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IDAHO BAR NO. 5585  
MEMBER, AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

From: Adam B. King   
To: Mayor DeWayne Briscoe  
Re: Whether the City Council Can Set a Monetary Level  
for Conflicts of Interest  
Date: May 19, 2015  
Cc: Susan Robertson

At a recent City Council meeting the question was posed by the Mayor as to whether the City Council can set a monetary level for conflicts of interest, below which there would be deemed not to be a conflict. In brief, the City Council lacks such power. To do so would be unconstitutional.

Under the Idaho Constitution, Art. XII, Sec. 2, "Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary, and other regulations as are not in conflict with its charter or with the general laws."

Consequently, the provisions of any city ordinance or regulation must yield to the provisions of a State statute under this Constitutional provision.

The Idaho State Code section that defines conflict of interest for City Council members is in Title 59, "Public Officers In General," and states in pertinent part (with emphasis added):

(4) "Conflict of interest" means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the **private pecuniary benefit** of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

Clearly, the definition of "Conflict of Interest" lacks a monetary threshold. The statute only uses the phrase "pecuniary benefit," and there is no *de minimis* exception. By strong implication the legislature intended any and all pecuniary benefit to constitute a conflict (unless one of the other exceptions is met). To legislate a level of pecuniary benefit under which there is deemed to be no conflict would be itself in conflict with Idaho Code Section 59-703, and consequently unconstitutional under Art. XII, Sec. 2.

There is a fair amount of case law associated with this principle, and I briefed and argued this issue in the Idaho Supreme Court in 2006 in the marijuana initiative litigation, so I can provide a more in-depth analysis if needed. Please let me know if you would like me to elaborate on this analysis.

-ABK

## Susan Robertson

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**From:** briskyd <briskyd@earthlink.net>  
**Sent:** Thursday, May 21, 2015 1:38 PM  
**To:** Susan Robertson; Adam King  
**Subject:** Fwd: RE: memo re Can City Council set a monetary limit on conflicts

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Susan, print out this and Adams opinion for the June agenda item on revision of city code #5 conflict of interest. Confidential and privileged . MAYOR

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** Seth Grigg <sgrigg@idahocities.org>  
**Date:** 05/21/2015 5:55 AM (GMT-10:00)  
**To:** briskyd <briskyd@earthlink.net>  
**Subject:** RE: memo re Can City Council set a monetary limit on conflicts

Mayor Briscoe,

I would advise following the advice of your attorney in this matter. His advice is consistent with AIC's interpretation of the statute and the training that we provide to city officials on ethics and conflict of interest. In fact, at the district workshop held in Burley on April 29, AIC addressed this issue as part of our training program. According to the law, it makes no difference if a public official (city official in your case) has a \$50 financial interest or a \$1,000,000 financial interest, at any amount it is a serious violation of the law.

All the best,

Seth



**Seth Grigg**

**Executive Director**

**Association of Idaho Cities**

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**From:** briskyd [mailto:briskyd@earthlink.net]  
**Sent:** Tuesday, May 19, 2015 10:01 AM  
**To:** Seth Grigg  
**Subject:** Fwd: memo re Can City Council set a monetary limit on conflicts

Seth, this is city attorney opinion on conflict of interest. I have not heard back from you yet. MAYOR

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** Adam King <[abk@ketchumlegal.com](mailto:abk@ketchumlegal.com)>  
**Date:** 05/19/2015 9:18 AM (GMT-07:00)  
**To:** 'Briscoe - CITY' <[dbriscoe@svidaho.org](mailto:dbriscoe@svidaho.org)>, Briscoe - HOME EMAIL <[briskyd@earthlink.net](mailto:briskyd@earthlink.net)>  
**Cc:** [srobertson@svidaho.org](mailto:srobertson@svidaho.org)  
**Subject:** memo re Can City Council set a monetary limit on conflicts

See attached.

