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December 30, 2019

*Attorney-Client Privileged
Via E-mail and U.S. Mail*

Mr. Patrick McCormack
Director, House Research Department
Minnesota House of Representatives
600 State Office Building
St. Paul, MN 55155

Re: Investigation of Representative Jamie Long's Employment with the University of
Minnesota's Energy Transition Lab

Dear Mr. McCormack:

At the direction of the Minnesota House of Representatives, I submit this report on my investigation into Rep. Jamie Long's employment with the University of Minnesota's Energy Transition Lab.

I. Scope of the Investigation.

Effective October 1, 2019, the Minnesota House of Representatives (the "House" or "House of Representatives") retained the undersigned attorney and the law firm of Ballard Spahr LLP to investigate allegations of misconduct relating to Rep. Jamie Long's employment with the University of Minnesota Institute on the Environment's Energy Transition Lab ("ETL"). The scope of the investigation was limited to whether Rep. Long's conduct in seeking and accepting a position as an Energy Research Project Specialist at the ETL and his subsequent employment in that role were consistent with state laws and rules governing legislator conflicts of interest and lobbying activity. The investigation was singularly focused on Rep. Long's conduct; it did not investigate or analyze whether employees of the University

of Minnesota acted in compliance with University policy with respect to the process of hiring Rep. Long.¹

II. Evidence Considered.

The undersigned investigator reviewed substantial documentary and oral evidence in connection with the investigation. The following evidence was considered:

- Documents produced by the University of Minnesota in response to Rep. Chris Swedzinski's August 20, 2019², data request³;
- Documents produced by the University of Minnesota in response to Amy Schwartz's October 4, 2019, data requests (P002699-100419 and P002700-100419)⁴;
- Letter from University of Minnesota President Joan T.A. Gabel to Senator Paul Anderson dated September 19, 2019;
- Interview of Minority Leader Rep. Kurt Daudt on November 1, 2019;
- Telephone Interview of Rep. Chris Swedzinski on November 3, 2019;

¹ A copy of the contract between the House and Ballard Spahr LLP is annexed hereto as Exhibit A.

² Rep. Swedzinski's data request was made by letter dated August 19, 2019, but submitted on August 20, 2019. A copy of the letter from Rep. Swedzinski is annexed hereto as Exhibit B.

³ Due to the volume of the documents produced in response to the various data requests, the complete productions are not appended to this report. Rather, where appropriate, specific documents from the productions have been annexed as exhibits.

⁴ On December 6, 2019, this investigator submitted data request P002956-120619 to the University of Minnesota. Broadly, the data request seeks information relating to the University of Minnesota's return of funds to the McKnight Foundation, records relating to Rep. Long's resignation of employment, and public data relating to Ellen Anderson's demotion. To date, the University of Minnesota has not provided responsive information to that request. It is unclear when any responsive information will be produced. To the extent this investigator receives significant information after the submission of this report, the new information will be addressed in an addendum, as appropriate.

- Interview of Ellen Anderson on December 3, 2019;
- The McKnight Foundation's December 18, 2019, written responses to questions;
- Interview of Barb Jacobs on December 19, 2019;
- Interview of Rep. Jamie Long on December 20, 2019.⁵

III. Factual Background.

A. Rep. Long and Ellen Anderson.

Jamie Long ("Rep. Long") is a freshman DFL representative in the Minnesota House of Representatives (the "House"). Rep. Long was elected to office on November 6, 2018, and was sworn in on January 8, 2019.

Rep. Long is a graduate of Carleton College and, in 2007, received his *juris doctor* from The George Washington University Law School. While in law school, Rep. Long clerked for the National Resources Defense Council and, as a clerk, focused on clean energy issues. After graduating from law school, Rep. Long worked as an associate attorney at Morgan, Lewis & Bockius LLP, where he practiced in the litigation and environmental law groups. In 2009, Rep. Long left private practice but continued to work on environmental issues in his various roles as legislative counsel, a legislative director, and an adjunct professor. Rep. Long worked for U.S. Rep. Keith Ellison from January 2012 until December 2018.⁶

In or about 2015, Rep. Long met Ellen Anderson ("Anderson") when they were guest speakers at a Carleton College panel on legal careers. At the time, Anderson was the Executive Director of the ETL and taught classes at the University of Minnesota.⁷ Anderson was impressed with Rep. Long and, in 2015, asked Rep. Long to present a guest lecture in a class she taught at the University of Minnesota. Over the years, Rep. Long and Anderson kept in intermittent contact as professional acquaintances, but did not see each other socially.

