

South Dakota Statutes Concerning Conflicts of Interest for Municipal Officials

SDCL 6-1-1. Local officer's interest in public purchase or contract unlawful--Contract void.

It shall be unlawful for any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services to be rendered, or for the purchase of commodities, materials, supplies, or equipment of any kind, the expense, price, or consideration of which is paid from public funds or from any assessment levied by said county, municipality, township, or school district, or in the purchase of any real or personal property belonging to the county, municipality, township, or school district or which shall be sold for taxes or assessments or by virtue of legal process at the suit of such county, municipality, township, or school district. Such contract shall be null and void from the beginning.

SDCL 6-1-2. Conditions under which contract with local officer permitted--Contract voidable if conditions not fully met.

The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit. However, the contract is voidable if the provisions of the applicable subdivision are not fully satisfied or present at the time the contract was entered into:

- (1) Any contract involving five thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;
- (2) Any contract involving more than five thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in § 5-18A-14;
- (3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;

- (4) Any contract for which competitive bidding procedures are followed pursuant to chapter 5-18A or 5-18B, and where more than one such competitive bid is submitted;
- (5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;
- (6) Any contract for commodities, materials, supplies, or equipment found in the state contract list established pursuant to § 5-18D-6, at the price there established or below;
- (7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a public postsecondary educational institution if an employee of the Board of Regents serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement; and
- (8) Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter 5-18A, and where only one such competitive bid is submitted, provided the procedures established in § 6-1-2.1 are followed.

SDCL 6-1-2.1. Conditions under which competitive bid pursuant to chapter 5-18A from officer of governing body may be accepted.

If competitive bidding procedures have been followed pursuant to chapter 5-18A, and the bid notice has been placed on the central bid exchange pursuant to § 5-18A-13 for two weeks prior to the opening of bids, a bid from an officer of the governing body may be opened and accepted provided the consideration is reasonable and just as determined by the governing body or a disinterested governmental entity.

SDCL 6-1-3. Deposit of funds permitted despite bank connection of public officer.

A bank may be designated as the official depository of county, municipal, township, or school district funds, notwithstanding that an officer, director, stockholder, or employee of a bank is an elected or appointed officer or treasurer of such county, municipality, township, or school district.

SDCL 6-1-17. Official prohibited from discussing or voting on issue if conflict of interest exists--Legal remedy.

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.

SDCL 6-1-18. Officer may consider relevant information from any source--Reliance on experience.

An elected or appointed municipal, county, or township officer may receive and consider relevant information from any source to perform the duties of office. An elected or appointed municipal, county, or township officer may rely on his or her own experience and background on any official matters, subject to the applicable law and rule concerning recusal and disqualification of a public officer.

SDCL 6-13-7. Persons prohibited from purchasing surplus property--Exception.

No governing board member, any officer of a county, municipality, township, or school district, who has been elected or appointed, or real property owner acting as an appraiser may purchase the surplus property except at public auction.

SDCL 3-16-7. Officer's interest in public contract as misdemeanor.

No public officer who is authorized to sell or lease any property, or make any contract in the officer's official capacity may become voluntarily interested individually in any sale, lease, or contract, directly or indirectly with such entity. A violation of this section is a Class 2 misdemeanor unless the act is exempted by law.

SDCL 9-14-3. Appointment of officers. Such officers as needed and provided for by ordinance shall be appointed.

Each appointive officer of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities, each officer shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employees, police, and firefighters. Such officers shall be appointed annually or at intervals determined by the governing body.

**SDCL 9-14-37. Neglect of duty or misconduct by municipal officer as misdemeanor--
Removal from office.**

It is a Class 2 misdemeanor for any member of the governing body or other municipal officer to commit a palpable omission of duty or to intentionally commit oppression, misconduct, or malfeasance in the discharge of the duties of his office. Upon conviction of a violation of this section, the court in which such conviction is had may in its discretion enter an order removing the member of the governing body or other officer so convicted from his office.

SDCL 1-56-10. Grant agreements with nonstate agencies to be displayed on website.

The grant agreement for each grant, pass-through grant, or any other award granted by a state agency to a nonstate agency after July 1, 2016, shall be displayed on the website created pursuant to § 1-27-45.

Each grant agreement shall include an attestation by the award recipient or sub-recipient that:

- (1) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- (2) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- (3) An effective internal control system is employed by the recipient's or sub-recipient's organization; and
- (4) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Additional rules regarding candidates' financial interest statements are found in SDCL Chapter 12-25. Additional rules or laws not provided here may impose additional requirements concerning conflicts of interest; this list will be updated as new laws are adopted or amended.