

**State of Minnesota
Campaign Finance and Public Disclosure Board**

**In the matter of the Complaint Regarding
Representative Denise Dittrich**

Summary of Allegations and Responses

On August 30, 2006, Representatives Kurt Zellers and Tom Emmer ("Complainants") filed a written complaint with the Campaign Finance and Public Disclosure Board (the "Board") requesting the investigation of Representative Denise Dittrich ("Respondent") for possible violations of Minnesota Statutes Chapter 10A.

Upon receipt of the complaint, Board staff notified Representative Dittrich of the allegations and afforded her an opportunity to respond.

On September 8, 2006, Attorney Alan W. Weinblatt responded on behalf of Representative Dittrich. In response to a request for additional information, Attorney Weinblatt supplemented Representative Dittrich's response on September 14, 2006.

The complaint alleges that Representative Denise Dittrich failed to disclose on her Statement of Economic Interest a financial interest in real property at 328 Fourth Street North in Minneapolis and failed to recuse herself from certain legislative votes in which she had a conflict of interest.

Complainants state that Representative Dittrich was excused from voting on House File 2480 upon citing a possible conflict of interest relating to a property at 333 Washington Avenue North, but she participated in other votes on and acted as an author of bills that may have affected the future use and value of 328 Fourth Street North.

Complainants acknowledge that Representative Dittrich did disclose an interest in real property at 333 Washington Avenue North and did recuse herself on a vote that had the potential to affect the value of the property. According to Complainants, the owner of record of both parcels is an entity named the Duddy Limited Partnership.

Complainants state that both properties are within two blocks of the proposed new outdoor baseball stadium site and that 328 Fourth Street North is adjacent to the proposed Northstar commuter rail line. As a result, say complainants, the future use and economic value of the properties will likely be affected by 2006 legislation which Representative Dittrich authored or on which she voted.

On behalf of Representative Dittrich, Attorney Weinblatt responded that:

- (1) Representative Dittrich does not own and has not at any time owned or held any interest in the real estate located at 333 Washington Avenue North or 328 Fourth Street North, Minneapolis.

- (2) Representative Dittrich does not and has not at any time had an ownership interest in the Duddy Limited Partnership, which is the owner of both of the subject properties.
- (3) Representative Dittrich's spouse owns one third of one percent of the Duddy Limited Partnership, which is non-marital property against which she has no claim.

Attorney Weinblatt states that Representative Dittrich's remarks indicating that she had an ownership interest in 333 North Washington Avenue resulted from an error in her understanding of the ownership of that property. He indicates that the same error was included on her Statements of Economic Interest and that she will amend the Statements to remove that reference.

Attorney Weinblatt included with his response a one-page document with the name Richard K. Pogin at the bottom, which he obtained from a reliable source and believes to be authentic.

In the document, Mr. Pogin states that he is the general partner of the Duddy Limited Partnership and that the limited partnership is the owner of the land in question and has been for more than 20 years. He states that Representative Dittrich's spouse owns a small interest in the limited partnership, but that during its more than 20 year existence, Denise Dittrich has not owned any interest in it.

Staff research confirmed that the name of the limited partnership is "Duddy, LLLP" and that Hennepin County records list Duddy, LLLP, as the owner of both of the subject parcels.

In the course of the investigation of this matter, Complainants brought to the attention of the Board other issues, not within the Board's jurisdiction under Minnesota Statutes Chapter 10A.

Board Analysis

The complaint raises two questions:

- (1) Whether Representative Dittrich is required to disclose an ownership interest in either 333 North Washington Avenue or 328 4th Street North, Minneapolis or in the Duddy, LLLP, limited partnership on her Statements of Economic Interest filed under Minnesota Statutes, Section 10A.09, subd. 5; and
- (2) Whether Representative Dittrich has an interest in 328 4th Street North or in the Duddy, LLLP, limited partnership that would trigger application of the conflict of interest provisions of Minnesota Statutes, Section 10A.07.

Minnesota Statutes, Section 10A.09, subd. 5, requires disclosure of real property interests directly owned by the individual and real property owned by a partnership in which the individual is a member.

Minnesota Statutes, Section 10A.07 requires disclosure of potential conflicts of interest when a vote to be taken by a member of the legislature would affect the official's financial interest unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation. The term "financial interest" is not defined in statute.

The answer to each question depends on the legal nature of Representative Dittrich's interests, if any, in each real estate parcel and in the limited partnership.

333 Washington Ave North: Complainants provide an alleged statement by Respondent in which she appears to acknowledge purchasing the property with her spouse “a long time ago”. Attorney Weinblatt states that Representative Dittrich does not now and has never owned an interest in the real estate located at 333 Washington Ave. North. Attorney Weinblatt indicates that Representative Dittrich had incorrect information about the true nature of the ownership of the property when she made the referenced statement and when she filed her Statements of Economic Interest with the Board.

