



Metropolitan Airports Commission: Conflict of Interest Policies

**Special Review
October 3, 2017**

OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

State of Minnesota
Office of the Legislative Auditor

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

October 3, 2017

Members of the Legislative Audit Commission:

In response to a request from Representative Jim Nash, we examined how conflict of interest laws and policies apply to members of the Metropolitan Airports Commission (MAC) who are also lobbyists. We addressed four general questions and one that applied specifically to Commissioner Michael Madigan, who is also an attorney and lobbyist for the Minnesota Beer Wholesalers Association.

Every individual from whom we requested information cooperated fully with our review. Also, given the generally positive nature of our findings, neither MAC nor Commissioner Madigan felt it was necessary to submit a written response to our report.

Sincerely,

James Nobles
Legislative Auditor

Elizabeth Stawicki
Legal Counsel

cc: Representative Jim Nash
Representative Joe Hoppe
Metropolitan Airports Commission



TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
Metropolitan Airports Commission	1
Conflict of Interest Laws and Policies	2
CONFLICT OF INTEREST QUESTIONS.....	3
1. Are members of the Metropolitan Airports Commission who are also lobbyists subject to conflict of interest laws and policies?	3
2. Did MAC Commissioner Michael Madigan take action on H.F. 1050 that created a conflict of interest?.....	5
3. Does appointment of lobbyists to MAC conflict with existing provisions in <i>Minnesota Statutes</i> 2017, Chapter 10A?.....	6
4. Does existing law provide needed transparency, such as disclosure of possible conflicts and recusal from votes that may affect clients of a registered lobbyist?	6
5. Are there sufficient deterrents, such as financial penalties, for violating conflict of interest standards?	6



INTRODUCTION

The Office of the Legislative Auditor (OLA) conducted this special review in response to a request from Representative Jim Nash. He raised concerns about registered lobbyists serving on state boards or commissions, suggesting that their obligations to clients might conflict with their responsibilities as a board or commission member.

Representative Nash raised specific concerns about lobbyists serving on the Metropolitan Airports Commission (MAC). He cited the example of Michael Madigan, a MAC commissioner who is a lobbyist for the Minnesota Beer Wholesalers Association. He asked OLA to examine whether it was a conflict for Mr. Madigan to lobby against H.F. 1050, a bill that affects MAC and beer wholesalers.

These are the questions we addressed in response to Representative Nash's request:

1. Are members of the Metropolitan Airports Commission who are also lobbyists subject to conflict of interest laws and policies?
2. Did MAC Commissioner Michael Madigan take action on H.F. 1050 that created a conflict of interest?
3. Does appointment of lobbyists to MAC conflict with existing provisions in *Minnesota Statutes* 2017, Chapter 10A?
4. Does existing law provide needed transparency, such as disclosure of possible conflicts and recusal from votes that may affect clients of a registered lobbyist?
5. Are there sufficient deterrents, such as financial penalties, for violating conflict of interest standards?

BACKGROUND

Metropolitan Airports Commission

The Metropolitan Airports Commission (MAC) owns and operates the Minneapolis-St. Paul International Airport and six smaller airports within the Twin Cities Metropolitan Area. State law defines MAC's powers, duties, and governance.¹

The provision of the law that establishes the composition of the MAC board of commissioners is complex and sets detailed requirements for who may serve. The footnotes reference some of those requirements, but in simple terms, the law provides the following:

¹ *Minnesota Statutes* 2017, 473.601-473.685.

- The commission has 15 members.
- The governor appoints 13 members, including the chair.²
- The other 2 members are the mayors of Minneapolis and St. Paul or their designees.

The law does not prohibit lobbyists from serving as a commissioner, nor does it specify other occupations, relationships, or interests that would disqualify a person from serving as a MAC commissioner.³ We identified two commissioners who are registered lobbyists.

- Michael Madigan is an attorney at the law firm of Madigan, Dahl & Harlan. Governor Dayton appointed Mr. Madigan to MAC in March 2011 and reappointed him in March 2015. He is a registered lobbyist for the Minnesota Beer Wholesalers Association.⁴
- Richard W. Ginsberg is a registered lobbyist for several organizations.⁵ Governor Dayton appointed Mr. Ginsberg to MAC in December 2016.