⁵ Rep. Long cooperated with the investigation and provided, at this investigator's request, an informed consent to the release of not public data held by the University of Minnesota.

⁶ A copy of Rep. Long's resume is annexed hereto as Exhibit C.

⁷ Anderson is a former Minnesota State Senator who served in the Minnesota Senate from 1993-2011. See <http://energytransition.umn.edu/about/our-team/>

In the winter of 2018-2019,⁸ Rep. Long contacted Anderson, advised that he was looking for a part-time job⁹ when the legislature was not in session, and was interested in exploring a position at the ETL. Anderson stated that she understood Rep. Long was interested in a job at the ETL because he has a “great deal of experience in [clean energy].” At the time Rep. Long inquired, no position was available. Rep. Long did not pressure or pester Anderson for a job.

B. The ETL’s Grant From the McKnight Foundation.

On December 13, 2018, the ETL submitted a grant proposal to the McKnight Foundation.¹⁰ The grant proposal sought a total award of \$383,000, which award was to be divided among multiple initiatives at the ETL.¹¹ On February 22, 2019, the McKnight Foundation notified the ETL that it had awarded the ETL a total of \$433,000—\$50,000 more than the ETL had originally requested.¹² The parties formalized the relationship via a grant agreement.¹³ The McKnight Foundation advised that the additional \$50,000 was to fund a policy fellows program that the McKnight Foundation had discussed with Anderson.¹⁴

⁸ Neither Rep. Long nor Anderson recalled the precise time of this conversation, only that it took place “during the winter”, sometime after the election in November 2018.

⁹ In December 2018, Rep. Long worked as the Deputy Chief of Staff for Keith Ellison (“Ellison”) while Ellison was a representative in the U.S. House of Representatives. After Ellison was elected as Minnesota Attorney General and Rep. Long was elected to the House, Rep. Long consulted with caucus staff who in turn consulted with the House Research Department to determine whether Rep. Long could continue working for Ellison without running afoul of the House ethics rules. Rep. Long was advised that it was a “gray area.” Accordingly, Rep. Long resigned his position with Ellison before he was sworn into the House on January 8, 2019. In this period, Rep. Long began looking in earnest for a new position within his areas of experience.

¹⁰ A copy of the December 13, 2018, grant submission is annexed hereto as Exhibit D.

¹¹ *Id.*

¹² A copy of the February 22, 2019, letter from the McKnight Foundation to the University of Minnesota Foundation is annexed hereto as Exhibit E.

¹³ A copy of the February 26, 2019, Grant Agreement between the McKnight Foundation and the University of Minnesota Foundation is annexed hereto as Exhibit F.

¹⁴ A copy of the February 27, 2019, email exchange between the McKnight Foundation and various employees of the University of Minnesota is annexed hereto as Exhibit G.

The McKnight Foundation's initial discussions with Anderson regarding the policy fellows program were oral.¹⁵ The parties' original idea was to hire two policy fellows with divergent political views to work together on energy and climate policy issues.¹⁶ As the McKnight Foundation described it:

The McKnight Foundation understood that \$50,000 would be used by ETL to fund a bipartisan fellows program with two fellows — one from the GOP and one from the DFL.¹⁷

Anderson had the same understanding.

The McKnight Foundation further “understood that ETL would select the fellows [for the fellows program] and that the McKnight Foundation would play no role in that selection process.¹⁸ Although the McKnight Foundation and Anderson discussed a number of potential candidates in January 2019, of which candidates Rep. Long was one, no one at the McKnight Foundation asked or suggested that Rep. Long be hired as a fellow.¹⁹ There is no evidence that anyone at any other outside organization asked or encouraged the ETL to hire Rep. Long.²⁰

C. Communications Between Rep. Long and the ETL Regarding the Fellows Position.

On March 4, 2019, Anderson contacted Rep. Long to schedule a meeting to catch up; she invited him to her office for the meeting.²¹ On March 8, 2019, Anderson and Barb Jacobs

¹⁵ A copy of the McKnight Foundation's written responses to questions, response to question 2, annexed hereto as Exhibit H.

