

Lessard-Sams Outdoor Heritage Council

Agenda Item Memo

DATE: July 3, 2012

SUBJECT: Conflict of Interest

Council member Bensch entered into a contract with DNR to perform restoration and enhancement on a Wildlife Management Area next to Councilor Bensch' property. The contract is under \$2,500 and not paid from appropriations out of the Outdoor Heritage Fund. M.S. 2012, Chapter 97A.056, Subd. 4 identifies two instances in which a conflict of interest occurs. If one or both of these instances occur the conflict of interest must be handled according to the policies and requirements developed by the Office of Grants Management pursuant to M.S.16B.98.

The two situations found in statute to be handled under these policies are when a person has:

- **An organizational conflict of interest and those interests present the appearance that it will be difficult for the person to impartially fulfill his or her duty; and**
- **A direct financial interest and those interests present the appearance that it will be difficult for the person to impartially fulfill his or her duty.**

An organizational conflict of interest occurs when an affiliation exists between the applicant and the Council member. Affiliate is defined in Merriam- Webster as:

a : to bring or receive into close connection as a member or branch *b* : to associate as a member
<affiliates herself with the local club>

Councilor Bensch clearly is not a member, branch, or formal associate of DNR. Therefore under 97A.056, Subd. 4 no organizational conflict of interest exists. Therefore the grants management policies of the Office of Grants Management promulgated according to M.S. 16B.98 don't apply.

The second condition in statute that would indicate there is a conflict of interest is a direct financial interest. Mr. Bensch' contract is encumbered against existing appropriations from accounts other than the Outdoor Heritage Fund. There is no known DNR request before the Council that would result in enrichment of Bensch. So there is no direct financial interest. Therefore the grants management policies of the Office of Grants Management promulgated according to M.S. 16B.98 don't apply

Stricter direction on conflict of interest is found in the Council's procedures:

Conflict of Interest to be Managed Through Procedures:

Members of the COUNCIL have been appointed because of their legislative duties, interest, expertise, or knowledge of the science, policy, or practice of restoring, protecting, and enhancing wetlands, prairies, forests and habitat for fish, game and wildlife. Therefore, certain affiliations may constitute a conflict of interest that must be managed by the COUNCIL, including:

- **receipt of personal financial benefit from a proposing organization or request for funding being reviewed.**
- **servicing as an employee or governing board member of a proposing organization whose request for funding is being reviewed.**
- **having a family relationship with someone requesting funds or a staff or board member of a requesting organization.**

Procedures regarding conflict of interest:

A conflict of interest must be identified before or during the initial request for funding review process. The member must complete the Lessard-Sams Outdoor Heritage Council Conflict of Interest Disclosure Form and file it in the COUNCIL office. If a conflict of interest is recognized during the course of a meeting the member must declare the conflict at the first opportunity. Declaring a conflict of interest means that a member may not advocate for or against the request for funding, or vote on the request for funding. In addition, existing law and institutional policies on conflict of interest cover the COUNCIL members and staff and other legislative staff.

Certainly Councilor Bensch is in "receipt of personal financial benefit from a proposing organization ... being reviewed." Councilor Bensch is required to identify this contract with DNR on his Council Conflict of Interest Disclosure Form.

Council experience is that relationships between Council members and applicants can, to some, "present the appearance" of partiality even where no financial interest exists.

Therefore staff recommends the Council ask Councilor Bensch to recuse himself from discussing DNR requests for funds to restore or enhance wildlife management areas or voting on motions exclusive to DNR requests for funds to restore or enhance wildlife management areas.

From: [Bill Becker](#)
To: [Heather Koop](#); [Sandy Smith](#)
Subject: FW: Procedural Document
Date: Thursday, July 05, 2012 3:24:21 PM

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-----Original Message-----

From: Viking Valley [<mailto:viking@prtcl.com>]
Sent: Thursday, July 05, 2012 3:23 PM
To: Bill Becker
Subject: Procedural Document

Bill,

After careful study of the procedural document you sent, I've come to the following conclusions:

- To the best of my knowledge, I have more interest, expertise and knowledge of the science, policy and practice of restoring, protecting and enhancing habitat than any other member of the Council, so it makes little sense to take me out of the decision-making process in my greatest area of expertise.
- I agreed to do one small maintenance project (mowing sumac and other invasives) on one particular WMA. This particular WMA adjoins land which I own and previously and personally restored. I own the equipment to do this work and made my time and equipment available so that the project could be completed in a reasonable timeframe.
- The project is already completed, funding was not from LSOHC, and the work had no bearing on anything that will be discussed for future funding.

I did not and do not see this as a conflict of interest in any way. I see a considerable benefit to my neighbors, the reputation of the DNR for maintaining WMA's, and the habitat for wildlife in rural Minnesota.

If "the staff" feels it is necessary to discuss this further, I request that you put this email into the records and I request a vote of the Council on this matter. If the Council votes to consider this a conflict of interest, I will accede to their wishes and recuse myself from voting on DNR requests for funding in the particular area of WMA enhancement or restoration for this current round of voting only.

Les Bensch