

Legally (Relevant



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Conflicts of Interest and Local Government

Ethical conduct by employees and officials is essential to the integrity of local government. Local government officials, such as city commission and council members, and rural water district (RWD) board members, as well as their employees, have ethical obligations prescribed by state law. This article will highlight these obligations.

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First a warning – these rules are contained in Kansas Statutes 75-4301a through 75-4306. They contain detailed definitions and rules governing officials’ and employees’ conduct that use those definitions. The detail contained in these statutes is simply too great to cover fully in this article, so the discussion here is less than complete. However, it should be enough to alert officials and employees to be aware of situations when an ethical conflict as defined by state law is likely and to know to ask questions or request help when needed, along with some tips on how to avoid problems.

If there are two things elected and appointed officials need to remember on this subject, they are:

1. Complete and file a Statement of Financial Interest (SOFI); and
2. Unless the contract is the result of a competitive bid, do not vote on a contract or purchase from anyone with whom you conclude that you may have a conflict of interest.

Conflicts of Interest

Now for some detail. State law prohibits “officers” and employees from making or participating in the making of “contracts” with anyone whom the officer or employee has a “substantial interest”.

An “officer” is anyone elected or appointed to any governmental subdivision or its agencies.

A “contract” is any agreement for sale or purchase of property (including, but not limited to land) or services.

At the risk of much oversimplification, a “substantial interest” exists in any business in which the individual and/or spouse received \$5,000 or more in compensation or a gift of \$500 or more in the

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previous year; in which there is an ownership with a value of \$5,000 or more or five percent or more; is employed by that business; or an officer, director or proprietor of that business. Each of these connections results in the officer or employee having a “substantial interest” that classifies the officer’s/employee’s relationship as a conflict of interest. Note the inclusion of the individual’s spouse for the substantial interest test. Other close family, such as parents and children, are not considered.

If an officer or employee has a conflict of interest as defined by state law, unlike all of these definitions which can make determination of conflict complex, the answer to the question of what to do when a conflict exists is actually very simple – do not make or participate in the making of the contract. For an employee who has discretion to make a purchase, do not do it with any business with which that employee



has a conflict of interest. Refer it to another employee in the organization or back to the governing body instead.

In the case of an elected or appointed officer of the local government, do not vote on a contract that involves a party with whom there is a conflict of interest. Note that the statutes and opinions by the Governmental Ethics Commission make it clear that the officer need not leave the room when the contract is under consideration, and can even participate in the discussion. As provided in state law, it is sufficient to abstain from action on the contract.

There are two important exceptions to this rule: the employee/officer with a conflict of interest is allowed to make or participate in the making of the contract, including officers voting on the matter if the price is fixed by law or is the result of a competitive bid “advertised by published notice” (K.S.A. § 75-4304(d)).

Statement of Financial Interest

The second prong of the state law concerning conflicts of interest by local officials is the requirement that each candidate for local office and person appointed to local office must complete a form Statement of Financial Interest (SOFI) within the times prescribed by statute. This is usually fairly automatic for city council and commission candidates as it is usually done at the time of filing for candidacy with the city clerk or county election official. It may not be so automatic when appointed to fill a vacancy, but the requirement exists nonetheless. Also, if changes occur, these need to be made in an updated SOFI to be completed and filed between April 15th and April 30th of the following year.

RWD board members are also required to complete and file SOFIs according to Ethics Commission Opinion 2003-16. Because of the way RWD elections

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Local Preferences Purchasing Policies

It is very common for states and local governments to adopt local preference policies. These are designed to favor local vendors and contractors over others in order to help retain local jobs, create new jobs, help support local business and, in the case of taxing entities, help support the local tax base. They appear in various forms, and some can be exceedingly complicated in the way they operate, but often involve a form of percentage or points system that weigh in favor of the local vendor or contractor over the proposal or bid of a non-local one, the result of which may be to justify the selection of the higher cost local proposal or bid over the lower cost competition.

These programs tend to have broad support by voters, who like the idea of their taxes and fees being plowed back into the local economy in the form of purchases of goods and services within the local community.

But these programs are not without their problems. What is local? The State of Kansas has a local preference that awards points to bids for motor vehicles assembled in Kansas (i.e., General Motors, whose assembly plant in Wyandotte County is a major employer). But what is “local” in your community? Is a nationwide big box chain store “local” so that it receives the same favorable treatment as a locally owned hardware store?

Most criticism involves the effect on competition and the resulting potential on prices. While recognizing the obvious political appeal, most governmental purchasing organizations conclude that the impact on competition, along with the added administrative burden of certifying local vendors scaling local v. non-local proposals generally outweigh the benefits. Federal procurement regulations generally discourage use of geographic restrictions and most local preference programs explicitly provide that local preference does not apply to purchases or contracts that involve the use of federal funds.

are typically held, SOFI filings will not occur until after the election, but in any case, they should be done as soon as possible after the board member’s election or appointment. The SOFI form is prescribed by the Governmental Ethics Commission and once complete, is to be kept on file, available for inspection and copying, in the RWD office.

Penalties for Non-Compliance

Ethical requirements concerning conflicts of interest are important not only for the integrity of local government but because the penalties for violation are severe.



Failure to make any disclosure of a conflict of interest is a crime, classified as a Class B Misdemeanor. In addition to being a Class B Misdemeanor, making or participating in a contract in which the employee or officer has a conflict of interest, if convicted, forfeits his or her employment or office.

Conclusion

Every elected and appointed local government official, and every local government employee, should be aware that very strict ethical obligations exist as concern their dealings with sales and purchases involving businesses in which they have a substantial interest. These key terms have very specific definitions that require interpretation and application to the specific facts of the situation. Fully and carefully complete a SOFI, and update it annually, which will help greatly in identifying these potential conflicts. And finally, be familiar enough with the rules to spot a conflict when it may arise, and by all means ask for help from legal counsel if there is any question.

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