¹⁶ *Id.* at responses to questions 1 and 2, and Exhibits A, B, and C thereto.

¹⁷ *Id.* at response to question 1.

¹⁸ *Id.*

¹⁹ *Id.* at response to question 2.

²⁰ At his interview, Minority Leader Rep. Daudt expressed surprise that a freshman legislator like Rep. Long would have been competitive for a position at the University of Minnesota. Rep. Daudt wondered whether a high-level third-party, such as Speaker of the House Melissa Hortman, might have asked the McKnight Foundation to donate the funds to create a position for Rep. Long. Both the McKnight Foundation and Anderson denied the allegation and there does not appear to be documentary evidence supporting it.

²¹ A copy of the email exchange between Anderson and Rep. Long dated March 4, 2019, is annexed hereto as Exhibit I.

(“Jacobs”), a project manager at the ETL, met with Rep. Long to discuss the policy fellows program and explore his potential interest in working at the ETL.²² In this meeting, Anderson described a bipartisan fellows program where Rep. Long would represent a progressive viewpoint and a to-be-determined Republican legislator would represent the conservative viewpoint. Anderson and Jacobs advised Rep. Long that they were in the process of putting together a position description, but that the position would be publicly posted and he would need to apply for the position like any other candidate. At the March 8 meeting, Anderson told Long that she would let him know when the position was posted.

At this point, Rep. Long was Anderson’s “preferred candidate” for the policy fellow position and she “hoped to hire him,” but, according to Anderson, she had not made a final decision on the contours of the role or who she would select for it.

Anderson reported that while she originally hoped to hire two legislators to act as policy fellows, she became concerned in the spring of 2019 that \$50,000 was insufficient funding to support two fellows and it would be difficult to find a Republican legislator interested in the position. Consequently, Anderson decided to hire one policy fellow, not two. Rep. Long was not consulted about this decision and had no knowledge of it.

Internally, Anderson and Jacobs made several statements suggesting that the ETL planned to hire Rep. Long for the policy fellow position. For example, in a March 17, 2019, budget, Jacobs noted on the ETL’s internal budget that the ETL had received “[m]oney from [McKnight] to... hire MN Rep. Jamie Long...”²³ In May 2019, Jacobs routinely referred to the policy fellow position as the “Jamie Long position.”²⁴ In her interview, Jacobs stated that her references to the “Jamie Long position” were simply her shorthand for the position. At their interviews, Jacobs and Anderson stated that these were internal notes that were not shared with Rep. Long. Rep. Long stated that—at the time it was happening—he was wholly unaware that his name was being used in the internal ETL documents.

In mid-April, Anderson submitted a grant request to the Bloomberg Foundation via the McKnight Foundation. The grant request touted the ETL’s achievements and noted that Rep. Long was the ETL’s proposed new policy fellow:

²² A copy of Jacobs’ Notes re: Jamie Long dated March 8, 2019, is annexed hereto as Exhibit J.

²³ A copy of the March 17, 2019, email and budget is annexed hereto as Exhibit K.

²⁴ A copy of the May 23, 2019, email correspondence and attachments between Anderson and Jacobs are annexed hereto as Exhibit L. A copy of an email from Jacobs to Anderson and April Snyder dated May 24, 2019, is annexed hereto as Exhibit M (stating, “We got \$50k from [the McKnight Foundation] to hire Jamie Long for one year”).

ETL and IonE²⁵ have a unique access to state legislators and government leaders, given Anderson's background as a former State Senator and PUC chair and architect of Minnesota's clean energy laws, two other colleagues with years of legislative experience, and a proposed new policy fellow who is a current legislative clean energy champion, Jamie Long.²⁶

It is odd that in mid-April—prior to a legislative policy fellow position even being posted—Anderson would represent to a third-party that Rep. Long was a “proposed new policy fellow.” When asked about this, Anderson stated that she included Rep. Long's name in the proposal to the Bloomberg Foundation because she believed naming Rep. Long would increase the likelihood that the Bloomberg Foundation would fund the proposal.

