

DATE: March 27, 2012

TO: Human Resource Directors/Designees  
Labor Relations Directors/Designees

FROM: Carolyn J. Trevis, Assistant State Negotiator  
Labor Relations Division



PHONE: (651) 259-3758

RE: Use of State Time and/or Resources under the State Code of Ethics, Minn. Stat. Sec. 43A.38

I have recently fielded a number of questions from state agencies regarding employees' use of state time, equipment or other state-owned resources in the course of the employee's pursuit of further education (e.g. obtaining masters' degree; doctoral degree).

For example, in one case, an employee asked if she could interview state employees while on state time for the purposes of obtaining information for her research paper. I concluded that the employee's activities as described to me *did* present a conflict of interest. My opinion is based primarily on the represented fact that the employee intended to use data collected from these interviews for her private interests (i.e. the research paper). In my view, this was using her state position to secure advantages that are not available to the general public.

The purpose of this memo is to set forth some guidelines for you if these types of issues arise in your agency.

***Potentially Applicable Code of Ethics Provisions***

Minn. Stat. Section 43A.38 provides in relevant part:

**Subd. 4. Use of State property.**

- (a) An employee shall not use or allow the use of state time, supplies or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

**Subd. 5. Conflicts of interest.** The following actions by an employee in the executive branch shall be deemed a conflict of interest . . .

- (a) Use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public . .

**Subd. 6 Determination of conflicts of interest** also provides in relevant part:

When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines that any of the following conditions to be present:

- (a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office of employment;

These provisions prohibit the use of state time and property for an employee's "private interest", defined earlier in the Code as "any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public." *Id.*, at subd. 1(c).

***Possible Considerations and Questions:***

In determining whether a particular situation raises concerns under the Code of Ethics, you should consider the following:

- Has the training/education been approved by management as part of the employee's regular work assignment?
- Is the education related to the employee's current job duties?
- Does the employee attend the classes on personal time or on state time?
- Is the agency reimbursing the employee for any tuition?
- Is the education required for the employee's licensure requirements?
- Is the employee using paid or unpaid educational leave while attending classes?

Certain responses to these questions will factor into a finding of a conflict of interest. For example, if management has approved the education as a work assignment, that fact shows that the employee is not acting solely for private interests. In contrast, if the education is not related to the employee's current job duties, that fact likely supports that the employee is pursuing the education for the employee's own gain.

March 27, 2012  
Page 3

Please contact me if you have any questions. We are also available to provide advisory opinions on these types of issues, upon request.

cc: MMB Labor Relations Staff  
Lynn Anderson, Deputy Commissioner, MMB  
Jim Schowalter, Commissioner, MMB