We did not attempt to compile a comprehensive list of past MAC commissioners who were also lobbyists, but we confirmed that there have been commissioners in the past who were lobbyists while serving on MAC.

Conflict of Interest Laws and Policies

Conflicts of interest are a persistent concern in the public sector. The concern is rooted in an expectation that people who hold a government position of any kind will serve the public interest, not a private interest.

As a result, the State of Minnesota has several conflict of interest laws and policies.⁶ Some cover specific employees and specific organizations. While there are some differences among these laws and policies, they have a common goal—to prevent a person’s private interests and relationships from inappropriately affecting their actions as a public employee or official.

² The chair serves at the pleasure of the governor; other members serve fixed terms. Eight of the governor’s appointees must represent the metropolitan airport districts as established in state law. Four of the governor’s appointees must reside outside the metropolitan area.

³ We used the Minnesota Campaign Finance and Public Disclosure Board’s website to identify current MAC commissioners who are lobbyists. OLA accessed the website, www.cfboard.state.mn.us/lob_lists.html, on August 16, 21, and 23, 2017.

⁴ Mr. Madigan is one of seven people listed as a lobbyist for the Minnesota Beer Wholesalers Association. The Campaign Finance and Public Disclosure Board’s website lists H. Theodore Grindal as the “designated lobbyist” for the association. Mr. Grindal is an attorney and partner at the law firm of Lockridge Grindal Nauen.

⁵ According to the Minnesota Campaign Finance and Public Disclosure Board’s website, the organizations include Hennepin County; LeafLine Labs, LLC; Minnesota Ambulance Association; Minnesota Association of Marriage and Family Therapy; Minnesota Credit Union Network; Minnesota Government Engineers Council; Minnesota Medical Solutions; North Memorial Medical Center; and Wal-Mart Stores, Inc.

⁶ In a 2011 report concerning implementation of the Legacy Amendment to the Minnesota Constitution, OLA presented an overview of Minnesota’s conflict of interest laws. See Office of the Legislative Auditor, Program Evaluation Division, *The Legacy Amendment* (St. Paul, 2011), 58.

It is important to keep in mind that these laws and policies do not try to eliminate potential conflicts of interest. Rather, their goal is to have public officials and employees acknowledge a potential conflict and resolve it before it becomes an actual conflict. Some laws and policies also encourage public officials and employees to avoid “even the appearance of a conflict.”⁷

In some cases, a conflict is clear, but not always. In fact, we noted in a 2011 report that there can be significant differences of opinion about what constitutes a potential or actual conflict of interest. In addition, we noted:

...determining whether a conflict actually exists for a specific person in a specific situation often requires a detailed assessment of the conflict of interest laws and policies that are applicable to that person, as well as a detailed assessment of the relationship, affiliation, or interest that allegedly has created the conflict.⁸

We applied this caution and the need for careful consideration of the specific facts and laws as we conducted this special review.

CONFLICT OF INTEREST QUESTIONS

1. Are members of the Metropolitan Airports Commission who are also lobbyists subject to conflict of interest laws and policies?

Yes. While commissioners who are lobbyists are not subject to special requirements and restrictions, they are subject to the same conflict of interest requirements and restrictions as other MAC commissioners. Moreover, those requirements and restrictions are essentially the same as those that cover other public officials and employees.

First, MAC commissioners are subject to *Minnesota Statutes* 2017, 10A.07, one of the state’s primary conflict of interest laws. A key provision says that a conflict of interest exists when:

...a public official...who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official’s financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official’s business classification, profession, or occupation....⁹

In addition, like many other state boards and commissions, MAC has its own Code of Ethics.¹⁰ To cite just two relevant provisions, the Code says:

⁷ *Ibid.*, 61.

⁸ *Ibid.*, 58.

⁹ *Minnesota Statutes* 2017, 10A.07, subd. 1.

¹⁰ Metropolitan Airports Commission, Human Resources Policies and Procedures, Section 20, *Code of Ethics*. MAC adopted the Code on September 1, 1997, and revised it on April 15, 2013.

- An employee or commissioner shall not use [MAC] confidential information to further his or her private interest.
- An employee or commissioner shall not use his or her MAC position to secure benefits, privileges, exemptions, or advantages for their immediate family or an organization with which they are associated, which are different from those available to the general public.