Anderson, Jacobs, and Rep. Long each stated and made clear in their interviews that Rep. Long was never notified that Anderson was advertising him to third-parties as the ETL's “proposed new policy fellow.” There is no documentary evidence that Rep. Long was aware of Anderson's statements to the McKnight Foundation or the Bloomberg Foundation.

There is evidence, however, that Rep. Long was in continuing communication with Anderson about the fellows position. For example, on March 31, 2019, Rep. Long wrote:

I'm incredibly excited about th[e] possibility [of a fellowship with the ETL], and it remains my top choice for employment following the legislative session. I wanted to check in to see if you had a sense for timing on when you will be posting the position and expecting to review applications? For my own timeline, I'm hoping to have my post-session employment sorted out by the end of April if possible.²⁷

When Anderson asked Rep. Long to describe “what would be optimal for [him],” Rep. Long indicated that he would like a position that would allow him to work in a part-time role such that he could “keep a bright line” between his role as a legislator and his work for the ETL.²⁸ At his interview, Rep. Long stated that, in drafting this email, he was trying to identify his particular areas of professional interest in hopes that his areas of interest would align with the ETL's needs.

²⁵ The University of Minnesota's Institute on the Environment goes by the acronym “IonE.”

²⁶ A copy of the email dated April 15, 2019, from Ellen Anderson to Aimee Witteman at the McKnight Foundation is annexed hereto as Exhibit N.

²⁷ A copy of the March 31-April 2, 2019, email exchange between Anderson and Rep. Long is annexed hereto as Exhibit O.

²⁸ *Id.*

After receiving Rep. Long's input on what he was ideally seeking in a position, Anderson and Jacobs tailored the position description to match Rep. Long's optimal requirements.²⁹ Anderson and Jacobs did not advise Rep. Long that they were modifying the position to match what Rep. Long indicated would be optimal for him. Indeed, Rep. Long never saw a position description until the position description for the role was publically posted on June 17, 2019.

According to University of Minnesota President Joan Gabel, "[w]riting a job description with an individual in mind is not against University policy," but "[a]sking a candidate to assist in creating a job description is not a common practice."³⁰

Rep. Long indicated that, because he worked on ethics compliance for Keith Ellison, ethics issues were "top of mind" when he was searching for employment. In the spring of 2019, in or about April or May, Rep. Long spoke with Speaker of the House Melissa Hortman about the possibility of a position opening up at the ETL and asked whether it would be appropriate for him to apply. Speaker Hortman advised Rep. Long that academia was appropriate and did not raise any conflicts issues.

D. Representative Long's Votes On The Higher Education Omnibus Bill and the Omnibus Energy Policy Bill.

As a freshman representative, Rep. Long voted at least twice on the Higher Education bill.³¹ Representative Long first voted on the bill on April 30, 2019, when it was House File 2544, and Rep. Long voted yes.³² On May 20, 2019, Rep. Long again voted yes when it was conference committee report on Senate File 2415.³³ The Higher Education bill does not appear to have given any direct funding to the ETL. On the dates of the vote, Rep. Long was not employed by the University of Minnesota and had not submitted an application for employment at the University of Minnesota.

²⁹ See email from Jacobs to Anderson dated May 23, 2019, annexed hereto as Exhibit L.

³⁰ A copy of Joan T.A. Gabel's letter to Sen. Paul Anderson dated September 19, 2019, is annexed hereto as Exhibit P.

³¹ Rep. Long was present for a vote in the House Ways and Means committee on April 11, 2019. Because a voice vote was taken on the bill, rather than a roll call, there is no way to verify how or if Rep. Long voted on April 11, 2019.

³² See *Journal of the House*, April 30, 2019, p. 5209.

³³ See *Journal of the House*, May 20, 2019, p. 5998.

Rep. Long was present for three votes on iterations of the Omnibus Energy Policy bill³⁴, which included an appropriation targeted toward transitioning certain campus buildings to renewable energy by 2030. The votes took place: on March 28, 2019, when the bill was included in the H1833DE1 amendment approved by the Energy and Climate Policy Division³⁵; on April 8, 2019, when it was heard as part of House File 1833 in the Ways and Means Committee³⁶; and on April 24, 2019, when it was approved as part of House File 2208 by the House acting as a whole.³⁷ Rep. Long is recorded as voting yes on final passage of House File 2208.³⁸ There is no indication in the legislative record that this appropriation was requested by the ETL, or that it would have impacted the ETL's work or its funding had it been enacted. As with the Higher Education Omnibus Bill, on the dates of the votes for the Omnibus Energy Policy bill, Rep. Long was not employed by the University of Minnesota and had not submitted an application for employment at the University of Minnesota.

