

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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442

Attorney General

Mark Suby
Special Assistant
Attorney General

June 29, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Temporary Rules of the Ethical Practices Board Relating to Economic Interest Disclosure

The temporary rules and temporary rules repeal in the above captioned matter are approved expect for the following:

1. First sentence of 1.0105(A): The use of the word "may" improperly grants the agency unfettered discretion.

Other matters for your clients consideration but which do not relate to this office's review for form and legality are as follows:

(a) 1.0100(B): The addition of the word "supplemental" between the words "filing" and "statement" would seem to clarify that provision.

(b) 1.0101: Addition of the clause "or candidate" after the word "public official" would conform this requirement with the agency's apparent intention as reflected elsewhere in the rules.

If you have questions, do not hesitate to contact me.

LES:mb

Enclosure

cc: B. Allen Clutter

#442 Ethical Practices Board

file

(ours)

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/23 Temporary Rule ✓

Resubmitted and Received 6

DUE DATE 6/30

a. Returned to Agency w/o filing w/Secy of State 6/29
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted _____
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable _____
4. Order for Hearing _____
5. Notice of Hearing _____
   (i) Sufficiency _____
6. Secretary of State's List _____
7. Certificate of Acquisition of Secretary of State's List _____
8. Affidavit of Mailing _____
   (i) At least 30 days prior to hearing _____
9. Statement of Need and Evidence _____
10. Hearing Examiner's Report _____
11. Agency's Findings of Fact _____
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting _____
14. Report of Chief Hearing Examiner _____
    (i) Finding of No Substantial Change _____
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures _____
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

Alan Clu Her 61720

X ① 1.0100 $\boxed{\text{word "supplemental"}}$ between "filing" & "statements"

② p. 2 1.0105 (A) "may"

X ③ 1.0105 (C) Why "public off or candidate" in this rule by not others e.g., no candidate in 1.0101

IN THE MATTER OF THE PROPOSED)
TEMPORARY ECONOMIC INTEREST)
RULES OF THE ETHICAL PRACTICES)
BOARD)

CERTIFICATION OF COMPLIANCE
WITH RULE MAKING PROCEDURES

I, Special Assistant Attorney General Mark M. Suby, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the applicable procedures have been followed. Any exceptions are noted below.

DATED:

MARK M. SUBY
Special Assistant
Attorney General

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ETHICAL PRACTICES BOARD

Office Memorandum

TO : Lee Sheehy,
Special Assistant Attorney General

DATE: June 21, 1978

FROM : B. Allen Clutter, B. Allen Clutter
Executive Director

PHONE: 296-1720

SUBJECT: Temporary Economic Interest Rules

Pursuant to Section 108, Chapter 463, Minnesota Session Laws 1978, and Minn. Stat. 15.0412, subd. 5, the attached temporary economic interest rules are forwarded for your review as to form and legality.

The Ethical Practices Board received no public comments, and therefore the Board has made no modifications in the proposed temporary rules, as published in the State Register on May 30, 1978.

If you have any questions, please contact me at 6-1720.

BAC:cg

MINNESOTA STATE ETHICAL PRACTICES BOARD

Rules and Regulations

Relating to Economic Interest Disclosure

Chapter Two

Replacing Vacated Rule EPB 100

9MCAR 1.0100 - 1.0111

Supersedes and repeals EPB Rule 100. Pursuant to Minn. Session Laws, Chapter 463, Section 108, these temporary rules are adopted to give effect to the economic interest provisions of Minn. Stat. Chapter 10A, the Ethics In Government Act, as amended by Minnesota Session Laws 1978, Chapter 463, and shall be effective until permanent rules are adopted pursuant to Minn. Stat. Chapter 15 or until October 1, 1979, whichever occurs first.

9MCAR 1.0100 ACTING PUBLIC OFFICIAL

A. An individual who is employed or appointed as an acting public official is required to file a statement of economic interest.

B. An individual who held a position as a public official during the calendar year preceding the annual filing date for filing statements of economic interest, but who resigned before the statement was required to be filed, must file for the period covered before resignation.

