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CONFLICT OF INTEREST

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INTRODUCTION:

1. The Public Service Regulations contain provisions which prohibit the involvement of Public Service employees in outside activities which could constitute a conflict of interest with their public duties. This directive highlights these provisions and outlines procedures for their implementation.

DEFINITIONS:

2. The following definitions apply within the Public Service of the Northwest Territories:

"Business" means a profession, trade, occupation or undertaking of any kind whatsoever and includes an office or employment.

"Conflict of Interest" means a situation where an individual's outside activities conflict with his or her public duty.

"Senior Officer" means a deputy minister, assistant deputy minister, regional director, assistant regional director, head of a secretariat of the Executive Council, chief executive officer of a government corporation or agency, executive branch staff, regional superintendent, division chief, director, and a person appointed by a Minister to serve on his executive staff, and who is paid out of public funds. This does not, however, include secretarial or clerical staff.

PROVISIONS:

Personal Gain

3. No Senior Officer or any other employee shall carry on any business or employment outside the Public Service in which he or she unduly and for personal gain exploits his or her acquaintance with other employees or with persons with whom he or she has become acquainted in the course of his or her employment in the Public Service.

Conflict of Interest

4. No Senior Officer or any other employee shall request or accept payment or other benefit for functions which are part of his or her public duties other than the remuneration and benefits accruing to his or her position.

Conflict of Duties

5. No Senior Officer or any other employee shall carry on any business or employment outside the Public Service in which there may be a conflict between the employee's private interests and the duties he or she is required to perform in the Public Service.

6. Except where appointed or recommended by the Government for appointment, no Senior Officer shall be a director or officer of a company which holds or is engaged in any contract or agreement with Her Majesty or the Government of the Northwest Territories under which any public money of the Northwest Territories is expended for any service or work, matter or thing other than the contract under which he or she holds his or her position as Senior Officer.

7. In seeking or negotiating a position outside the Public Service, every Senior Officer shall ensure that such endeavours do not interfere with his or her official duties or place him or her in conflict of interest.

Use of Information, Facilities or Property

8. No Senior Officer or any other employee shall carry on any business or employment outside the Public Service in which he or she makes unauthorized use of information he or she has acquired as a result of his or her employment in the Public Service, or of property or facilities owned by Her Majesty in Right of Canada or the Government of the Northwest Territories.

9. No Senior Officer or any other employee shall operate or permit a private business to be operated out of staff accommodation provided by the Government of the Northwest Territories.

Conflict of Interest

10. No Senior Officer shall, except as authorized or required by his or her duties, reveal any confidential information concerning the operation, financing and business transactions of the Government of the Northwest Territories which may come to his or her knowledge during his or her employment. A Senior Officer shall keep with complete secrecy all confidential information entrusted to him or her and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to the Government of the Northwest Territories. A Senior Officer shall not use any such information in any manner which may benefit him or her either directly or indirectly.

11. For a period of one year from the date his or her employment ceases, no Senior Officer shall own, operate, control or be employed by any business enterprise within the community in which he or she was employed and in which he or she may be in a position to unduly exploit knowledge he or she gained while he or she was employed by the Government of the Northwest Territories.

APPLICATION:

12. All employees are subject to the provisions of the Public Service Regulations and to the provisions of this directive, except where the directive specifically applies to Senior Officers only.

IMPLEMENTATION:

13. Before engaging in any business or employment outside the Public Service, employees must obtain the Employer's approval. In the case of Senior Officers, this approval must be obtained from the Minister of Personnel. All other employees must receive the approval of their Department Head.

14. If the Employer thinks a conflict of interest may exist, the Employer may deny the employee's request. The Employer will notify the employee, in writing, giving reasons for withholding permission.

15. An employee who contravenes this policy may be subject to disciplinary action.

16. The Minister of Personnel may, on the application of a Senior Officer or any other employee, exempt such person from this Directive or any provision thereof.

AUTHORITIES:

- (1) Public Service Regulations
Regulation 49. General
- (2) N.W.T.P.S.A. Collective Agreement
Article 8. Restriction on Outside Employment
- (3) N.W.T.T.A. Collective Agreement
Article 25. Extraneous Duties



CONFLICT OF INTEREST

INTRODUCTION:

1. The Public Service Regulations identify certain principles that when violated clearly establish a situation of conflict of interest. Each situation should be weighed against the criteria outlined in the regulations to determine whether the principles have been respected.