E. The ETL's Posting of the Energy Research Policy Specialist Position and Rep. Long's Application for the Same.

On June 17, 2019, the ETL posted the fellows position, which it formally titled "Energy Research Project Specialist."³⁹ Anderson notified Rep. Long of the posting that day.⁴⁰ Rep. Long then submitted his application for the position. On or about June 28, 2019, the ETL took the job posting down.⁴¹ On July 10, 2019, Snyder, Administrative Director of the IonE, advised

³⁴ The House' Omnibus Energy Policy bill (House File 1833) was ultimately incorporated into the Omnibus Jobs and Economic Development, Energy and Climate, and Telecommunications Policy and Finance bill (House File 2208). For purposes of clarity, the bill is referred to herein simply as the "Omnibus Energy Policy bill."

³⁵ See H1833DE1, section 60. Rep. Long is recorded as voting "yes" to re-refer the amended bill from the division to the Ways and Means Committee.

³⁶ See HF 1833, first division engrossment, section 63.

³⁷ See HF 2208, third engrossment, Article 29, section 63.

³⁸ See *Journal of the House*, April 24, 2019, page 4249.

³⁹ A copy of the Energy Research Project Specialist position description that was publically posted is annexed hereto as Exhibit Q.

⁴⁰ A copy of the June 17, 2019, email from Anderson to Rep. Long is annexed hereto as Exhibit R.

⁴¹ A copy of an email from April Snyder to Jacobs and Anderson dated June 28, 2019, is annexed hereto as Exhibit S.

Anderson not to “rush the process of finding and vetting the best candidate for [the] open position.”⁴²

Anderson interviewed three individuals for the position, ultimately selecting Rep. Long. Anderson explained her decision as follows:

We interviewed 3 excellent candidates. The first one, [Redacted], is a very knowledgeable and experienced energy analyst, but we did not consider him a finalist because he didn’t have other skills we would need for this work. I contacted references for [Redacted] and for Jamie, and got detailed feedback for both. [Redacted] is very skilled at research, writing, and communication and energy, and great people skills, but is less familiar with Minnesota’s energy policy and has no relationship with the Minnesota Legislature. Jamie is also excellent at research, writing, and communication on energy, but is also deeply steeped in Minnesota energy policy as well as national energy policy, having worked with several members of Congress, the Attorney General, and now as a State Representative himself. He also is highly regarded as someone who can work on both sides of the political aisle and has a network of policy leaders around the US. All of these assets make him by far the best choice for our work engaging in educating legislators and other decision-makers. We would like to hire him.⁴³

On July 12, 2019, Snyder sent Rep. Long a formal offer letter, which Rep. Long signed and returned on July 15, 2019.⁴⁴ The ETL offered to pay Rep. Long a salary of \$70,000 for his work at the ETL from July 22, 2019, until February 7, 2020.⁴⁵ Rep. Long was actively seeking employment from third-party employers until he received an offer from the ETL.

F. Rep. Long’s Employment with the ETL.

⁴² A copy of the email from Snyder to Anderson and Jacobs dated July 10, 2019, is annexed hereto as Exhibit T. At her interview, Anderson stated that Snyder’s email was a form email that Snyder sent for each new hire.

⁴³ A copy of the email from Anderson to Snyder and Jacobs dated July 10, 2019, is annexed hereto as Exhibit U.

⁴⁴ A copy of the offer letter dated July 12, 2019, and executed July 15, 2019, is annexed hereto as Exhibit V.

