

91-2  
OPINION OF THE ETHICS REVIEW BOARD  
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

September 26, 1991

The Ethics Review Board ("the Board") has been asked by Councilmember Maxey to review the question of whether a member of a City board or commission who has a conflict of interest in a particular decision may appear before his or her own board or commission to address the matter in a personal capacity, even though he or she would have to refrain from participating in the decision in an official capacity. In reviewing the relevant provisions of local and state law, it appears that neither state statutes nor the City Charter prohibit such private capacity appearances, so long as the board or commission member files a conflict of interest statement and does not participate in the board or commission's decision in any official capacity.

The City Charter provision which pertains to this matter reads as follows:

*Interests in other decisions.* Any officer or employee who has, or whose relative has, a financial interest and any officer or employee who has a personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision **in any manner as an officer or employee.** (Article IV, Section 9[b][3], City Charter, emphasis added.)

The City Charter definition of "personal interest" reads as follows:

*Personal interest* means any interest (other than a financial interest) arising from blood or marriage relationships or from close business, political or personal associations or concerns which would, in the judgment of a reasonably prudent person, tend to impair independence of judgment or action in the performance of official discretionary duties. (Article IV, Section 9[a], City Charter.)

The City Charter also provides that any contracts made in violation of the conflicts of interest provisions are voidable by the City. (City Charter, Article IV, Section 9[b][5].)

To the extent that state law may be applicable, it states that a local government official or employee (which would include board

and commission members) is to refrain from performing any official act in which he or she has a financial interest or is engaged as a consultant, representative or agent. (Section 24-18-109[2][d], C.R.S.) This provision of state law is to be contrasted with the state rule for councilmembers, which simply states that councilmembers are to refrain from attempting to influence decisions in which they have a personal or private interest. The rule for councilmembers makes no distinction between attempts to influence the decision in a personal or private capacity.

The Board believes that members of City boards or commissions, as non-elected citizen volunteers, should not be required to give up the right to protect their personal interests when they might be directly affected by a board or commission, even if they serve on that board or commission. This right should not extend, however, to representing interests other than their own individual interests. For example, while a member of the Zoning Board of Appeals should be able to argue in favor of a variance for his or her private residence, that same board member should not be permitted to serve in a representative capacity, with or without compensation, and make presentations to the Zoning Board of Appeals on behalf of another person or entity, such as a developer or neighborhood association.

The Board recommends the following guidelines for board and commission members who have conflicts of interest but wish to make private capacity presentations to their own board or commission:

1. Immediately upon discovery that a conflict of interest exists as defined in the City Charter, a board or commission member should file a conflict of interest statement with the City Clerk as required by the Charter. (He/she may also wish to file a disclosure statement with the Secretary of State under the relevant provisions of state law. The City Attorney should be consulted on this point.)
2. The board or commission member must thereafter refrain from participating in discussions of the board or commission, voting on the matter or attempting to influence the decision as a board or commission member.
3. Any presentations made by the board or commission member in support of the proposal should be made in an individual capacity and not as a representative of any group or organization.

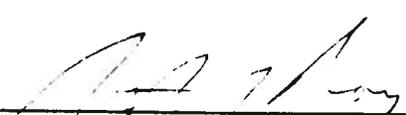
4. Each time that the board or commission member addresses the matter, he or she should clearly state that he/she is doing so in a private capacity and will not be participating in the decision-making process. The opportunities for input that are made available to the board or commission member should be limited to those which would be available to any other member of the general public who is similarly interested in the decision.

The Board does not believe that these limitations should apply to a board or commission member's ability to make personal capacity presentations to boards or commissions of the City other than the one on which the individual serves. Appearances to other boards or commissions in a representative capacity should be permitted. For example, an attorney serving on the Planning and Zoning Board should not be precluded from representing a client in a matter before the Zoning Board of Appeals.

Staff liaisons to boards and commissions are encouraged to work with the City Attorney's office and the City Clerk's office to inform board and commission members of the ethical rules of conduct that apply to the performance of their duties. Members of boards and commissions are encouraged to consult with these members of City staff, as well as their Council liaisons, for guidance on the handling of conflict of interest situations.

