

**Board of Ethics
City of Sioux Falls
Advisory Opinion No. 08-3**

Request for Opinion

Scott L. Ehrisman has asked whether it would be a conflict of interest for Council Members Greg Jamison and Robert Litz to vote on proposed ordinances before the City Council regarding water distribution platting fees and arterial street platting fees.

Facts

Council Members Jamison and Litz previously appeared before the Board in a confidential matter similar in nature to this request, and provided information as to their personal involvement in the development industry within the City of Sioux Falls. Councilor Litz is not currently engaged in development activities and Councilor Jamison has minor interests in development activities. Both Councilors appeared again before the Board in the matter at hand and agreed to have their previously given sworn statements considered as part of the Board's review of Mr. Ehrisman's request as well. The Board also considered the written data in Mr. Ehrisman's request since he did not appear at the public hearing or submit any other evidence on the conflict issue.

The proposed development fee ordinances, and an ordinance proposing an increase in the second penny sales tax, are before the City Council as a means to address the backlog of arterial road and sewer/water projects that need funding. Money collected through this general infrastructure funding strategy would go into a separate fund earmarked for such projects. Decisions regarding which projects to fund and the timing of the projects are made by the City's Public Works Department. The proposed tax increase and the development fees are City-wide in their effect and do not pertain to any one particular development or developer. Both Councilor Litz and Councilor Jamison related to the Board that they do not see their vote on a City-wide policy for funding arterial streets and water mains as presenting a conflict; however, they realize that a Council member may have to recuse himself or herself from voting on a particular development or parcel of land if the circumstances warrant it.

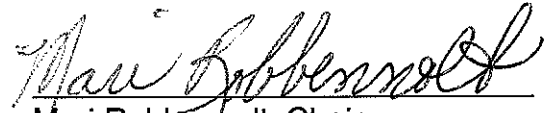
Opinion

Sec. 12 ½ -43(3) of the Revised Ordinances of Sioux Falls directs that council members shall not participate or vote in matters in which they may have a direct or indirect financial interest, or in which an immediate family member has a direct or indirect financial interest.

Sec. 12 ½ -44(5) of the Revised Ordinances of Sioux Falls prohibits city officials from using their elected position to secure special advantages or privileges for themselves or others.

Finally, Sec. 7.01 of the Sioux Falls Charter, dealing with conflicts of interest, specifically prohibits the use of public office for private gain. The Charter goes on to set out a general prohibition that the appearance of impropriety must be avoided by elected or employed persons with the City.

Based upon the above facts, above ordinances, and the applicable law, it is the opinion of the Board that Council Member Jamison and Councilor Member Litz do not have a conflict of interest in voting on the proposed ordinances dealing with the above identified development fees.



Mari Robbenholt, Chair

Opinion decided: September 10, 2008

Written opinion approval _____