⁴⁵ *Id.*

Rep. Long began working for the ETL on July 22, 2019, and resigned effective September 20, 2019.⁴⁶ While at the ETL, Rep. Long spent approximately 75% of his time working on a landscape assessment, which, at the time he was working on it, focused on identifying categories of Minnesota's greenhouse gas emissions, researching those emissions, and meeting with researchers to discuss.⁴⁷ Rep. Long spent approximately 5% of his time handling student-facing matters. Rep. Long spent the remaining approximately 20% of his time planning a conference that was to take place in January 2020. Rep. Long reported that he never worked on creating a policy fellows research program and was never asked to do so.⁴⁸

Although Rep. Long appears to have had one contact with a legislator while employed by the ETL, the contact does not appear to involve lobbying. Rep. Long and other employees of the ETL decided to tour the University of Minnesota's T.E. Murphy Engine Research Laboratory ("Engine Lab") on the same date as Sen. Scott Dibble.⁴⁹ There is no indication that Rep. Long communicated with Sen. Dibble while at the Engine Lab or that he did so for the purpose of attempting to influence legislative action.⁵⁰ The substantive communications at the Engine Lab tour were made by the Engine Lab employees to the attendees of the tour (which attendees included Sen. Dibble and Rep. Long).

On August 20, 2019, Rep. Chris Swedzinski submitted a data request to the University of Minnesota seeking production of certain documents.⁵¹ In late August, the University of Minnesota asked Anderson and others to gather documents responsive to Rep. Swedzinski's data request. On September 10, 2019, the University of Minnesota publically released the records responsive to Rep. Swedzinski's request.

On the date of the records release, Anderson was asked to attend a meeting with Jessica Hellmann, the director of the IonE, and the Office of the Vice President for Research. At the meeting, Anderson was told that she was being demoted from Executive Director of the ETL

⁴⁶ A copy of the resignation letter from Rep. Long to Jessica Hellmann dated September 10, 2019 is annexed hereto as Exhibit W.

⁴⁷ See letter from Joan T. A. Gabel to Sen. Paul Gazelka dated September 19, 2019, annexed hereto as Exhibit P.

⁴⁸ *Id.* at response to question 8.

⁴⁹ A copy of the email from Rep. Long to Sen. Scott Dibble, Shawn Haag, and Will Northrop dated August 6, 2019, is annexed hereto as Exhibit X.

⁵⁰ *Id.*

⁵¹ A copy of the data request from Rep. Chris Swedzinski to the University of Minnesota dated August 19, 2019, but emailed August 20, 2019, is annexed hereto as Exhibit B.

to a senior researcher. According to Anderson, the University told her that she appeared too partisan and was being demoted due to “the optics of partisanship.”

In a simultaneous meeting, Rep. Long met with Melissa Kenney (“Kenney”), Associate Director of Knowledge Initiatives at the IonE, and Snyder. Kenney and Snyder advised Rep. Long that, although Anderson had not violated any University of Minnesota hiring policy, she was nonetheless being demoted because she appeared too partisan in hiring Rep. Long. The University told Rep. Long that it was uncomfortable with him continuing in the position given the publicity. On September 10, 2019, Rep. Long submitted his letter of resignation, which resignation was effective September 20, 2019.⁵²

On September 17, 2019, the IonE unilaterally decided to terminate the legislative fellows program and, on the same date, the University of Minnesota Foundation returned the grant funding to the McKnight Foundation.⁵³

IV. Applicable Law.

There are a number of statutes and rules that guide the conduct of representatives at the Minnesota House of Representatives. This section of the report is intended to identify the applicable rules, set forth the requirements of the rules, and identify the conduct that may be implicated by the rule at issue.

A. Conflicts of Interest.

1. Minn. Stat. § 10A.07.

Minnesota Statute § 10A.07, subd. 1, governs conflicts of interest for legislators. It provides:

(a) A public official⁵⁴... 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

⁵² See resignation letter dated September 10, 2019, from Rep. Long to the University of Minnesota, Exhibit W.

⁵³ See the McKnight Foundation’s written responses to questions, response to question 5, Exhibit H hereto.

⁵⁴ A public official includes any member of the legislature. See Minn. Stat. § 10A.01, subd. 35(1).

interests or those of an associated business⁵⁵, 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.

(b) For purposes of this section, "financial interest" means any ownership or control in an asset which has the potential to produce a monetary return.