2. Employees should also be made aware that it is an offence under Section 110(1) of the Criminal Code for an employee to demand, accept or offer, or agree to accept from a person who has dealings with the government, a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through anyone for his benefit.

3. It is, however, acceptable for a public servant to receive casual benefits such as hospitality or small gift items from persons having dealings with the government where such benefits or advantages are a normal expression of business courtesy or advertising or are within the normal standards of hospitality and would not bring suspicion upon the public servant's objectivity.

PROVISIONS:

4. Public Service Regulation 49 states;

"No employee shall carry on any business or employment outside the Public Service in which:

- (1) he exploits unduly and for personal gain his acquaintance with other employees or with persons with whom he has become acquainted in the course of his employment in the Public Service.
- (2) there may be a conflict between the duties the employee is required to perform in that business or employment and the duties he is required to perform in the Public Service; or

CHAPTER C-11

AN ORDINANCE RESPECTING CONFLICT OF INTEREST
OF MEMBERS OF BOARDS AND MUNICIPAL COUNCILS

SHORT TITLE

1. This Ordinance may be cited as the *Conflict of Interest Ordinance*. 1974(1st),c.2,s.1. Short title

INTERPRETATION

2. (1) In this Ordinance Definitions
- (a) "board" means a school board, hospital board, housing corporation, planning board, or other public board, commission, committee, body or local authority established or exercising any power or authority for public purposes; "board"
- (b) "council" means the council of a municipality; "council"
- (c) "municipality" means a city, town, village or hamlet under the *Municipal Ordinance*; "municipality"
- (d) "member" means a member of a council or board; "member"
- (e) "person" includes a corporation and a co-operative association; "person"
- (f) "senior officer" means "senior officer"
- (i) the chairman or vice-chairman of the board of directors of a corporation, or
- (ii) the president, vice-president, secretary, treasurer or general manager of a corporation, and includes a person who performs functions for the corporation similar to those normally performed by a person occupying such office;
- (g) "voter" means, "voter"
- (i) in respect of a municipality, a person entitled to vote at a municipal election in the municipality, and
- (ii) in respect of a board, a person entitled to vote at the election of members of such board, and if the board is appointive, includes the person who may appoint members of the board.

Controlling interest

(2) For the purposes of paragraph (3)(a), a member shall be deemed to have a controlling interest in a corporation if he beneficially owns directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than ten percent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

Indirect pecuniary interest

(3) For the purposes of this Ordinance, a member has an indirect pecuniary interest in a contract or proposed contract with the municipality or board or in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or board of which he is a member or in any other matter in which the council or board is concerned,

(a) if he or his nominee is a shareholder in, or a director or senior officer of, a private corporation that does not offer its securities to the public or has a controlling interest in, or is a director or senior officer of, a public corporation that offers its securities to the public or is a member of a body,

(i) with which the contract is made or is proposed to be made,

(ii) that has a pecuniary interest in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or board, or

(iii) that has a pecuniary interest in any other matter in which the council or board is concerned; or

(b) if he is a partner or employee of a person,

(i) with whom the contract is made or is proposed to be made, or

(ii) who has a pecuniary interest in a contract likely to be affected by a decision of the council or board, or

(iii) who has a pecuniary interest in any other matter in which the council or board is concerned.

Exception

(4) A member does not have an indirect pecuniary interest by reason only that he is

(a) a director or senior officer of a corporation incorporated for the purposes of carrying on business for and on behalf of the municipality or board,

(b) a member of a board, commission or other body as an appointee of the council or board, or

(c) a nominal director of, or the owner of one share in, a private corporation that does not offer its securities to the public. 1974(1st),c.2,s.2.

Duty to disclose interest and other conduct

3. (1) Where a member either on his own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect,

- (a) in any contract or proposed contract with the municipality or board,
- (b) in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or board, or
- (c) in any other matter in which the council or board is concerned,

and is present at a meeting of the council, board or committee thereof at which the contract, proposed contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose his interest and the extent and nature thereof and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way whether before, during or after the meeting to influence the voting on any such question.