9MCAR 1.0101 BUSINESS WITH WHICH THE INDIVIDUAL IS ASSOCIATED

A public official who holds a joint interest in a security, or in a partnership, shall disclose ownership in the security or the partnership if his or her proportionate share of the holding is valued at $2,500.00 or more.

9MCAR 1.0102 COMPENSATION

"Compensation" includes every kind of compensation for labor or personal services from private or public employment. It does not include alimony or child support payments.

9MCAR 1.0103 COMPENSATION IN ANY MONTH

A. For the purpose of an original Statement of Economic Interest, "compensation in any month" includes only compensation received in the calendar month immediately preceding the date of appointment as a public official or filing as a candidate.

B. For the purpose of supplementary Statements of Economic Interest to be filed on April 15, "compensation in any month" includes compensation and honorariums received in any month between the end of the period covered in the preceding Statement of Economic Interest and March 31, inclusive.

C. For the purpose of calculating the amount of compensation received from any single source in a single month, such amount shall include the total amount received from such source during the month, whether or not the amount covers compensation for more than one month.

9MCAR 1.0104 DATE OF APPOINTMENT

"Date of Appointment" means the effective date of the appointment to a position.

9MCAR 1.0105 LATE FILING FEES

A. The Board may grant a waiver of a late filing fee for sickness or injury of the filer, or other compelling reasons. A written request for a waiver must be submitted not later than the fifth business day after filing the late statement. For purposes of this rule, business day means 8:00 a.m. to 4:30 p.m. Monday through Friday except for official state holidays.

B. A late filing fee will be charged through the day preceding the day of filing of a late statement.

C. The Board shall send a delinquency notice by certified mail to a public official or candidate within ten business days after a filing date. If a certified letter is returned by the post office to the Board as refused, then the

letter shall be deemed to have been received by the addressee. The late filing fee will then commence accumulating on the eighth day after refusal. A certified letter returned to the Board as undelivered or refused shall be forwarded by first class mail to the public official or candidate.

9MCAR 1.0106 HONORARIUM

"Honorarium" includes anything of value received for services for which there is no obligation to make payment; for example, a speech, an article, or similar service. Honorariums are not reported on original statements.

9MCAR 1.0107 OCCUPATION AND PRINCIPAL PLACE OF BUSINESS

For statement of occupation, the individual shall state his or her principal occupation; i.e. the occupation at which he or she spends most of his or her working hours or which provides his or her major source of compensation. "Principal place of business" means the name of the entity providing the individual's principal occupation.

9MCAR 1.0108 REAL PROPERTY

A. For the purpose of determining the value of an individual's interest in real property, the value of the property shall be the market value shown on the property tax statement.

B. For the purpose of an original Statement of Economic Interest, the individual shall disclose only those real properties owned on the date of appointment as a public official or filing as a candidate.

C. For the purpose of a supplementary Statement of Economic Interest, the individual shall disclose any real property owned at any time between the end of the period covered by the preceding Statement of Economic Interest and through the last day of the month preceding the current filing.

9MCAR 1.0109 SECURITIES

A. "Securities" includes any stock, share, bond, warrant, option, pledge,

note, mortgage, debenture, lease, or commercial paper in any corporation, partnership, trust, or other association. "Securities" does not include deposits in a savings account or shares in a pension fund.

B. A "Holder of Securities" or an individual who "Holds Securities" is an individual having an ownership interest in any security as defined herein, or who is the trustee or beneficiary of a trust.

C. For the purpose of an original Statement of Economic Interest, "Securities" includes only securities held on the date of appointment as a public official or filing as a candidate.

D. For the purpose of a supplementary Statement of Economic Interest, "Securities" includes any security held at any time between the end of the period covered by the preceding Statement of Economic Interest and through the last day of the month preceding the current filing.

E. For the purpose of indicating the address of the entity in which a security is held, the registered office or principal place of business shall be stated, except that if a security is listed on one of the national security exchanges, and the address of the entity is not known, the name of the exchange shall suffice.

9MCAR 1.0110 SOURCES OF COMPENSATION

"Sources of Compensation" means the name of the corporation, partnership or other entity from which the individual receives compensation. A self-employed individual is required to list only a description of the occupation in which the individual is self-employed (e.g. farming, practice of law, etc.) and is not required to list the names of corporations, partnerships, or other entities which pay compensation to the public official or candidate in his or her capacity as a self-employed individual.