In describing the requirements under Minn. Stat. § 10A.07, subd. 1, the Campaign Finance Public Disclosure Board has stated:

No employment relationship, in itself, will give rise to a conflict of interest under this statute. Instead, the statute requires that public officials evaluate the decisions they are required to make and the actions they are required to take as part of their official duties and to determine if a conflict of interest exists. To determine if there is a conflict of interest a public official must first consider two criteria, both of which are established by Minnesota Statutes section 10A.07. First, will the official action benefit either the public official's personal financial interests or the interests of any associated business? If the answer is yes than the second criteria is whether the benefit will be greater for the public official or the official's associated business than the affect [sic] on other members of the same business classification, profession, or occupation. Only when both conditions are true does the public official face a conflict of interest.

Campaign Finance and Public Disclosure Board, Advisory Opinion 439 to Sen. David Tomassoni, February 6, 2015. *See also United States v. Jennings*, 487 F.3d 564, 578 (8th Cir. 2007) ("The statute does not require notice when a legislator's interest in proposed legislation is the same as others in the same general vocation, such as teachers or farmers."); *Should Practicing Lawyers Be Legislators?*, 41 *Hastings L.J.* 87, 91-93 ("[A] legislator who is a farmer or a doctor may be disposed to vote in favor of provisions that aid farmers or doctors.

⁵⁵ An associated business means any business "from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a[n]...employee...." Minn. Stat. § 10A.01, subd. 5.

This influence generally is accepted as an inevitable aspect of democratic government and is not necessarily undesirable. ... Thus, a farmer need not recuse himself from voting on a general measure that inevitably would affect his farm as well as every other farm within the state. ... When a legislator directly benefits in a unique way from a particular piece of legislation, however, the legislator generally is expected to announce his or her involvement and to recuse himself from further involvement with the legislation.”).

Rep. Long’s votes in favor of funding for the Omnibus Higher Education bill and the Omnibus Energy Policy bill appear to be the only votes that could conceivably have created a conflict of interest. Those votes could only create a conflict of interest if—at the time of the vote—the votes: (1) substantially benefited Rep. Long’s personal financial interests; and (2) benefited those interests in a manner greater than other higher education employees. At the time of Rep. Long’s votes on the Omnibus Higher Education bill and the Omnibus Energy Policy bill, Rep. Long was not employed by the University of Minnesota or the ETL. When Rep. Long ultimately became employed by the ETL, his position was, at the time, funded by a grant from the McKnight Foundation and not from the University of Minnesota’s general coffers. There is no evidence that Rep. Long received a direct personal benefit from his votes on the bills. To the extent Rep. Long received an indirect benefit from his votes in favor of the bills, there is no evidence that the benefit would have been either substantial or greater than that received by other University of Minnesota employees.

2. House Rule 2.05.

House Rule 2.05 provides that “A House member who has an immediate interest in a question must not vote on it.” The House Rule does not define what constitutes an “immediate interest.”

House Rule 2.05 reflects the policy goals of Minn. Stat. § 10A.07, and thus requires a direct benefit by the representative in order to be triggered. The same factors used to analyze Minn. Stat. § 10A.07 should be used to analyze House Rule 2.05.

B. Gifts and Honoraria.

Minnesota statute § 10A.071, subd. 2 addresses gifts to public officials. It states, “[a]n official may not accept a gift from a lobbyist or principal.” The statute defines “gift” as “money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.” Minn. Stat. § 10A.071, subd. 1.

The investigation did not uncover evidence to support the claim that Rep. Long received employment from the ETL as a gift from a lobbyist. As an initial matter, there is no indication that the ETL would qualify as a lobbyist or lobbyist principal under Minnesota law. See Minn. Stat. § 10A.01, subd. 21(a) and Minn. Stat. § 10A.01, subd. 21(b) (“Lobbyist” does

not include: ... (2) an employee of the state, including an employee of any of the public higher education systems.”). Further, the ETL’s payroll records indicate that the ETL paid Rep. Long the agreed upon wages at or about the time the actual work performed.⁵⁶ Both Anderson and Rep. Long stated that Rep. Long performed substantial work for the ETL in exchange for wages.

Minnesota House Rule 9.20 provides that “a member must not accept an honorarium for a service performed for an individual or organization that has a direct interest in the business of the House, including, but not limited to, a registered lobbyist or an organization a lobbyist represents.” The Rule does not define “honorarium” or provide interpretive guidance on what it means for an organization to have a “direct interest in the business of the House.”