The advisory opinion was reviewed and approved by Councilmembers Maxey, Edwards and Fromme, as members of the Ethics Review Board of the City Council, for distribution to the members of the Council and for distribution to the City Clerk, to be maintained in the permanent file of opinions of the Ethics Review Board.

Dated this 26th day of September, 1991.

  
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Stephen J. Roy, City Attorney

SJR:whm

**From:** David Lingle [mailto:dlingle@alm2s.com]  
**Sent:** Friday, July 08, 2016 7:37 AM  
**To:** Christine Macrina  
**Cc:** Ron Sladek  
**Subject:** Re: Ethic's Review Board Meeting on Conflict of Interest

Hi Christine:

Thank you for the opportunity to comment on the subject of the Ethics Review Board meeting. I will not be available to attend in person.

I am a current member of the Landmark Preservation Commission and a past member and chair of the Planning & Zoning Board. I think it is important that the City continue to foster an atmosphere where the most qualified citizens can volunteer and participate on boards and commissions.

In regards to the first agenda issue, I believe that every applicant that appears before a board or commission should have the right to be represented by their professional consultants at that meeting. An applicant should not be required or expected to present professional materials on their own behalf, or answer what can be very technical questions themselves. For a firm with multiple partners/professionals such as mine, that is not a problem. If I have a conflict of interest, I recuse myself and another professional in the firm handles the presentation. (Only one time in the last 20 years did this present a problem, where I was serving on a commission in another city and my designated replacement was ill the day of the meeting. I received special permission from the board to make the presentation on behalf of our client.) However, I do believe a special circumstance exists for a consultant who is a sole proprietor and has no one available to present their professional materials to the board or commission. In this case, I believe they should be allowed to make the presentation and not force an applicant to represent themselves.

This leads to the larger issue discussed by the City Attorney's office but not listed as an agenda item for the Ethics Review Board meeting.....whether members of the City's boards and commissions should be able to provide professional services to the City. I firmly believe that this does not present a conflict as long as the board or commission member recuses himself from discussion and voting on any agenda item that might be related to such work. The reason many of these members were selected in the first place was because they had expertise in the areas handled by their board or commission, and in the case of the LPC, the commission membership is required to be made up primarily of qualified professionals. If this was not allowed, the City would lose many highly qualified, knowledgeable, experienced and dedicated citizen members, which would obviously not be in the City's best interests.

Thanks again for soliciting our input,  
Dave

**David Lingle, AIA, LEED AP**

Principal

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**From:** Ron Sladek [mailto:tatanka@frii.com]  
**Sent:** Friday, July 08, 2016 11:22 AM  
**To:** Christine Macrina  
**Subject:** Re: Ethic's Review Board Meeting on Conflict of Interest

Hi Christine,

First of all, I really appreciate the opportunity to provide comments on the conflict of interest issue that is coming before the Ethics Review Board next week. I will be out of state at the time of the meeting, so will not be able to attend.

This issue concerns me from two different perspectives: one as chair of the Landmark Preservation Commission and the other as a professional who has provided consulting services to the city for many years.

As a professional historic preservation consultant, I have provided services to various departments throughout the city over the past few decades and hope to continue to do so into the future. While my consulting practice involves projects throughout the Rocky Mountain states, I have been based here in Fort Collins since the early 1990s and consider the city to be one of my most important clients. Over the past 6-1/2 years since I joined the LPC, I have been very clear about the line between my professional work and volunteer service. Because of that awareness and in compliance with city code, I have always been careful to recuse myself from hearings and discussions where there might be an actual or perceived conflict of interest related to my professional work.

However, this has also presented occasional problems in situations where I have not been able to present the results of my work before the LPC for private clients or city departments. At the beginning of each project, I inform my clients that I will not be able to appear before the LPC on their behalf or even to present the results of my work. This often leaves them in a difficult situation where they will have to explain the technical results of my work without the benefit of experience and understanding. As a sole consultant I have had no one else to turn to for help. This has placed me in a different and more challenging situation than firms with partners or junior associates (such as at architecture firms) who can still appear before the LPC.

The other issue that has recently been raised by the city attorney's office is whether anyone serving on a board or commission is allowed to engage in business of any kind with the city. This question, and the code related to it, should also be taken into consideration during the Ethics Board's discussion. We need clarity on this question and the code language needs to be more clearly defined or perhaps even changed. I want to encourage discussion of this question with the city attorney during the meeting so we get some resolution to this additional issue.

