

Legally Prohibited Conflicts of Interest.

1. MCL 46.30:

The County Boards of Commissioner Act at MCL 46.30 prohibits a member of a County Board of Commissioners from being interested, directly or indirectly, in any contract or other business transaction with the County, or a board, office, or commission thereof, during the time for which they are elected or appointed, and for one year thereafter, *unless* the contract or transaction has been approved by 3/4 of the members of the County Board of Commissioners and is shown in the minutes of the Board together with a showing that the Board is cognizant of the member's interest.

MCL 46.30 does not expressly require the affected Commissioner to abstain from voting. Rather, the conflict must be disclosed by the Commissioner (or former Commissioner) and noted by the Board then approved by vote of 3/4 of the members of the Board.

2. MCL 15.322:

The Contracts of Public Servants with Public Entities Act at MCL 15.322 generally prohibits a public servant from being a party, directly or indirectly, to any contract between them and the public entity of which they are an officer or employee.

This statute prohibits a public servant, directly or indirectly, from soliciting a contract between the public entity of which they are an officer or employee, and (a) him or herself; (b) any firm of which he or she is a partner, member, or employee; (c) any private corporation in which he or she is a stockholder owning more than 1% of stock (if unlisted on a stock exchange), or stock valued in excess of \$25,000 (if listed on a stock exchange, or of which he or she is a director, officer, or employee); or (d) any trust of which he or she is a beneficiary or trustee. MCL 15.322(2).

Here, a public servant is prohibited from taking any part in the negotiations for such a contract, the renegotiation or amendment of the contract, *or in the approval of the contract*. Nor may the public servant represent either party in the transaction. MCL 15.322(3).

There are exceptions in this Act for public servants who are paid for working an average of 25 hours per week or less for the public entity, in which case the public servant *must* disclose any pecuniary interest, and the contract is approved by a 2/3 majority of the entity *without the vote* of the public servant making the disclosure. MCL 15.323(1)(a), (2). The disclosure is to be provided in writing to the Board Chair (or County Clerk if the Chair is making the disclosure) at least 7 days prior to the meeting where the contract is considered, and also at that meeting. If the disclosing commissioner will directly benefit \$5,000 or more from the contract, the contract would need to be voted on at a subsequent meeting held 7 or more days after the meeting disclosure.

The statute does not prevent a public servant from making or participating in a governmental decision to the extent that the public servant's participation is required by law. If 2/3 of the members are not eligible (under this statute) to vote on a contract or to constitute a quorum, a

member may be counted for purposes of a quorum and may vote on the contract if the member will directly benefit from the contract in an amount less than \$250 and less than 5% of the public cost of the contract, and the member files an affidavit to that effect with the official body. MCL 15.323(3).

Summary

For Commissioners, MCL 46.30 most often applies in the event of a financial interest in a contract or business transaction with the County. Since commissioners are usually paid for working an average of less than 25 hours per week, the general prohibitions of MCL 15.322 rarely apply. Even so, a Commissioner should disclose any financial interest in a contract between the County and the Commissioner or their affiliated entity and then the County should confirm which process to follow.