement program for child care providers and a Council Members son was a child care provider, the interest is remote because the son benefits no more or less than other child care providers.

9. Interests of Other Agencies. A public officer or employee may participate in a decision that indirectly affects a relative who is an officer or employee of another public agency. For example, the head of the state agency responsible for allocating funds to local governments could participate in such decisions even though his/her spouse was an officer or employee of the local government. If, however, the decision confers some direct economic benefit or detriment resulting in the termination of a spouse's employment by the local government, a conflict of interest is present.

DISCLOSURE OF INTEREST

Any Council Member who has a conflict of interest in any decision must disclose that interest. The Member must file a signed, written disclosure statement with the Regional Coordinator fully disclosing the interest. The disclosure of the conflict should include a statement that the Member withdraws from participation regarding the matter and will not vote on or participate in any discussions of the matter.

WITHDRAWAL FROM PARTICIPATION

Having disclosed the conflict of interest and withdrawn in the matter, the Council Member should not communicate about the matter with anyone involved in the decision making process in order to avoid the appearance of impropriety. Further, the Council Member should not otherwise attempt to influence the decision and should remove himself/herself from the Council table/room while the matter is considered.

RULE OF IMPOSSIBILITY

In the event that a public agency cannot act because most of its members have a conflict of interest, members may participate in the agency's decision after making known their conflicts of interest in the agency's official records. A.R.S. 38-508(B). This is referred to as "the rule of impossibility." It is important to note that before the rule of impossibility will apply to a multi-member board or commission, the majority of the entire membership of the board or commission must be unable to participate because of conflicts of interest. The rule of impossibility may not be invoked if merely a quorum of the public body is present and unable to act because of conflicts. In those cases, the public agency must reconvene to take up the matter when all the members are present.

IMPROPER USE OF OFFICE FOR PERSONAL GAIN

Public officers and employees are prohibited from using or attempting to use their official position to secure valuable things or benefits for themselves, unless those are part of the compensation they would normally be entitled to for performing their duties.

It is a class 4 felony for a public servant to solicit, accept, or agree to accept any benefit upon an understanding that his or her vote, opinion, judgment, or other official action may thereby be influenced. It is a class 6 felony for a public officer to ask to receive any unauthorized gratuity or reward or promise of a gratuity or reward for doing an official act.

SANCTIONS FOR VIOLATIONS

A. Knowingly or intentionally violating any provision of the conflict of interest laws is a class 6 felony.

B. Negligent or reckless violation of the law is a class 1 misdemeanor. This means that one may be prosecuted for failure to disclose a conflict of interest, even those of which he/she did not, but should have known.

C. Upon conviction of a violation of the conflict of interest laws, a public officer or employee forfeits the public office or employment.

D. Any contract made by FTF is subject to cancellation if anyone significantly involved in the contract process on behalf of FTF was or is also employed by or acted as consultant to any other party to the contract during the time the contract or extension to the contract is in effect.

E. Any person who is affected by a FTF decision made in violation of the conflict of interest laws, may sue to have the contract or decision declared null and void. The court may award costs and attorney's fees to the prevailing party. Persons claiming that a Council Member had a pecuniary interest in making a decision against them may also file suit in state or federal court alleging a violation of their civil rights.