

Michelle Crocker

From: Richard Lewis
Sent: Tuesday, July 2, 2024 12:49 PM
To: Michelle Crocker
Subject: FW: Conflict of Interest - attorney/client privileged communication

FYI – Know I release the opinion at the June 11th meeting. Topic was on the agenda and I gave a verbal report.

From: Matt Nordfjord <mnordi@cstmlaw.com>
Sent: Monday, June 3, 2024 4:01 PM
To: Richard Lewis <rlewis@leelanau.gov>
Cc: Nicole Moles <nmoles@cstmlaw.com>
Subject: RE: Conflict of Interest - attorney/client privileged communication

Hi Richard –

The Leelanau County Policy on Conflicts of Interest states in Sec. 5 that a conflict of interest occurs when a public servant (which includes an appointee to a County board or commission) openly advocates the approval and funding for a program, which would result in a benefit to the public servant. Please note that this provision of the policy is more restrictive than applicable State law here.

Although this situation appears to present a conflict under the County's policy it should be addressed by the Board at an open meeting (e.g. the investigation in Sec. 7 of the Conflicts Policy). Depending on the Board's consideration of information from the task force related to the justification for the proposal, this arrangement could still be considered as presented to the Board of Commissioners.

Whether (or not) this situation violates the policy may turn on the response from the members of the task force. Further, based on my understanding of this situation, under the Contracts of Public Servants with Public Entities Act (MCL 15.321 *et seq.*) with full disclosure in writing from the members of the task force describing the arrangement and its justification to the Board of Commissioners satisfaction, they could approve this arrangement without violating State law.

Here, an appointee to the County's Energy Futures Task Force, Mr. DeFors, is alleged to have a conflict of interest, because he openly lobbied for a State grant for the County's solar project. Mr. DeFors designed the solar system for which the grant is intended to provide funding.

The grant funding will pay for the time spent on the project by various County officials, including the Administrator, Treasurer, Finance Director and Facilities Manager, for a total of \$16,329.60 in personnel costs under the "administrative expenses" category.

In addition, two members of the Energy Futures Task Force, including Mr. DeFors, will be paid for consultation on the project as the Project Leadership Team at the rate of \$45 per hour for a combined total of three hours per week. That amounts to \$8,100 budgeted out of a total \$925,772 in contracted labor for the project.

This is separate from the Project Manager, who is to be paid \$50 per hour for 10 hours per week, for a total of \$30,000.

The justification for including the two Energy Futures Task Force members as paid consultants performing the three-hour weekly Project Leadership Team services is set forth in the grant as follows:

Two individuals will share this role. Joe DeFors and Russ Packard. As a team, both individuals researched, interviewed, planned, designed and coordinated all activities required to construct this project design and grant application. As such, they created a wide ranging network of organizations and individuals who collectively, possessed the skills and knowledge required to conceive, design and implement the project. It is anticipated that this same wide ranging network will be called upon during the actual construction and implementation of the project as a whole. Rather than making an effort to transfer this broad and complex network structure of established relationships to a new project manager, it is deemed more efficient and effective to, when necessary, call upon the original individuals already in place. This salary is based on an estimated 3 hours per week to be shared between the two individuals as required by project needs. Resumes for both individuals are included in the project support documents as: Leelanau County_RE_EIED application BIO PROJECT LEADERSHIP TEAM_February 2024.
Approximate cost: \$8,100.00

An argument could be made that the Task Force members openly advocated for the grant, which was the purpose of the Task Force. The grant does provide for compensation for their future work on the project. The grant could have excluded them as Project Leadership Team, or required them to work without compensation. The justification for their involvement is that it would make the project "more efficient and effective" as they were already in place and had an existing network of relationships.

As a technical matter, Mr. DeFors does benefit from the grant contract he lobbied for, but if the true benefit is to the County (as stated in the justification language) it is something the BOC could consider.

Regards,

Matt

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From: Richard Lewis <rlewis@leelanau.gov>
Sent: Wednesday, May 29, 2024 2:20 PM
To: Matt Nordfjord <mnordi@cstmlaw.com>
Subject: Conflict of Interest

Good afternoon Matt,

Attached please find three items:

1. Letter to the Board of Commissioners regarding a Conflict of Interest of Mr. Joe Defors, Chair of the Energy Futures Task Force received at the Board of Commissioners meeting last Tuesday evening. There were eleven identical letters received.
2. The County's Conflict of Interest Policy
3. The Grant Proposal identified in the Letter whereas Mr. Defors would be the Grant Administrator if awarded. When the grant was approved for submittal, I believe it was understood by the Board of the administration of the grant.

The Commission requested your thoughts as to whether a Conflict of Interest exist.

Richard

Richard I. Lewis
Interim County Administrator
Leelanau County, MI

"Relationships are primary; all else is derivative." Ron David

