

CONFLICTS OF INTEREST POLICY
For
SOUTH DAKOTA ELLSWORTH DEVELOPMENT AUTHORITY.
(A South Dakota Body Corporate and Politic)

ARTICLE I

Purpose

The purpose of this policy is to protect the South Dakota Ellsworth Development Authority's ("Authority") interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Member of the Authority or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest. The Authority expects all Members to exercise good judgment and the highest ethical standards in their private activities outside the Authority which in any way can affect the Authority. In particular, every Member has an obligation to exercise the utmost good faith in fulfilling his or her duty, to exercise independent judgment, act in the Authority's best interest, and to avoid any activity, agreement, business investment or interest, or other situation which is in conflict with the Authority's interests or interferes with the duty to serve the Authority at all times to the best of the person's ability. In furtherance of these principles and to establish clear guidelines, the following policy has been adopted:

ARTICLE II

Definitions

1. *Direct Compensation*: Members may not receive direct compensation for services rendered on behalf of the Authority. S.D.C.L. § 1-16J-5. Members shall, however, be reimbursed for necessary expenses incurred in connection with Authority duties and powers. *Id.*
2. *Member*: A reference to Members, unless otherwise noted, also includes former Members, for up to a two year period after the relationship ends, spouses, parents, siblings, children, partners of a partnership in which they are a partner, or co-owners of a business in which the Member owns at least five percent of the equity, or any other organization of which the Member is a Member or officer.
3. *Financial Interest*: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - a. An ownership or investment interest in any entity with which the Authority has a transaction or arrangement;
 - b. A compensation arrangement with any entity or individual with which the Authority has a transaction or arrangement;or,

- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Authority is negotiating a transaction or arrangement.
4. *Interested Person*: Any Member, principal officer, or member of a committee with Authority delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
5. *Transaction*: The term transaction means buying; selling; leasing; transferring; payments for goods and services; grants and assistance to other organizations; furnishing services to, seeking or receiving, for personal or any other person's gain; any payment, whether for services or otherwise; loaning (except from a bank); gift or discount of more than nominal value; or entertainment, which goes beyond common courtesies usually associated with accepted business practice, from the Authority or any business enterprise which is a competitor of the Authority or has current or known prospective dealings with the Authority as a supplier, purchaser or seller, lessor or lessee. Nominal transactions, below \$1,000, are not included within this policy.
6. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
7. A financial interest is not necessarily a conflict of interest. Under Article V, Section 2, a person who has a financial interest may have a conflict of interest only if the Authority decides that a conflict of interest exists.

ARTICLE III General Policy

No Member shall for personal or any other person's gain deprive the Authority of any opportunity for benefit which could be construed as related to any existing or reasonably anticipated future activity of the Authority.

No Member shall, for personal or any other person's gain, make use of or disclose confidential information learned as a result of serving the Authority.

ARTICLE IV Scope of Activities and Relationships Covered

No Member shall enter into any transaction(s), as defined in Article II, except upon full and frank disclosure of all the facts and with the prior written approval of a majority of the non-interested Members present at a meeting of the Authority where a quorum is present.

ARTICLE V
Procedures

1. *Duty to Disclose:* In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Members and/or members of committees with Authority delegated powers considering the proposed transaction or arrangement.

2. *Determining Whether a Conflict of Interest Exists:* After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Authority or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Members or committee members shall decide if a conflict of interest exists.
 - a. Factors to consider when determining whether a transaction is a material conflict of interest include but are not limited to the following:
 - i. The size of the transaction;
 - ii. The fair market value of the transaction;
 - iii. Historical ties between the parties;
 - iv. The Authority's overall budget;
 - v. The timing and length of the transaction; and
 - vi. Whether the transaction was an "arms length" transaction.

 - b. Factors to consider whether there was an "arms length" transaction are:
 - i. Were other competitive bids solicited, accepted, or considered? If so, how many?
 - ii. Did the interested Member abstain from the decision to enter into the transaction?
 - iii. Is the transaction so large or over such a long period of time that it can no longer be considered arms length?
 - iv. Does the cumulative amount of transactions in the last two years, when combined, constitute a material amount?
 - v. Was there any coercion or advantage taken by either party?

3. *Procedures for Addressing the Conflict of Interest:*
 - a. An interested person may make a presentation at the Authority or committee meeting, but after the presentation, he/she shall leave the

meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

- b. The Chairman of the Authority or chairperson of the committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Authority or committee shall determine whether the Authority can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under the circumstances not producing a conflict of interest, the Authority or committee shall determine by a majority vote of disinterested Members whether the transaction or arrangement is in the Authority's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. *Violations of the Conflicts of Interest Policy:*

- a. If the Authority or committee has reasonable cause to believe a Member has failed to disclose actual or possible conflicts of interest, it shall inform the Member of the basis for such belief and afford the Member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the Member's response and after making further investigation as warranted by the circumstances, the Authority or committee determines the Member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE VI
Records of Proceedings

The minutes of the Authority and all committees with Authority delegated powers shall contain:

- 1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Authority's or committee's decision as to whether a conflict of interest in fact existed.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternative to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE VII

Transactions Between the Authority and Individuals or Business Firms

1. No Member shall have a direct or indirect financial interest in, or receive any compensation or other benefits as a result of, transactions between any individual or business firm:
 - a. From which the Authority purchases supplies, materials or property;
 - b. To which the Authority sells any of its products, materials, facilities or properties;
 - c. Which renders any service to the Authority;
 - d. Which enters into leases or assignments to or from the Authority;
or
 - e. Which has any other contractual relations or business dealings with the Authority,

except upon complete disclosure of the facts with the prior approval of a majority of the non-interested Members present at a meeting of the full Authority where a quorum is present.

2. The Authority's Members shall make a full and frank disclosure of the circumstances, known to them, in a transaction affecting the Authority and shall not undertake such transaction without the sanction of the Authority's Authority in accordance with Article V of this policy. The disclosure shall be given no later than the next meeting of the Authority.
3. The financial interests mentioned in this section do not include interests in Authority listed on a national stock exchange or traded over the counter, providing the financial interest is one percent or less of the Authority's outstanding shares.

ARTICLE VIII

Annual Statements

Each Member, principal officer and member of a committee with Authority delegated powers shall annually sign a statement which affirms, in part, such person:

1. Has received a copy of the conflicts of interest policy;
2. Has read and understands the policy; and
3. Has agreed to comply with the policy.

Former Members are not required to file the annual statements. The annual statements shall be in writing and on forms as provided by the Secretary or legal counsel.

ARTICLE IX
Distribution of Policy

This policy shall be distributed to and made available to all Members and others required to comply with the policy, and any interested parties, upon request.

ARTICLE X
Violations of Policy

Violations of this conflicts of interest policy may result in the removal from the Authority by the Governor of the State of South Dakota together with any appropriate legal action, including but not limited to voiding the transaction.

ARTICLE XI
Approval

This conflict of interest policy was approved by the Authority on this 21 day of ~~December, 2009~~, by Resolution Number 10-03
June, 2010

SOUTH DAKOTA ELLSWORTH
DEVELOPMENT AUTHORITY

By: 
Bruce Rampelberg

Its: Chairman