(2) Where the interest of a member has not been disclosed as required by subsection (1) by reason of his absence from the meeting referred to therein or by reason of such interest having been acquired after such meeting, and after the contract or matter has come to his knowledge, he shall disclose his interest and otherwise comply with subsection (1) at the first meeting of the council or board that is attended by him after the meeting referred to in subsection (1) or after acquiring such interest. Where member absent

(3) The interest of a dependant, spouse, son, daughter or other relative of a member who has the same home as the member shall, if known to the member, be deemed for the purposes of this section to be also an interest of the member. Interest of dependants and relatives

(4) Subsections (1) and (2) do not apply to an interest in a contract, proposed contract or other matter that a member may have Cases where this section does not apply

- (a) as a voter or a user of any public utility service supplied to him by the municipality or board in like manner and subject to the like conditions as are applicable in the case of a person who is not a member;
- (b) because he is entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or board;
- (c) by reason of his purchasing or owning a debenture of the municipality or board;
- (d) by reason of his having made a deposit with the municipality or board, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to all other ratepayers; or
- (e) by reason of his being a member of a co-operative association.

Disclosure to be in minutes

(5) Every disclosure of interest under subsection (1) or (2) shall be recorded in the minutes of the meeting by the secretary-treasurer of the municipality or the secretary of the board, as the case may be.

Contracts not invalidated but voidable

(6) The failure of a person to comply with subsection (1) or (2) does not of itself invalidate a contract, proceedings in respect of any proposed contract or other matter mentioned in subsection (1); but the contract, the proceedings in respect of any proposed contract or other matter is voidable at the instance of the municipality or board, before the expiration of two years from the date of the passing of the by-law or resolution authorizing the contract or proposed contract or other matter. 1974(1st),c.2,s.3.

Quorum

4. Where the number of members that have a pecuniary interest direct or indirect is such that at any meeting the remaining members are not sufficient to constitute a quorum, the remaining number of members shall, notwithstanding any other Ordinance, be deemed to constitute a quorum, if such number is not less than two. 1974(1st),c.2,s.4.

Judge may try contravention

5. The question of whether or not a member has contravened subsection 3(1) or (2) may be tried and determined by the Court. 1974(1st),c.2,s.5.

Court procedure

6. (1) Subject to subsection (3), the Commissioner or a voter may, within three months after the fact comes to his knowledge that a member may have contravened subsection 3(1) or (2), apply to the Court by way of originating notice in the manner prescribed by the Rules of Court for a determination of the question of whether or not a member has contravened subsection 3(1) or (2).

Voter must state grounds in notice of motion

(2) The Commissioner or a voter referred to in subsection (1) shall, in his notice of motion, state the grounds for finding a contravention by the member of subsection 3(1) or (2).

Time limitation

(3) No application under subsection (1) shall be brought against a member of a council or board who does not hold office at the time the application is brought. 1974(1st),c.2,s.6.

Penalty

7. (1) Where the Court determines that a member has contravened subsection 3(1) or (2), the Court shall, subject to subsection (2) of this section, declare the seat of the member vacant and may

(a) disqualify him from being a member of any council and of any board during a period thereafter not exceeding five years, and

(b) impose a fine not exceeding five thousand dollars.

Exception

(2) Where the Court determines that a member has contravened subsection 3(1) or (2), if the Court finds that the contravention was committed through inadvertence or by reason of a *bona fide* error in

judgment, the member is not subject to having his seat declared vacant or to being disqualified as a member or to be fined as provided by subsection (1). 1974(1st),c.2,s.7.

8. An appeal lies from any order made under section 7 to the Court of Appeal in accordance with the Rules of Court. 1974(1st),c.2,s.8. Appeal

9. Nothing in this Ordinance prevents a member from taking part in the consideration or discussion of or from voting on any question in respect of an allowance for attendance at meetings or any other allowance or honorarium, remuneration, salary or benefit to which he may be entitled by reason of being a member. 1974(1st),c.2,s.9. Where discussion permitted

10. No municipality or board shall enter into a contract other than his own contract of employment with Special provision

(a) the secretary-treasurer or chief administrative officer of the municipality or board, or

(b) a corporation or other body in which the secretary-treasurer or chief administrative officer is a senior officer or has a controlling interest as defined in subsection 2(2),

and if such contract is entered into contrary to this section it shall be void *ab initio*. 1974(1st),c.2,s.10.

11. In the event of conflict between any provision of this Ordinance and any provision of any other Ordinance, the provision of this Ordinance prevails. 1974(1st),c.2,s.11. Prevailing provisions