Both the Complainants and the Respondent agree that title to the property is held by Duddy, LLLP, a limited partnership.

328 4th Street North: Complainants do not allege that Representative Dittrich, individually, owns any interest in this property. They agree with Respondent’s statement that the property is owned by Duddy, LLLP.

Duddy, LLLP: Attorney Weinblatt provided a statement from Richard K. Pogin, general partner of Duddy, LLLP, stating that Representative Dittrich does not own, and has never owned any interest in the limited partnership. This statement is not contradicted by any evidence offered by Complainants.

Attorney Weinblatt states that Representative Dittrich’s spouse’s interest in the limited partnership is non-marital property, having been acquired before the parties’ marriage. Whether the spouse’s interest in Duddy, LLLP, is considered marital property or non-marital property under Minnesota statutes governing dissolution of marriage is not relevant to a determination of Representative Dittrich’s assets for disclosure on a Statement of Economic Interest.

Minnesota Statutes, Section 10A.09, subd. 5, governing disclosure of economic interests, requires disclosure of real property interests directly owned by the individual and real property owned by a partnership in which the individual is a member. Section 10A.09 does not require disclosure of a spouse’s individually held assets, regardless of when they were acquired.

The Board must also consider whether an interest in real property held by a legislator’s spouse constitutes a “financial interest” of the legislator under Minnesota Statutes, Section 10A.07. If the spouse’s limited partnership was a “financial interest” of Representative Dittrich, then the disclosure and recusal provisions of Section 10A.07 could be applicable, depending on the nature of the matter on which the Representative was voting.

Again the Board does not find it necessary to rely on the statutes related to classification of property as marital or non-marital. Those statutes give a spouse an interest in property at the time of dissolution of a marriage that the spouse could not exercise during the marriage. In this complaint, it is the present interests of the parties that are the subject of examination.

It is understood that married individuals can have their own separate incomes and assets. The Board finds no authority for a theory that an individual could be required to share her or his separate assets with a spouse during the marriage, even though in most marriages such sharing takes place. That being the case, the Board cannot conclude that individual ownership by a legislator’s spouse of an interest in real property constitutes a financial interest of that legislator.

The Complainants also refer to Minnesota Statutes, 10A.071, 10A.10, 10A.23 and 10A.34 as relevant, however, they provide no evidence or allegations related to violation of any of these statutes.

Based on the above analysis, testimony of the parties or their representatives, and the staff investigation, the Board makes the following:

EVIDENTIARY FINDINGS

1. The evidence before the Board supports a finding that at the time Representative Dittrich filed her Statements of Economic Interest with the Campaign Finance and Public Disclosure Board, she did not own any interest in real estate located at 333 Washington Ave. North, Minneapolis, MN.
2. There is no evidence before the Board that Representative Dittrich has ever owned any interest in real estate located at 328 4th Street North, Minneapolis, MN.
3. There is no evidence before the Board that Representative Dittrich has ever owned any interest in the limited partnership known as Duddy, LLLP.

Based on the above information, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to conclude that Representative Denise Dittrich failed to provide all required disclosure on her Statements of Economic Interest filed with the Campaign Finance and Public Disclosure Board.
2. There is no probable cause to conclude that Representative Dittrich had any financial interest in real property or the Duddy, LLLP, limited partnership that would have required her to disclose a potential conflict of interest under Minnesota Statutes, Section 10A.07.

Based on the above Findings, the Board issues the following:

ORDER

1. The complaint filed by Representative Kurt Zellers and Representative Tom Emmer on August 30, 2006 regarding Representative Denise Dittrich is dismissed.
2. The Board's investigation of this matter is concluded and the records of the investigation are hereby made a part of the public records of the Board pursuant to Minnesota Statutes, Section 10A.02, subdivision 11.

Dated: September 19, 2006



Felicia Boyd, Vice Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.07 Conflicts of interest.

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit 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, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- (2) deliver copies of the statement to the official's immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. **Required actions.** If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official must abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

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10A.09 Statements of economic interest.

Subdivision 1. **Time for filing.** Except for a candidate for elective office in the judicial branch, an individual must file a statement of economic interest with the board:

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- (2) within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective state office or an elective local office in a metropolitan governmental unit;

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Subd. 5. **Form.** A statement of economic interest required by this section must be on a form prescribed by the board. The individual filing must provide the following information:

- (1) name, address, occupation, and principal place of business;
- (2) the name of each associated business and the nature of that association;
- (3) a listing of all real property within the state, excluding homestead property, in which the individual holds:
 - (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or
 - (ii) an option to buy, if the property has a fair market value of \$50,000 or more;
- (4) a listing of all real property within the state in which a partnership of which the individual is a member holds:
 - (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or
 - (ii) an option to buy, if the property has a fair market value of \$50,000 or more. A listing under clause (3) or (4) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located; and
- (5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a race horse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest.

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