

Resolution 2016-096

A RESOLUTION ADOPTING A CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS OF THE CITY OF RAPID CITY.

WHEREAS, South Dakota Codified Laws (SDCL) Section § 1-56-10 requires that all non-state agencies receiving state grants and awards from a state agency adopt and enforce a conflict of interest policy; and

WHEREAS, the City of Rapid City receives millions in dollars from the State of South Dakota either directly or through federal pass-through funds which will be subject to the statutory requirement that it enforce a conflict of interest policy; and

WHEREAS, while provisions addressing conflicts of interest for municipal officials currently exist in state law, the Common Council wishes to adopt a conflict of interest policy that incorporates these statutory requirements and assists its elected and appointed officials in recognizing, disclosing, and avoiding conflicts of interests; and

WHEREAS, adopting a conflict of interest policy will clarify expectations from the public when elected and appointed officials are conducting City business; and

WHEREAS, the City of Rapid City deems it is in the best interest of the City to adopt this Conflict of Interest Policy for the Common Council and for all elected and appointed officials of the City.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that there is hereby established the following Conflict of Interest policy, which in its entirety reads as follows:

RAPID CITY CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS

The City of Rapid City seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid the appearance of such conflicts to the public it serves. Each elected and appointed official has the duty to place the interests of the citizens of Rapid City foremost in any dealings on behalf of the City and has a continuing responsibility to comply with this Policy. This policy applies to any elected or appointed official who serves on the Common Council, who serves on any board, committee, or commission of the City, or who is appointed to serve the City in any capacity pursuant to SDCL Chapter 9-14 (collectively referred to as "Official").

Conflicts of interest may exist when an Official, or an immediate family member of such Official, has a personal or financial interest clearly separate from that of the general public on a matter before the Official. An immediate family member for purposes of this policy is any person related to an Official within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild or an individual claimed by the Official or his/her spouse as a dependent for federal income tax purposes. Such conflicts of interest may be financial or personal, direct or indirect, and the existence of a conflict of interest is dependent upon the

unique facts of a particular situation.

It is the policy of the City of Rapid City to follow state law regarding conflicts of interest, and this policy is not intended to be more strict than the applicable requirements of state law. Generally, state law provides that an Official may not have a personal financial interest in any City transaction for the purchase of labor or services, materials or supplies, or real or personal property that belongs to the City. An exception to this general rule may apply if the transaction is reasonable and just, if the contract is made without fraud or deceit, and if the Official discloses the conflict and recuses himself/herself from participation in the decision for which there is a conflict of interest. These exceptions include the following:

- (1) A contract for \$5,000 or less;
- (2) A contract awarded by competitive bidding procedures if more than one competitive bid is submitted or, if only one competitive bid is submitted, the procedures in SDCL 6-1-2.1 have been followed;
- (3) A contract for professional services;
- (4) A contract awarded off of the state contract list at the established price or less;
- (5) A contract that does not require competitive bidding when there is no other source of supply or services and when the total of any such contracts does not exceed \$50,000 for a public improvement or \$25,000 for a contract for supplies or services; or
- (6) A contract with an entity for which competitive bidding is not required unless the majority of the governing body are members or stockholders who collectively have a controlling interest, or any governing board Official is an officer or manager or such entity.

No Department Director who is authorized in his/her official capacity to sell or lease any property or to make any contract may be personally interested, directly or indirectly, in any such sale, lease, or contract.

Procedure When Conflicts of Interest Exist

If an Official who is a member of the City Council, or a board, committee, or commission has a disqualifying interest in a matter before the body on which the Official serves, he/she shall disclose the conflict to the body prior to its consideration of the matter. Once this disclosure is made, the Official shall not formally participate in the official discussion, any executive session, or any vote on the matter. If the Official has a conflict of interest in the matter and chooses to participate in the discussion, the Official should leave the dais and speak on the item from the audience as a member of the public.

If it is alleged that an Official has a disqualifying conflict of interest in a matter before the City Council, or a board, committee, or commission on which the Official serves, and if the Official

does not voluntarily refrain from participating in the matter, then the Official may be disqualified from officially participating in consideration of the matter upon a two-thirds vote of the Council, board, committee, or commission on which the Official serves. The City Council, or a board, committee, or commission voting to disqualify such Official must make a specific finding of the disqualifying conflict of interest for which it has excluded the Official from participating in the matter under consideration. An Official disqualified in this manner may not participate in the official discussion, any executive session, or any vote on the matter.

If any Official desires assistance to determine if that Official, or another Official, has a disqualifying conflict of interest, the Official may request an advisory opinion from the City Attorney's Office. Such opinion shall be made available to all members of the City Council, or the board, committee, or commission about which the opinion is provided, but shall not be available for public inspection unless a majority of the members of the City Council or the board, committee, or commission to which the opinion is provided votes to make such opinion public.

Distribution of Policy to Officials

Upon adoption of this policy, the City Attorney's Office shall distribute this Conflict of Interest Policy and all pertinent state law provisions to all City Officials. The policy and state law provisions shall be timely provided to all newly elected or appointed Officials.

DATED this 20 day of January, 2017.

CITY OF RAPID CITY



Mayor

ATTEST:


Finance Officer

(SEAL)

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 employces, 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.