The other concern I have with this is as chair of the LPC. I have served as chair for 4-1/2 years and hope to continue in that position until I am term limited out in another year and a half. As you may know, as a Certified Local Government the City of Fort Collins is mandated to ensure that the LPC has a minimum number of preservation professionals involved. Right now we have myself, four architects, an archaeologist, a public historian, a retired history librarian, and a preservation advocate. This is a remarkable group of people who bring education, experience and commitment to the task. A number of us take on projects for the city from time to time, and we have been careful to recuse ourselves from hearings when the projects appear on our agendas. I am concerned that a number will resign from the LPC if greater restrictions are placed upon us. In addition, it will become very difficult to find other working professionals to take their place. Obviously, this will severely limit the ability of the LPC to function as it should.

Thank you for taking these concerns into consideration. I look forward to hearing the results of the discussion.

Regards,

Ron

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Ron Sladek, Chair

Landmark Preservation Commission

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**From:** doug ernest [mailto:ernest.doug@gmail.com]  
**Sent:** Tuesday, July 05, 2016 6:21 PM  
**To:** Christine Macrina; tatanka@frii.com  
**Subject:** Re: Ethic's Review Board Meeting on Conflict of Interest

Hi Christine,

I will be out of town most of next week and therefore can't attend the meeting. In regard to written input, my opinion is that the topic under discussion is somewhat of a gray area. If, however, a board or commission member who has recused himself or herself due to a conflict of interest with a client who is appearing before that same board or commission, I do think that the client/applicant should have an opportunity to allow the board or commission to at least query in person the recused member if said member has technical expertise or knowledge that the applicant cannot otherwise present to the board/commission for its full consideration.

I do agree that the recused member ought not to appear before the/commission on behalf of another person (assuming that I am understanding that eventuality correctly).

I have copied LPC chair Ron Sladek as an FYI.

Doug Ernest

**From:** Vicky McLane [mailto:vmhmclane@gmail.com]  
**Sent:** Tuesday, July 05, 2016 5:26 PM  
**To:** Christine Macrina  
**Subject:** Re: Ethic's Review Board Meeting on Conflict of Interest

Christine - I may be old fashioned, BUT, it seems obvious to me that if you declare a conflict of interest in your role as a Board/Commission member, then you must recuse yourself from any further contact with the Board/Commission on that subject, whether in your official Board/Commission capacity or on behalf of a client or a project.

I have served on several State Boards, as well as local Boards, and the ethics are clear. Once you have declared a conflict of interest on any topic, you do not participate in ANY capacity on further discussion of that topic.

I appreciate the opportunity to comment.

Vicky McLane  
Land Conservation and Stewardship Board

On Tue, 5 Jul 2016 23:04:54 +0000, Christine Macrina <[cmacrina@fcgov.com](mailto:cmacrina@fcgov.com)> wrote:

Board and Commission Members:

You may recall that there have been recent discussions regarding whether an individual board or commission member who has declared a conflict of interest may present materials to his or her own board on behalf of a client or project. In order to obtain more clear guidance on this issue,

Councilmember Gino Campana has requested that the Council's Ethics Review Board consider this question and issue an ethics opinion. (The Ethics Review Board opinion is then presented to the City Council for review and adoption by resolution.)

The Ethics Review Board is scheduled to meet at 4:00 p.m. for one hour on Tuesday, July 12<sup>th</sup>, in the City Attorney's Office conference room at 300 LaPorte Avenue. The meeting is a public meeting and is open for all interested persons to attend. A copy of the formal notice of this meeting is attached.

You may want to provide input regarding this issue to the Ethics Review Board (either as a board/commission if you have time to meet prior to July 12, or as an individual). If so, it will facilitate with coordination and allow the Ethics Review Board to make efficient use of its meeting time for you to **provide your comments in writing in advance through me by noon on July 12**, so that I can be sure to forward that input to the Board as it is received, in addition to including the information in the Board's meeting packet.

Please feel free to call if you have any questions or concerns regarding this process or how you may comment on it.

Thank you.

**CHRISTINE MACRINA**

Boards and Commissions Coordinator

[City of Fort Collins](#)

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