The Code also contains this broader guidance:

All employees and Commissioners are expected to conduct themselves in a manner that reflects positively on the Commission. They should not place themselves in an external business relationship or other activity where their actions are, or could reasonably be, interpreted as not in the best interests of the Commission, without prior disclosure to their Manager and written approval from the Executive Director...or Chair.¹¹

Being a registered lobbyist is clearly an external business relationship for a MAC commissioner. Therefore, being both a MAC commissioner and a lobbyist could create a potential conflict depending on who the commissioner represents as a lobbyist and how a particular issue might affect both the lobbyist's client and MAC.

We emphasize again, however, that a potential conflict is not an actual conflict.¹² For an actual conflict to occur, a MAC commissioner—lobbyist or not—would have to take action to benefit a private interest that is in conflict with the “best interest” of MAC. In addition, people—even MAC commissioners—might define MAC’s “best interest” differently; therefore, determining when an actual conflict occurs can be difficult.

For the purpose of this review, we decided that a commissioner who is a lobbyist would have an actual conflict only if these two factors were present:

- MAC has taken a formal vote to define its position or objective on a particular issue; in other words, the commission has officially defined its “best interest.”

¹¹ *Ibid.*

¹² One of the best discussions we have found on the difference between a potential and an actual conflict of interest is in a document prepared by the North Carolina Board of Ethics. It says in part, “Potential conflicts of interest are much more common [than actual conflicts]. They are also *the* most misunderstood concept in public service ethics. Many Public Officials give ‘potential conflict’ a negative connotation, when in fact it is neutral. ‘Potential’ means ‘capable of being but not yet in existence’—*possible*. Thus, when a covered Public Official has a *potential* conflict of interest due to some financial, familial, or personal situation that means that such Official must exercise appropriate caution (sometimes extreme caution) to ensure that the unrealized, possible conflict does not ‘ripen’ into a forbidden actual conflict in violation of his or her public responsibility. This is usually done by the Official removing himself or herself from the situation to an appropriate degree (commonly in the form of ‘recusing’ himself or herself from a particular vote). Rather than a source of embarrassment or anger, an evaluation that an Official has a potential conflict of interest should be viewed as an ethical ‘red flag,’ a warning that he or she must be careful when whatever is causing the potential conflict comes before the Official for public action.” North Carolina Board of Ethics, Letter from the Director, Volume 9, Issue 3, “*Actual*” vs. “*Potential*” Conflicts Edition, April 2006.

- The commissioner who is a lobbyist took an action for a client that was in conflict with MAC's position or objective.

We applied these criteria in our response to the next question.

2. Did MAC Commissioner Michael Madigan take action on H.F. 1050 that created a conflict of interest?

No; Mr. Madigan did not take action on H.F. 1050 that created a conflict of interest. In fact, we did not find evidence that Mr. Madigan lobbied legislators on the bill.

Representative Joe Hoppe introduced H.F. 1050 on February 9, 2017.¹³ The bill proposes to allow Minnesota brew pubs to sell their beers and ales to a retailer at a MAC facility for on-site consumption without being required to go through a wholesale distributor.¹⁴ Representative Hoppe told us he sponsored the bill for the Minnesota Craft Brewer's Guild to provide additional opportunities to feature Minnesota-made beers and ales at the Lindbergh Terminal.¹⁵ When he presented his bill to the House Commerce and Regulatory Reform Committee on February 15, 2017, Representative Hoppe said the bill was a "work in progress." No one else testified in favor of the bill, and a lobbyist for the Minnesota Licensed Beverage Association spoke against it. No further action occurred in the House, but the House could reconsider the bill in 2018.¹⁶ The Senate does not have a companion bill.

As noted previously, MAC Commissioner Michael Madigan is a registered lobbyist for the Minnesota Beer Wholesalers Association. We interviewed him about his lobbying activities generally, and specifically about any actions he took relative to H.F. 1050. He told us that he primarily does legal work for the Minnesota Beer Wholesalers Association, not lobbying. He said his lobbying activities for the association amounts to about 20 hours a year. He indicated that attorneys at Lockridge Grindal Nauen are the primary lobbyists for the association. He also told us his involvement with H.F. 1050 was "virtually nil"—that it might have come up briefly in a conversation he had with Representative Hoppe about liquor legislation generally—but he could not recall that in fact it did.

¹³ Representative Hoppe is Chair of the House Commerce and Regulatory Reform Committee, which has primary jurisdiction over liquor legislation in the Minnesota House of Representatives.