Generally, an “honorarium” is “a payment given for professional services that are rendered nominally without charge.” *Oxford Dictionary*, online. In a typical example, an honorarium is paid for a limited engagement item such as a speech. There is no indication that wages—which Rep. Long was contractually entitled to receive in regular intervals—constitute an honorarium for purposes of Minnesota House Rule 9.20.

Further, there is no indication that the ETL had a direct interest in the business of the House different from any other Minnesota organization and there is likewise no indication that the ETL qualifies as a lobbyist.

C. Lobbying.

The House Rules prohibit members of the House from accepting compensation for lobbying. *See* Minn. House R. 9.10 (“A member must not accept compensation for lobbying.”). There is no statutory definition of “lobbying.” However, Minn. Stat. § 10A.01, subd. 21(a) defines “lobbyist.” Under Minn. Stat. § 10A.01, subd. 21(a)(1) and (2), a lobbyist is a person who receives statutorily designated compensation thresholds for “communicating or urging others to communicate with public or local officials.” Notably, however, Minn. Stat. § 10A.01, subd. 21(b) carves out several exceptions to the definition of lobbyist. The term lobbyist does *not* include: (1) public officials themselves; or (2) “an employee of the state, including an employee of any of the public higher education systems...” Minn. Stat. § 10A.01, subd. 21(b)(1) and (2).

The Minnesota Administrative Rules addressing the Campaign Finance and Public Disclosure Board define “lobbying” as “attempting to influence legislative action... by communicating with or urging others to communicate with public officials....” *See* Minn. Rule 4511.0100, subp. 3. The Minnesota Administrative Rules do not expressly except public officials or higher education employees from the definition of lobbying. Nevertheless, the

⁵⁶ A copy of Rep. Long’s payroll records are annexed hereto as Exhibit Y.

Administrative Rules have the stated intent of implementing the requirements of Minn. Stat. chapter 10A. *See* Minn. Rule 4511.0010. Consequently, the Administrative Rules should be read in harmony with—not in conflict with—the exceptions set forth in Minnesota Chapter 10A.

The investigation did not uncover any evidence that, in his role at the ETL, Rep. Long communicated with public officials for the purpose of influencing legislative action. To the extent he did, however, he would have done so either as a member of the House or as an employee of a public higher education system. In either event, Rep. Long’s actions would be statutorily excepted from the definition of lobbying. *See* Minn. Stat. § 10A.01, subd. 21(b).

D. Improper Behavior.

Minnesota House Rule 6.10 provides:

A complaint may be brought [to the House Committee on Ethics] about conduct by a member that violates a rule or administrative policy of the House, that violates accepted norms of House behavior, that betrays the public trust, or that tends to bring the House into dishonor or disrepute.

Under Rule 6.10, the conduct of the representative is the conduct at issue. A representative’s conduct may appear improper and lead to a complaint if it violates a policy of the House, violates accepted norms of House behavior, betrays the public trust, or tends to bring the House into dishonor or disrepute.

Rep. Long is permitted to seek employment outside the House of Representatives.⁵⁷ Consequently, Rep. Long’s application for employment, in and of itself, does not provide a basis for an ethics complaint. In order for there to be a violation of Rule 6.10, there must be a determination that Rep. Long—through his own conduct—violated a House policy, acted improperly, betrayed public trust, or acted in a manner that brings dishonor or disrepute to the House. In this case, there is no indication that Rep. Long was aware that the ETL was titling the position as the “Jamie Long” position or advising third-parties that Rep. Long was a “proposed new policy fellow.” There is likewise no evidence that Rep. Long was aware that the ETL had modified the position from a bipartisan two-role position to a single position. Nor is there evidence that Rep. Long took actions creating a conflict of interest with his role as a public servant in the legislature.

⁵⁷ In Minnesota, members of the House are “‘citizen legislators’ and most have jobs outside the Legislature.” *See* <https://www.leg.state.mn.us/leg/faq/faq?subject=10>.

Mr. Patrick McCormack
December 30, 2019
Page 17

CONCLUSION

I appreciate the opportunity to be of service to the House of Representatives. I would be happy to discuss any of the foregoing with you at your convenience.

Very truly yours,



Amy Schwartz

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Attachments