

Conflicts of Interest & Ex Parte Contact in Quasi-Judicial Proceedings



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Conflicts of Interest in Quasi-Judicial Proceedings

1. What is a quasi-judicial proceeding?

- Proceedings such as hearings on variances, conditional use permits, or any other proceeding designed to have an immediate effect relating to a specific matter.
- Legislative or rule-making proceedings are not quasi-judicial. Those types of proceedings where the impact of the decision relates to general matters where the effect will be in the future are not quasi-judicial.

2. What is a conflict of interest?

Direct Pecuniary Interest

Voting on a matter benefitting the official's own property or affording a direct financial gain to the voter.

Indirect Pecuniary Interest

Voting on a matter that financially benefits one closely tied to the official, such as an employer, or family member.

Direct Personal Interest

Voting on a matter that benefits a blood relative or close friend in a non-financial way but in a matter of great importance.

Indirect Personal Interest

Voting on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

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3. How is the determination made?

- A. The members should be made aware of the definitions shown above and each member should, on their own, disclose any conflict that might fit within one of the definitions.
- B. Potential conflicts should be made known to the entire board. If the member believes he or she has a conflict, that member should recuse themselves from not only the vote but any participation in the proceeding.
- C. If the member with the potential conflict does not believe a conflict of interest exists, the matter should be voted on by the board.
- D. SDCL 6-1-17 states:

No county, municipal, or school official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

- (1) The official has a direct pecuniary interest in the matter before the governing body; or*
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.*

If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.

4. Giving notice of a potential conflict

To the extent the potential conflict does not result in recusal prior to the hearing, the potential conflict should be disclosed, on the record, and prior to the start of the hearing. This affords the participating parties the chance to lodge objections or inquire. Failure to do so may constitute a waiver.

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Ex-Parte Communications in Quasi-Judicial Proceedings

1. What is an ex parte communication?

It is a communication between a decision maker and an interested party outside of the official channels of the proceeding. Examples include: receipt of mail from proponents or opponents, phone conversations, inspections, conversations, etc. which go to the merits of the decision to be made.

2. What should be done if ex parte communications occur?

DISCLOSE! The communications should be disclosed prior to the start of any hearing. The disclosure should be made in the presence of the board and the public and, if possible, the content of the communication should be made part of the record.

3. Does ex parte communication require recusal?

- If the communication is "invited," then recusal should occur.
Invited communication is generally communication that is initiated by the board member.
- If the communication is "uninvited," then recusal should only occur if the board member feels that the content of the communication will not allow them to be fair and impartial regarding the matter to be decided.