Adam B. King

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(from) ← 2007-12 March 15 2007



From my Council book I received in 2008 when I was inaugurated

APPENDIX A

MEDICAL INSURANCE PLAN

**CITY STAFF HEALTH REIMBURSEMENT ARRANGEMENT ANNUAL ROLLOVER AND PORTABILITY POLICY**

Regence BlueShield of Idaho has been selected by the City of Sun Valley to provide health insurance for its full-time regular employees (at least thirty (30) hours or more per week). The Health insurance plan includes a Health Reimbursement Arrangement (HRA) program. Individual employee HRA accounts are established and annually the city appropriates funds to the HRA account to help pay for employee deductibles.

It is the City's policy that at the end of each fiscal year, any unused appropriation funds in an individual's HRA account may be rolled over into the next fiscal year. The maximum amount that may be rolled over each year is seventy percent (70%) of the remaining funds. The funds may be used in subsequent years for medical costs as authorized by Regence BlueShield.

Vesting of rollover funds occurs at the completion of three (3) years of full-time employment. Rollover funds will at that time become available as a profitability payment to an employee should the employee leave City employment. After year three (3), an employee, upon employment termination, will be provided a payment of up to \$1,500 of any vested rollover funds. At the end of five (5) or more years of employment, an employee will be entitled to payment of up to \$5,000 of any vested rollover funds.

An employee receiving a profitability payment may choose to either have the payment made as income and, therefore, subject to all applicable payroll taxes and payroll benefits or the employee may select that a payment or payments be made directly for another health insurance plan.

**MAYOR & COUNCIL HRA PROGRAM**

The Mayor and Council are full-time employees of the City and are eligible to receive health insurance benefits equal to those provided to other employees. In addition, the Mayor & Council may select to provide for their health insurance coverage through an existing health insurance program of their own or through a spouse's health insurance program. If one of these options is selected, the Mayor and/or Councilperson(s) may still participate in the City's Health Reimbursement Arrangement (HRA) program as follows:<sup>1</sup>

<sup>1</sup>The Mayor and Council are considered a unique class under this policy and, therefore, other employees are not eligible for this HRA Program.

1. The City will establish an individual HRA account for the Mayor and/or Councilperson and contribute \$1,217.40 per month to the account. The maximum total contribution over a twelve month period is \$14,608.80 and the period of time will be from January 1 through December 31<sup>2</sup>
2. The HRA account may be used by the Mayor and/or Councilperson(s) for the reimbursement of their health insurance premiums and/or deductibles including all dependents on the program.
3. The Mayor and/or Councilperson(s) must present to ISC, the City's HRA account managers, acceptable proof of health insurance premium payment in order to be reimbursed (i.e. payroll documentation or premium invoice).
4. The Mayor and/or Councilperson(s) must present to ISC acceptable proof of deductible payment in order to be reimbursed (i.e. doctor's receipt or Explanation of Benefits (EOB) from health insurance provider.)
5. ISC will be responsible for verifying receipts and payroll deduction documentation and will make timely reimbursements for all eligible health insurance premium costs and deductibles. and deductibles.

<sup>2</sup> The monthly and maximum annual City Contribution to the HRA accounts is calculated based upon the current per employee and dependent *premium costs* charged by Regence BlueShield of Idaho (Health Insurance) and MetLife (Dental Insurance) for City employees and the City's share of paid deductibles in the current 2004/05 health insurance policy.

Dental	Health
	Employee: \$ 263.00/month
\$ 25.80	Spouse: \$ 316.00/month
\$ 23.70	Children: \$ 354.00/month (or \$118/month/child up to 3 children) \$ 30.00
	Total per month: \$ 933.00
\$ 84.40 (family)	
	Total per year: \$ 11,196.00
\$1,012.80	
Plus: City Deductible Payment:	\$ 2,400.00
Total Annual HRA Account Contribution:	\$ 14,608.80
Total Monthly HRA Account Contribution:	\$ 1,217.40

6. The maximum total reimbursement for the twelve-month HRA period is \$14,608.80.
7. At the end of the twelve-month period, or at anytime that the elected term of the Mayor and/or Councilperson(s) should end, any remaining funds in the Mayor's or Councilperson(s) HRA account will revert back to the City and will be forfeited by the Mayor and/or Councilperson(s) if they do not have outstanding receipts to withdraw those funds. There is no rollover provision provided in this program.