



## STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

October 8, 2021

TRANSMITTED VIA EMAIL

Amy G. White, Partner  
Anderson, Julian & Hull, LLP  
C.W. Moore Plaza  
250 South 5<sup>th</sup> Street, Suite 700  
P.O. Box 7426  
Boise, ID 83707

RE: Opinion Regarding Claim of Bias/Conflict

Dear Ms. White:

This letter is in response to your recent inquiry regarding an alleged conflict of interest. Specifically, you have asked whether individuals serving on boards who are employed within specific positions have a conflict of interest. It appears that this question arose because boards are considering measures related to public health and safety and have members employed by insurance companies, health care providers, and other employers related to these issues. As explained in more detail below, unless there is a personal pecuniary benefit involved, there is no conflict of interest.

Idaho's ethical statutes are found within Title 74, Chapters 4 (Ethics in Government) & 5 (Prohibitions Against Contracts With Officers), as well as Title 18, Chapter 13 (Bribery and Corruption). As yours is a general question of a conflict of interest, this analysis will focus on the Ethics In Government and Bribery and Corruption chapters of the code.

Conflict of interest is defined in Idaho Code § 74-403(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....

Amy G. White  
October 8, 2021  
Page 2

(emphasis added). As shown by the bolded portion of the statute, a key element of the definition of a conflict of interest is a private pecuniary benefit. In order for a conflict to exist, the board member, or a member of the board member's household, must receive a tangible measurable benefit of value. Privately held policy positions, personal beliefs, or other decision-making influences not motivated by a private pecuniary benefit are not considered conflicts of interest under this definition.

Similarly, under Idaho Code § 18-1359, public officials are prohibited from using their public positions for personal gain. This prohibition comes in two forms. First, public officials are prohibited from using government property or services, soliciting payments or gifts for public service, using confidential information, or being interested in contracts made with the governmental entity. Idaho Code § 18-1359(1)(a-d). Second, public officials are prohibited from using their positions to appoint or vote for the appointment or the employment of their family members. Idaho Code § 18-1359(1)(e) & (3-5). Within the fact scenario described, the question of a conflict arises solely out of certain types of employment and does not involve the receipt of any benefit from either the government or the employer for certain types of conduct, policy positions, recommendations, or decisions. Similarly, there is no allegation that the board member is seeking to appoint someone inappropriately. This office can identify no violation of Idaho Code § 18-1359 based solely on who the employer of a board member is.

As demonstrated above, within Idaho, conflicts of interest and prohibited conduct for personal gain revolves almost solely around a pecuniary benefit unique to the board member or a member of the board member's household. It is essential to note that stretching conflicts of interest to policy positions or strongly held personal beliefs would run counter to our system of elected representative government. Candidates, in order to garner votes, often are asked and required to respond to specific policy position questions. Many candidates share their employment backgrounds as a means of establishing their bona fides for a position. Just as some may assert a "conflict of interest" based upon a policy position or employer, many others may have voted for that board member specifically based upon their work experience and background. The simple existence of an employer or a publicly stated policy position does not equate to a conflict of interest under Idaho law.

I hope that you find this brief analysis helpful.

Sincerely,



BRIAN KANE  
Chief Deputy