

Klein, Thorpe & Jenkins, LTD –Conflict of Interest Municipal Law

The General Assembly has, by legislation, prohibited and limited the interests of both elected and appointed persons holding any office with a unit of local government they serve. First, the **Public Officer Prohibited Activities Act (50 ILCS 105/3(a))**, sometimes referred to as the “Corrupt Practices Act”, provides that no elected or appointed public office holder “may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person . . . in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote”. **The words “may”, “act” and “vote” have been emphasized to stress on the one hand that it is not necessary that the officer actually act or vote; the mere fact that the officer may act or vote can be enough to place the officer in violation of this Act, and, on the other hand, abstaining from voting or not even being present at the meeting at which the vote in question was taken is not enough to absolve the official from a violation of the Act.** In the event an officer has a conflict of interest in a contract coming before the public body and such officer cannot bring himself or herself within one of the several limited exceptions, then, in that case, the officer must make one of the following two decisions in order to avoid a violation of the Act:

1. **have the contract removed from the agenda before a vote is taken, or**
2. **resign his or her office before the vote is taken.**

The attorneys at KTJ continue to be amazed every time they hear a public official, and too often **even a governmental attorney**, say that all the public official need do in order to avoid a statutory conflict of interest is to abstain from voting. **Although abstaining from voting will be sufficient to avoid a common law conflict of interest, it is not enough to avoid a statutory conflict of interest.**

Next, the legislature has also included provisions in the Illinois Municipal Code prohibiting city and village officers from being interested in contracts with the city or village that they serve. (65 ILCS 5/3.1-55-10 and 65 ILCS 5/4-8-6 for commission form governments). Although these two Municipal Code contract prohibition provisions are similar to those found in the Corrupt Practices Act, they are not identical. Therefore, public officials and their attorneys must always review the provisions of the Corrupt Practices Act and, if applicable, the Municipal Code provisions when investigating a possible conflict of interest.

These statutory conflict of interest provisions serve notice that self-dealing by public officials will not be tolerated. Also, these statutory conflict of interest provisions are merely reflective of the common law that held contracts in which governmental officials had an interest voided on grounds of public policy to protect the government from being defrauded by its own servants.

Why is this issue of conflict of interest so important to public officials? Well, every time a vote is taken at a meeting of the public body, one or more members may, whether they realize it or not, face a potential conflict of interest, either statutory or common law. **Conviction for violating either of the conflict of interest statutes is a Class 4 felony punishable by a fine not to exceed \$25,000, a jail sentence of 1 to 3 years, and removal from office.**

Several Firm members have prepared a handbook, entitled “Manual on Conflict of Interests and Liability of Illinois Elected Officials”, published and distributed by the Illinois Municipal League. You may purchase copies of this manual from the League by going to the League’s Website: <http://www.iml.org>, then go to the bottom of the right-side menu under the caption **Products/Services**, click on **IML Publications**, then click on the manual Conflict of Interest and Liability and place your order.