

Case # 2018-07

Date Filed: 21 December 2018

Requested by: Councilmember Peltier

Subject: When Might I Have a Conflict of Interest and What Do I Do About It?

Date Issued: 15 April 2019

This advisory opinion issued under the authority granted to the Bainbridge Island Ethics Board, per Article III, Section F of the Ethics Program.

Findings:

This advisory opinion has been written in response to requests for clarification on conflicts of interest. In this opinion we suggest the process for determining and disclosing a potential conflict of interest and lay out some guidelines around conflicts of interest for city council members and city committee members, with the understanding that every situation is different and that we continue to rely on the best judgment of individuals. Hence, this opinion offers a framework and not specific guidelines.

The intent behind conflict of interest disclosures is to ensure that a government body and the community it represents understand situations where an elected or appointed member faces potential personal benefit from actions or decisions made when acting in their official capacity. In reporting known or potential conflicts of interest, a member is allowing the governing body to understand and determine the extent of this risk. Such a process mitigates concerns the community may have around the intent of a decision and builds trust with the community the governing body represents. As stated in other advisory opinions, trust is hard to earn and easy to lose. Thus, the spirit of this framework is to help council and committee members err on the side of transparency and building trust.

At the core of a conflict of interest is the potential for personal benefit. Personal benefit can take many forms, but we generally associate it with monetary benefit which can be most easily identified. An example commonly cited would be a decision where a council or committee member benefits monetarily from an award for city business. Beyond this example, which shows clear direct benefit, one can point to other situations where benefit can come in the form of favorable treatment through a city regulation, zoning changes, or local improvement projects. In these examples, a council or committee member may benefit from a change that positively impacts the value of their property.

Bainbridge Island is a small community, and much of the work we entrust to our elected and appointed committees will involve decisions that impact everyone, hence it may be challenging

to understand when there is a conflict of interest. Furthermore, decisions involving parts of the community or island often require participation and representation from affected citizens.

When determining whether a committee member should disclose a potential or apparent conflict of interest, the following criteria should be taken into consideration:

1. **Benefit:** Benefit, in the case of a conflict of interest, stems from the potential personal returns derived from a decision. Benefit may be seen as a potential incentive for an action. In the context of this framework, the expectation is that committee members are acting with the intent to represent the larger community, or the affected group, impartially and without the intent of personal benefit. So, the first question should be: could it appear that I have a potential benefit (monetary or otherwise) associated with the action at hand? If such a benefit can be defined, then look at:
2. **Particularity:** As a community we all have a link to the island which does not require further clarification or declaration. However, in some cases the impact of the decision is closer to the decision-maker. When a policy decision benefits one or a small group of citizens, with less or no benefit going to the larger community, there is the potential for conflict of interest. This means that there is a further connection, such as in the case of a decision having a direct impact on a council or committee person's personal property, business, or locality which is narrower than the island and neighborhood they represent. Again, the benefit need not be monetary. Many decisions may appear to be related to a small group of people, but if there are no benefits to be derived from the action/decision, then there is likely not a conflict of interest.

This framework provides guidelines for those serving to use their judgment as to when to disclose a conflict of interest. Given that this is a small community, and many can draw some connection to a decision, a council or committee member should look at how these criteria apply to their specific situation. A helpful tool is to consider the "appearance of a conflict" when considering a disclosure. Could the citizens of the island view a decision as having the appearance of a conflict?

Process:

The above may seem complicated and possibly difficult to apply. However, it is really rather simple. When in doubt, disclose promptly.

Consider your own situation and how it may be affected by the decision in which you are participating. Is your situation any different than any other citizen of the island? If there is any way, based on the conditions discussed above, in which the answer is "yes," then you should disclose this situation to the council or committee, explaining your circumstances. This disclosure must be done at the outset of a relevant discussion in order to serve the concerns

about transparency. The option then is for the council or the committee to weigh in with whether they feel that your participation in the discussion and decision could be seen as bringing an unfair bias to the decision due to a conflict of interest (or even an appearance of a conflict). The council or the committee may choose to have you recuse yourself from the discussion and/or the vote. A key part of this process is to disclose, rather than to withhold and possibly taint the decision.

Advisory Opinion:

The councilmember submitting this request seeks advice regarding a vote in favor of a resolution before the City Council which lowered speed limits on neighborhood streets throughout Winslow. The councilmember owns a house on one of the streets where the speed limit was lowered. Please note that this advisory opinion does not change the opinion issued in 2018-04, which dealt tangentially with a similar matter. In the current request, inasmuch as many neighborhood streets were affected by the decision (and not just one where the council member owned property), the test of particularity indicates that a vote on this matter does not amount to a conflict of interest, and any benefit derived from the decision is shared so widely as to be negligible.