



FIRST THINGS FIRST

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AGENDA ITEM: Declarations of Conflict of Interest

BACKGROUND: This is provided as a reminder to the Regional Council regarding the conflict of interest requirements.

RECOMMENDATION: Discussion only – no action needed.



FIRST THINGS FIRST

Conflict of Interest Guidance for Regional Partnership Councils

I. Review of Conflict of Interest Statutes

A. “Substantial Interests” That Require Recusal From Participation:

A.R.S. § 38-503(A) states,

*Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract . . . 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** . . . in such contract . . . “*

The First Things First statutes, in A.R.S. § 8-1173(C), provide a further requirement:

“No regional partnership council member shall vote on, or participate in the discussion of, any grant proposal in which any entity by which they are employed or on whose board they serve on has a substantial interest . . .”

A “substantial interest” is any pecuniary or proprietary interest, unless it is considered “remote” under A.R.S. § 38-502(10). A substantial interest is not limited to a direct or indirect payment of money, rather it is an interest by which a person or entity *receives or loses something of value*.

“Employed” also includes volunteers. Further, “board” is not limited to the organization’s governing board – advisory boards are likely included.

Regional councils are boards of the State of Arizona, and council members are public officers of the State. All Arizona statutes apply to regional council meetings and members, regardless of whether a meeting is held on tribal land.

B. “Remote Interests” That May Allow Participation:

The Legislature has determined that certain interests are so remote that they do not impermissibly influence a person’s decisions or actions. These “remote interests” are set forth in A.R.S. § 38-502(10). The most common remote interests arising in connection with regional councils are described in this section.

A regional council member who is an employee of a government agency or a tribal government may not have a “substantial interest” that results in a conflict of interest on matters involving their government agency or tribal government. A regional council member employed by a government agency or tribal government may deliberate and vote as long as their interest is considered “remote” rather than “substantial.”

A.R.S. § 38-502(10)(i) provides that if the regional council member is an officer or employee of another public agency, they have a remote interest in decisions involving the other public agency “unless the contact or

decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative . . . “ The regional council member should consider:

- Will these funds be used by my agency to pay all or a portion of my salary?
- Will these funds increase my department’s budget, or prevent my budget from being cut?
- Will I receive any other direct benefit as a result of my employer’s receipt of these funds?

If the answer to *any* of these questions is “yes,” the regional council member must declare a conflict.

The conflict of interest statutes also provide that any interest of a person who is a “member of a trade, business, occupation, profession or class of persons of at least ten members *which is no greater* than the interest of the other members of that trade, business, occupation, profession or class of persons” has only a “remote interest.” A.R.S. § 38-502(10)(j). So, for example, an accountant who is a member of the Board of Accountancy may vote on issues regarding the licensing of accountants, even though those issues may impact that member personally – *provided the impact on the member is no greater than the impact on other accountants.*

II. Applying Conflict of Interest Statutes with Regional Partnership Councils— Regional Council Meetings

Regional council members are appointed for their knowledge and expertise. For general discussions they should participate, and it is expected that they participate in general discussions relating to the assessment of needs, assets, strategies and funding. When the discussions become more specific, for example the specifications, scope of work or amount of funding that should be allocated to the area in which members could be a bidder, then they should recuse themselves.

Conflicts of interest must be disclosed in writing before or at the time of recusal (and placed in the regional council’s conflict of interest file. A.R.S. § 38-502(3). The conflict also should be stated in the meeting and reflected in the minutes. It is the responsibility of the council member to assure that this is done.

In instances in which a member has made a written disclosure and placed it in the regional council’s conflict of interest file and that agenda item continues to be discussed as old business over several subsequent meetings, one disclosure form is likely sufficient. However, at each meeting the council member should state for the minutes that they have a conflict of interest on the agenda item and have previously filed a written disclosure with the Regional Council. In addition, FTF policy requires a copy of the written disclosure be attached to the minutes of each meeting. A new conflict of interest disclosure would be required for an item of new business.

As the discussion proceeds in the meeting, it may jump from one subject to another. The regional council member must remain focused on the nature of what is being discussed. It is the responsibility of the member to avoid talking about something for which they have declared a conflict.

If a council member has a conflict of interest on an agenda item, they must refrain from voting upon or otherwise participating in any manner. A regional council member cannot do or say anything that in any way potentially influences other council members, and should not display any body language, comment, or do anything that suggests their opinion. Recused members who may not be able to control their emotions should leave the room.

While it is not the responsibility of FTF staff to police conflicts, it is not appropriate for staff to ignore conflict issues. Conflicts noted by FTF staff should be brought to the member's attention in a professional manner. If the situation persists the circumstances should be brought to the attention of a Regional Senior Director and if it warrants, the Chief Regional Officer.

If the application of the conflict of interest statutes result in a regional council not having sufficient members to deliberate and vote, the "rule of impossibility" may be invoked so the agenda item may be considered. A.R.S. § 38-508(B). A quorum of an eleven member regional council is six members; if there are only five or fewer members without a conflict of interest it would be impossible to convene a quorum for the consideration of the issue. In this situation, A.R.S. § 38-508(B) provides that after all members of the council have disclosed any conflicts of interest, all members may then deliberate and vote on the issue. The "rule of impossibility" is very strictly administered, and only applies when due to conflicts of interest it is impossible for obtain a quorum of a council – *it does not apply to attendance problems*. If there are six members of the council with the ability under the conflict of interest statutes to deliberate and vote, the absence of one or more of the six from a particular meeting does not constitute impossibility.

III. Applying Conflict of Interest Statues with Regional Partnership Councils— Administration of Regional Council Grant Awards and Agreements

Regional council members sometimes serve a dual role as both a regional council member and as a member of an organization that has been awarded an FTF grant. A.R.S. § 38-503(A) states that a council member with a conflict of interest must not only refrain from deliberating and voting, they must refrain from "***otherwise participating in any manner*** . . . in such contract . . . "

The Arizona Court of Appeals stated when addressing this issue that "one cannot serve two masters". Council members should avoid "situations where their professional or financial concerns might conflict with the unbiased performance of their duties." *Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985).

As discussed above, an employee of a government agency or tribal government may be able to participate if their interest is "remote."

When financial and programmatic data reports are being reviewed and discussed by a regional council, a council member that works with an organization that has been awarded a grant should recuse themselves from participating in the discussion about their organization's grant and performance information presented.

Regional Council members who are affiliated with or work for an organization who receives funding from the Regional Council on which they serve should recuse themselves from all contract administration interaction with First Things First. We are seeking further clarity on conflict of interest law related to council members who operate statewide grants or grants from other regional partnership councils. We will provide additional clarity as soon as possible.