

DuPage County Ethics Adviser

To: DuPage County Board Members

From: Dan Hanlon/Ethics Adviser

cc: Conor McCarthy/DuPage County ASA

Date: 2/4/2025

Re: Conflict of Interest/Member Initiative Program and Small Grant Program

I have been asked by Conor McCarthy to prepare this advisory memorandum relating to the Member Initiative Program and the Small Grant Program and what actions the County Board Members can/must take.

It is my opinion that unless appointed to the not-for-profit organization (the NFP”) by the County Board to an unpaid position, any County Board Member who is also a board member (or volunteer in some circumstances) of an NFP, has a conflict when those NFPs are seeking grant money. This conflict extends to all participation in any discussions and votes on other NFPs seeking funds in competition with the NFP the Board Member is associated with. In these instances, the Board Member is required to recuse themselves from discussion and from voting.

Section 2-480 of the Ethics Ordinance provides that no person, subject to the ordinance and while representing or employed by their governmental entity, shall engage in any act that is in conflict with the performance of such person’s official duties. A conflict exists whenever official action could result in a personal advantage or disadvantage to the interested person including, but not limited to the following:

(2) represents, or whose firm represents, any individual or business entity who would receive direct financial benefit as a result of the official action under consideration.

Section 2-480 further provides that any officer who has a conflict shall abstain from discussion and shall not vote on any contract with the person or business entity involved in the conflict.

Beyond the limitations set forth in the County’s Ethics Ordinance, § 3 of the Public Officers Prohibited Activities Act 50 ILCS 105/1, et seq., provides in relevant part:

(f) Under either of the following circumstances, a municipal, county, or township officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality, county, or township:

(1) If the municipal, county, or township officer is appointed by the governing body of the municipality, county, or township to represent the interests of the municipality, county, or township on a not-for-profit corporation's board, then the municipal, county, or township officer may actively vote on matters involving either that board or the municipality, county, or township, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal, county, or township officer may be reimbursed by the not-for-profit board for expenses incurred as the result of membership on the not-for-profit board.

(2) If the municipal, county, or township officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, county, or township, then the municipal, county, or township officer may continue to serve; however, the municipal, county, or township officer shall abstain from voting on any proposition before the municipal, county, or township governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal, county, or township governing body.

Therefore, whether a Board Member is required to recuse themselves from voting depends, largely upon whether the Board Member was appointed to the NFP by the County Board and if so, whether that position is paid. If appointed to an unpaid position, they are not required to recuse themselves. If they were not appointed by the County Board or if they are paid to be on the NFP board, it is my opinion that, as a member of the NFP board, the Board Member represents the organization which would have a direct financial interest in the awarding of the grant. Therefore, pursuant to the Ethics Ordinance and the Public Officers Prohibited Activities Act, the Board Member is required to recuse themselves from any discussions or votes relating to the awarding of grant money which the subject NFP is applying for. To opine and make recommendations on competing applications could, theoretically, allow the Board Member to exert influence over the decision-making process.

While my opinion is generally the same if the Board Member is merely a volunteer for the NFP, I could imagine a scenario where the Board Member may not have a conflict. I think it would really depend on the extent of involvement as a volunteer and I would need to provide an opinion on a case-by-case basis. Volunteering once a year at a coat drive, for example, may not create a conflict, but volunteering as a consultant on grant application writing, would clearly be a conflict.

If you have any questions as to your specific situation, please do not hesitate to contact me.