

Via email, 4/4/2019

Dear Ted,

Contacting members to answer questions or taking a poll or survey is not a conflicting interest transaction because it is not a "contract, transaction, or other financial relationship" with the Association.

The annexation of Parcel D could be argued to be a conflicting interest transaction, and it is probably not worth it to debate whether this is or is not a conflicting interest transaction. I would argue that--even if we were to accept that this was a conflicting interest transaction for the sake of argument--it is explicitly permitted by C.R.S. §§ 7-128-501(3)(a) and (c). Specifically, it was disclosed and approved by the board and the transaction was fair to the Association.

The statute defines a "conflicting interest transaction" as a contract, transaction, or other financial relationship between:

- (1) a corporation and a director; or
- (2) between the corporation and a party related to a director; or
- (3) an entity in which a director of the corporation is a director or officer or has a financial interest.

However, it was allowable because it satisfies two of the situations where a conflicting interest transaction is allowed. That is, a nonprofit corporation may enter into a conflicting interest transaction in any of one of the three following situations:

- (a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or
- (b) [If the nonprofit corporation has voting members,] [t]he material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or
- (c) The conflicting interest transaction is fair as to the nonprofit corporation.

Sincerely,

Jessica H. Miller
Attorney at Law
The Law Firm of Jessica H. Miller, LLC
Canyon Professional Building
595 Canyon Boulevard
Boulder, Colorado 80302
Tel: (303) 443-0568
jessica@jhmillierlaw.com