



**City of Atlanta Board of Ethics
Formal Advisory Opinion 2010-2
Disclosure and Disqualification Due to Personal Interests**

Opinion Summary

Whether a city elected official has a personal interest that requires disclosure and disqualification from voting depends on whether there is a personal benefit to the official. The interest may be based on a reasonably foreseeable financial interest, a relationship with an immediate family member, or a relationship with a business, partnership, or corporate association other than a public agency.

Question Presented

What is a personal interest that requires city elected officials to disclose their interest and disqualify themselves from voting on a matter?

Facts

The Ethics Office has recently received several questions on whether city officials have a personal interest that precludes them from voting on a matter that has come before the Atlanta City Council. A personal interest means “any interest arising from relationships with immediate family or from business, partnership, or corporate associations, whether or not any financial interest is involved.” Atlanta, Ga. Code § 2-801. Section 2-813 requires officials to decline to participate when they know or should know that they have a direct or indirect financial or personal interest in a matter. If they have such an interest, they should not vote, discuss, decide, participate, or seek to influence others and must disclose their interest on an online Conflict of Interest Disclosure Report. See FAO 2008-2 (disclosure of conflicts of interest). Given the importance of avoiding conflicts of interest and the frequency of questions related to personal interests, the Ethics Officer believes that it would be helpful for the Board to consider the term “personal interest” and provide guidance on when a personal interest may preclude an elected official from voting on an ordinance or resolution.

The following scenarios are representative of the questions on voting and personal interests that have arisen over the past five years:

1. A Councilmember serves on the board of directors of a non-profit organization whose application for a city grant is before the City Council.

2. A Councilmember serves as the Council's representative on a conservancy board for a city park and a matter comes before the City Council related to parkland following a vote by the conservancy board.
3. A Councilmember serves as an ex officio, non-voting member of a non-profit board.
4. A Councilmember's brother is nominated to serve as a volunteer on a city board.
5. A Councilmember's spouse is a member of a private club that seeks an easement that the City Council must approve.
6. A Councilmember's daughter is a member of a church that is seeking a rezoning.

Relevant Laws

The Code of Ethics has two provisions on voting and personal interests.

Contract participation. Section 2-812 prohibits officials and employees from participating directly or indirectly in any matter pertaining to any contract, subcontract, solicitation, or proposal when the official or employee knows or with reasonable investigation should know that there is a financial or personal interest possessed by the official; an immediate family member; a business other than a public agency in which the official or an immediate family member serves as an officer, director, stockholder, creditor, trustee, partner, or employee; and a person or business with whom the official or an immediate family member is negotiating or seeking prospective employment or other business or professional relationship.

Voting disqualification. Section 2-813 deals with voting and prohibits officials and employees from voting, discussing, deciding, participating in considering a matter, or seeking to influence the votes or decisions of others when they know or with reasonable investigation should know that they have a direct or indirect financial or personal interest in any proposed legislation or decision pending before them or their agency.

State law makes it illegal for members of a municipal council to vote on questions in which they are "personally interested" and requires local government officials to disqualify themselves from voting on any rezoning action in which they have a financial interest. See OCGA §§ 36-30-6; 36-67A-2. Other city laws deal with voting related solely to financial interests. The Charter prohibits votes on contracts with any business in which a member of the Council has a financial interest and the City Council's Rules of Procedure prohibit members from voting on any measure that would affect any financial interest of the member or the member's immediate family. Atlanta, Ga. Charter §§ 5-401, 5-402, Code § 2-91.

Discussion

The purpose of the Ethics Code is to ensure that officials and employees are acting in the best interest of the City rather than in their own financial or personal interests. The ethics law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Towards that end, the city's standards of conduct prohibit officials from having contractual, financial, or personal interests that conflict with or create the justifiable impression in the public of a conflict with their proper discharge of their official duties or tend to impair the independence or objectivity of their judgment in performing their duties. Once a conflict is discovered, it must be publicly disclosed and the official is disqualified from taking any further action in connection with the matter.

Whether a person is disqualified from voting on a specific matter depends on the facts and usually must be reviewed on a case-by-case basis. In past advisory opinions, the Board of Ethics has addressed conflicts involving employees with a financial interest in companies doing business with the City or in a contractual relationship with companies doing business with and seeking official action from the City. See FAO 2003-2 (no inherent conflict of interest based on the possibility that a company may seek city business); FAO 2010-1 (employee cannot participate in decisions related to the client of a company in which he has a financial interest). In addition, the Board has addressed when officials and employees are required to publicly disclose their financial and personal interest on an online Conflict of Interest Disclosure Report. See FAO 2008-2.

It is difficult to draft a bright-line rule to apply to every conflict of interest given that the facts can vary widely, the law applies to both indirect and personal interests, and those terms are not easily defined. A review of other jurisdictions does not demonstrate any uniform approach to the issue. The City Model Ethics Code speaks in terms of “benefits” rather than “interests”: “An official or employee may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal or financial benefit, not shared with a substantial segment of the city’s population.” See http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC32. Another test is followed in Florida where an official has a voting conflict of interest when the matter “would inure to the officer’s special private gain or loss” or to the special private gain or loss of the official’s principal, corporation, relative, or business associate. See Fla. Statutes, § 112.3143 at <http://www.ethics.state.fl.us>. The City of Chicago addresses only financial interests distinguishable from those held by the general public, the City of Seattle applies a reasonably foreseeable financial-interest test, and the City of Honolulu allows members of the City Council to vote on any matter, provided they disclose their conflict.