¹⁴ Like other states, Minnesota has a regulatory structure for liquor called the "Three-Tier Regulatory System." With some exceptions, the system separates the liquor industry into three types of business activities—manufacturing, wholesale distribution, and retail sales—and it prohibits a business licensed for one activity from being involved in the other two. More specifically, the system generally does not allow a liquor producer to sell directly to the public or to a retailer; the producer is required to use a licensed wholesaler to distribute its product to retail outlets. In recent years, the Legislature has created exceptions that allow certain small producers of malt liquors (beers and ales) and spirits to sell a limited amount of their products directly to the public at their production sites. As noted above, H.F. 1050 would create another limited exception for Minnesota brew pubs to sell directly to a retail vendor at a MAC facility (presumably, at the Lindbergh Terminal).

¹⁵ The Minnesota Craft Brewer's Guild is the trade association of Minnesota craft brewers and brew pubs. The Guild has approximately 125 members. According to the Guild, it promotes Minnesota's brewing industry by sponsoring festivals and special events, and it provides information to its members about brewery operations.

¹⁶ Because Minnesota has two-year legislative sessions, bills introduced but not enacted in the first year can be considered and enacted in the second year.

To independently confirm the statements Mr. Madigan made to us, we reviewed lobbyists' registration information on the Campaign Finance and Public Disclosure Board's website and minutes of MAC meetings.¹⁷ We also talked to officials and staff at MAC, Representative Hoppe, legislative staff and lobbyists involved with liquor legislation during the 2017 legislative session, and a representative of the Minnesota Craft Brewer's Guild. No information we reviewed or obtained contradicted Mr. Madigan's statements to us.

3. Does appointment of lobbyists to MAC conflict with existing provisions in *Minnesota Statutes 2017, Chapter 10A*?

No; *Minnesota Statutes 2017, Chapter 10A*, does not contain a provision that conflicts with appointing a lobbyist to any board or commission, and specifically not to MAC. As suggested in the answer above, a member of MAC who is a lobbyist would create a conflict only if the member took an action for a client that conflicted with MAC's interest.

The most relevant provision in Chapter 10A requires that a public official must disclose a potential conflict of interest and "abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question."¹⁸

4. Does existing law provide needed transparency, such as disclosure of possible conflicts and recusal from votes that may affect clients of a registered lobbyist?

Yes; as noted in the answer above, *Minnesota Statutes 2017, 10A.07*, requires disclosure and recusal. In reviewing MAC meeting minutes, we noted that members have recused on certain votes.¹⁹

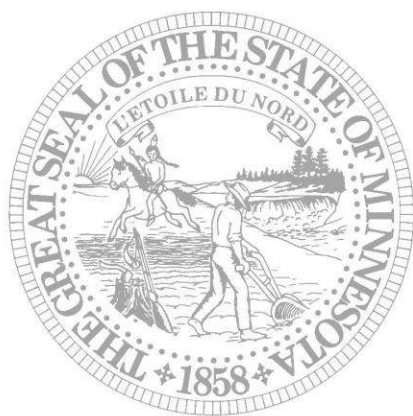
5. Are there sufficient deterrents, such as financial penalties, for violating conflict of interest standards?

No; *Minnesota Statutes 2017, 10A.07*, does not provide a penalty for violating the disclosure and recusal requirement. Also as noted above, while the MAC Code of Ethics indicates that a person who violates the Code is "subject to disciplinary action as appropriate," it does not specify what the disciplinary action might involve.

¹⁷ We reviewed MAC meeting minutes specifically to confirm Mr. Madigan's statement to us that he had recused himself from voting on certain items because they involved a business represented by Thomas Harlan, a lawyer at Mr. Madigan's law firm, Madigan, Dahl & Harlan, PA. For the recusal, see Metropolitan Airports Commission, Meeting Minutes, August 17, 2015.

¹⁸ *Minnesota Statutes 2017, 10A.07, subd. 2.*

¹⁹ As we noted in footnote 17, we confirmed that Mr. Madigan has recused himself on certain votes. In reviewing MAC meeting minutes for that confirmation, we noted that other MAC members also recused themselves on various votes.





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CENTENNIAL OFFICE BUILDING – SUITE 140
658 CEDAR STREET – SAINT PAUL, MN 55155