



TO: Mayor and Town Councilors

FROM: Thad W. Renaud, Town Attorney

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RE: Ethics in Government – Conflicts of Interest and Related Ethical Issues

Questions concerning conflicts of interest and related ethical issues arise with some frequency in the context of governmental decision-making. In Frisco, the conduct of governmental officials is governed by state statutory provisions and the “Code of Ethics” that has been adopted by the Town and codified as Chapter 15 of the Code of Ordinances of the Town of Frisco. I have prepared this memorandum on the principal provisions of the state statutes and the local Code to assist you in considering these issues as they may arise in the future.

I. Conflicts of Interest – State Statutory Prohibitions

Section 24-18-109 of the Colorado Revised Statutes sets out rules of conduct for local government officials and employees. Among other things, it prohibits local government officials from:

Perform[ing] an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

C.R.S. § 24-18-109(2)(b).

Moreover, “a member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.” C.R.S. 24-18-109(3)(a).

This statute is mandatory, and violations of the statute are subject to criminal prosecution. Votes which reflect a conflict of interest by any one member are voidable, even though the vote of that particular member may not have been a deciding vote.

II. Conflicts of Interest – Local Code Provisions

Frisco's local ethics code is, in many respects, more restrictive than the state statutes concerning governmental ethics and conflicts of interest. As stated in section 15-1 of the Town Code, the purpose of the Town's Code of Ethics is to "promote confidence in the town government" and the intent of the Ethics Code is "to foster public trust by defining the parameters of honest government and by prohibiting the use of public office for private gain." Particularly illustrative of this point is the provision of section 15-1.B., which provides as follows:

While it is critical that board members and employees follow both the letter and spirit of this chapter, it is equally important that they strive to avoid situations that may create public perceptions of violations of this chapter. Perceptions of such violations can have the same negative impact on public trust as actual violations.

While, similar to state law, Frisco's Code of Ethics contains a prohibition against the performance of official acts where the official actor has a financial or personal interest in a matter, Frisco's code contains additional prohibitions and limitations including the following:

No board member or employee may use any information obtained by virtue of his or her public position in furtherance of any personal or financial interest or the personal or financial interest of any other person (§ 15-3.A.(2)).

No board member or employee, in his or her official capacity, may solicit or accept from any one donor a present or future gift, favor, loan, service or thing of value, whose cumulative value is more than four hundred dollars (\$400.00) per annum, or under circumstances that would lead a reasonably prudent person to believe that such gift, favor, loan, service or thing of value was made or given primarily for the purpose of influencing or attempting to influence such board member or employee in connection with an official act, or as a reward for official action he or she has previously taken. This prohibition shall not apply to:

- (a) Acceptance of food and refreshment at conferences, seminars, training sessions, luncheon and dinner meetings, special occasions and other instances in connection with town business.
- (b) Campaign contributions reported under the Fair Campaign Practices Act. (§ 15-3.A.(3)).

No board member or employee shall engage in a substantial financial transaction for his or her private business purposes with a person whom he or she inspects or supervises in the course of his or her official duties. (§ 15-3.A.(4)).

No board member or employee shall perform any official act under circumstances that give rise to an appearance of impropriety on the part of the board member or employee. (15-3.A.(6)).

III. Conflicts of Interest – What to do if you have one (or think that you may have one)?

Section 15-4 of the Town Code prohibits a board member from voting on a matter if the board member has a conflict of interest as discussed above. On such a question, the board member must disclose the nature of the conflict of interest prior to abstaining from voting. When such a disclosure occurs, the board member must physically remove himself or herself from the board and is to refrain from attempting to influence the remaining members of the board on the question. (§ 15-4.B.)

If a board member is uncertain as to whether a conflict of interest exists, he or she can take one of several actions. First, under section 15-4.A. of the Code, the board member may ask the other members of the board to determine whether the member has a conflict of interest. On such a request, a vote of the remaining members of the board is conclusive on the question of whether the conflict of interest exists, and the motion made as to the question is to state the basis of the determination. Second, under section 15-6 of the Code, any board member may request that the Town Attorney provide an advisory opinion whenever a question arises as to the applicability of the Ethics Code to a particular situation. Because conflict of interest questions are sometimes complicated and involve a wide variety of factual scenarios, it is not at all uncommon for Councilors to call upon the Town Attorney for an advisory opinion and I ask that you do so if you are at all uncertain on a question.

IV. Conflicts of Interest – The Consequences

As discussed above, voting on a matter in which one has a conflict of interest can result in a void, or voidable, act or decision or even criminal liability under state law. Beyond that, however, Frisco's Code provides additional sanctions as follows:

Any board member or employee who violates any provision of this chapter shall be subject to the following:

- A. If a violation by any member of the Town Council is established to the satisfaction of a majority of the Town Council, the violation shall be grounds for an official reprimand by the Town Council.
- B. If a violation by any board member other than a Town Council member is established to the satisfaction of five (5) members of the Town Council,

the violation shall be grounds for removal of the board member from the board of which he is a member....

- C. If a violation by any employee is established by the town manager, the violation shall be grounds for discipline up to and including termination.

I hope that all of the foregoing is helpful to you as you consider matters that involve, or potentially involve, conflicts of interest in the governmental decision-making process. Because your consideration of such matters is vitally important to the public's trust in its elected officials, I very much encourage you to inquire of me or the Town Manager whenever you are faced with a situation that may involve a conflict of interest.