In Atlanta’s Code of Ethics, a “personal interest” is defined as interests related to immediate family members and to business, partnership, or corporate associations. A non-profit organization is included in the definition of a business. See Code § 2-801. Among the factors to consider are who holds the interest; whether the official will receive a personal benefit; whether a financial interest or reasonably foreseeable financial interest is involved; whether the benefit or interest affects a discrete group of identifiable persons; whether the potential benefit is direct, certain, and immediate; and whether the matter is part of a specific transaction or piece of legislation. Applying these factors, the Board of Ethics addresses each of the factual situations raised.

Disclosure and Disqualification Required

1. A Councilmember who is a member of the board of directors of a non-profit organization should not vote on legislation awarding city funds to it. A conflict arises because the Councilmember owes a fiduciary obligation to both the non-profit group and the City, and the Councilmember has a personal interest in the legislation based on his or her service as a director of the organization. When a contract or grant proposal involving the non-profit group comes before the City Council, the Councilmember should disclose the conflict and not vote, participate, or seek to influence others on the matter. This action helps to preserve the integrity of the funding process and avoid the perception that a Councilmember is using his or her official position to provide a financial benefit to a group of which he or she is a director.

A Councilmember has questioned whether this rule would apply when the organization is seeking funding as part of a legislative packet, such as the Community Development Block Grant program, which awards grants to many organizations. She says that she wants to help the organization on whose board she serves and also other groups in her community that are seeking funds in the same piece of legislation. The Board believes that the same rule applies whether the funding is part of an individual piece of legislation or a packet. In both situations, the legislation involves a financial benefit to an organization on whose board the Councilmember serves, the appropriation will provide a direct and immediate benefit to it, and the grant recipients are a discrete, identifiable group. Abstention on the matter assures both citizens and competing organizations that the funding process is fair and no entity is receiving special treatment due to a personal relationship. If the Councilmember wants to vote on the CDBG packet, the Councilmember could choose to change her status on the board and serve in an ex officio, non-voting capacity and abstain from participating on the non-profit's board in any matter involving city funding.

2. A Councilmember should not vote on the confirmation of a brother or other immediate family member to serve as a volunteer on a city board or the city's representative on a public board. While this interest is more indirect than the first example since it involves a family member rather than a member of Council, the Board believes that the better practice is for the Councilmember to refrain from voting on any appointment of an immediate family member due to the personal benefit and prestige that accrues to the relative. If, however, the City Council is asked to vote on a grant, appropriation, or contract with the organization, the Councilmember is not precluded from participating in the matter since it involves a public agency and the immediate family member is receiving no personal benefit.

Disclosure and Disqualification Not Required

3. A different situation arises when a Councilmember is appointed by the City Council to serve as a volunteer on the board of a public authority or non-profit organization, such as a park conservancy board. Unlike example one, the Councilmember in this situation is serving in an official capacity at the Council's request on behalf of the City and has a duty to represent the public's interest on the board. The Councilmember's board membership is not a personal interest that would prevent him or her from participating or voting on a matter of public concern before the City Council related to the authority or non-profit organization.
4. Similarly, a Councilmember is not precluded from participating in a matter involving a non-profit organization when he or she serves in an ex officio, non-voting capacity on its board of directors. As a non-voting board member, the Councilmember is not involved in financial decisions about funding and the budget and, therefore, does not serve in a fiduciary capacity.
5. & 6. A Councilmember may also vote on an easement related to a private club of which the official's spouse is a member or on a zoning matter related to a church to which an immediate family member belongs. In both situations, the family members are part of the organization's membership and do not serve in a fiduciary capacity as an officer or member of the board of directors. Neither the family nor church members gain a personal benefit from the church's rezoning, and any personal financial benefit that the

private club members gain from the city's grant of the easement is too uncertain, tenuous, and remote to disqualify the Councilmember from voting on the easement.

Conclusion

It is not possible to determine in advance every situation where an elected city official may be disqualified from voting due to a financial or personal interest. Disqualification is more likely to occur when the matter affects the official directly, involves a reasonably foreseeable financial interest, and will result in a clear and certain personal benefit or loss; the benefit accrues to a small identifiable group; and the vote is on a specific contract or grant. On the other hand, disqualification is less likely to be required when the official is not directly affected; there is no reasonably foreseeable financial interest of the official, a family member, or a business associate; any potential benefit is uncertain and contingent on other acts; and the matter affects a large segment of the public or is part of the annual budget.

This opinion is intended to provide general guidance to assist officials and employees in deciding when they are disqualified from participating and voting on a matter in which they have a personal interest. City officials and employees should seek advice from the Board of Ethics or Ethics Office if questions arise about specific situations that are not covered under these general guidelines.

Adopted November 18, 2010

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