9MCAR 1.0111 TIME FOR FILING

A. A Statement of Economic Interest is considered filed if delivered to the

Ethical Practices Board by 4:30 p.m. of the prescribed filing date or postmarked by midnight two days before the filing date.

B. An individual shall not be required to file more than one Statement of Economic Interest in any year; except that a public official who has filed a Statement of Economic Interest within the calendar year as a public official, must file a supplementary statement within 14 days after filing an affidavit of candidacy or submitting a petition to appear on the ballot.

C. A public official or candidate, who previously filed a Statement of Economic Interest and who is required to file a new Statement of Economic Interest following a period when no statement was required, shall file an original statement.

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt; suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Ethical Practices Board

Proposed Temporary Rules Governing Economic Interest Disclosure

Request for Public Comment

Pursuant to Minn. Stat. 15.0412, subd. 5, the Ethical Practices Board shall afford all interested persons an opportunity to submit data and comments concerning these proposed temporary Economic Interest Rules. All comments shall be submitted in writing to the Board, not later than the close of business on Tuesday, June 20, 1978.

Under Minn. Stat. 10A.01, subd. 11, and 10A.03 (1976), any individual* engaged for pay or other consideration, or authorized to spend money, who spends in excess of five hours in any month or in excess of $250 in a calendar year to influence legislative and administrative action, such as the promulgation of these rules, by communicating with, or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days.

Temporary Rules as Proposed

Rules and Regulations Relating to Economic Interest Disclosure

Chapter Two

Replacing Vacated Rule EPB 100

*with certain exceptions

9 MCAR §§ 1.0100-1.0111

Supersedes and repeals EPB Rule 100. Pursuant to Laws of 1978, ch. 463, § 108, these temporary rules are adopted to give effect to the economic interest provisions of Minn. Stat. ch. 10A, the Ethics In Government Act, as amended by Laws of 1978, ch. 463, and shall be effective until permanent rules are adopted pursuant to Minn. Stat. ch. 15 or until October 1, 1979, whichever occurs first.

9 MCAR § 1.0100 Acting public official.

A. An individual who is employed or appointed as an acting public official is required to file a statement of economic interest.

B. An individual who held a position as a public official during the calendar year preceding the annual filing date for filing statements of economic interest, but who resigned before the statement was required to be filed, must file for the period covered before resignation.

9 MCAR § 1.0101 Business with which the individual is associated. A public official who holds a joint interest in a security, or in a partnership, shall disclose ownership in the security or the partnership if he or her proportionate share of the holding is valued at $2,500.00 or more.

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A. The Board may grant a waiver of a late filing fee for sickness or injury of the filer, or other compelling reasons. A written request for a waiver must be submitted not later than the fifth business day after filing the late statement. For purposes of this rule, business day means 8:00 a.m. to 4:30 p.m. Monday through Friday except for official state holidays.

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9 MCAR § 1.0107 Occupation and principal place of business. For statement of occupation, the individual shall state his or her principal occupation; i.e., the occupation at which he or she spends most of his or her working hours or which provides his or her major source of compensation. "Principal place of business" means the name of the entity providing the individual's principal occupation.

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A. "Securities" includes any stock, share, bond, warrant, option, pledge, note, mortgage, debenture, lease, or commercial paper in any corporation, partnership, trust, or other association. "Securities" does not include deposits in a savings account or shares in a pension fund.

B. A "Holder of Securities" or an individual who "Holds Securities" is an individual having an ownership interest in any security as defined herein, or who is the trustee or beneficiary of a trust.

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9 MCAR § 1.0111 Time for filing.

A. A Statement of Economic Interest is considered filed if delivered to the Ethical Practices Board by 4:30 p.m. of the prescribed filing date or postmarked by midnight two days before the filing date.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

9 MCAR § 1.0111

B. An individual shall not be required to file more than one Statement of Economic Interest in any year; except that a public official who has filed a Statement of Economic Interest within the calendar year as a public official, must file a supplementary statement within 14 days after filing an affidavit of candidacy or submitting a petition to appear on the ballot.

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