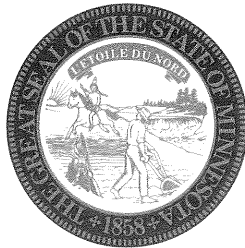


Peggy Scott
State Representative

District 35B
Anoka County



Minnesota House of Representatives

COMMITTEES: CIVIL LAW
ENERGY POLICY
JUDICIARY FINANCE AND POLICY

December 10, 2013

Via Hand Delivery

The Honorable Mark Dayton
Governor, State of Minnesota
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

Dear Governor Dayton,

Earlier this year, you appointed your chief of staff, Tina Smith, to the board of the Rochester-Mayo Destination Medical Center Corporation (DMCC). Subsequently, she was selected as the board's chair at its first meeting. Ms. Smith has not signaled an intention to resign her post as chief of staff, nor have there been any reports of you requesting her resignation. Ms. Smith is a person with an impressive record in both the private and public sector. However, I find your acceptance of her dual roles to be troubling and a massive ethical concern for the state.

DMCC Board members are tasked with spending \$585,000,000 in funds raised by public tax dollars. Between now and 2049, the state will dispense infrastructure, transit and general aid, sometimes in amounts up to \$30,000,000 per year or more. Given the uncertain nature of your tax plan passed earlier this year, it is likely that the DMCC will ultimately compete with other budget priorities for future funding. Moreover, the DMCC will be impacted by any number of policies proposed by the governor, legislature or state agencies, including changes to environmental policy, labor and employment regulations or transit funding.

It is almost impossible to conjure a scenario where Ms. Smith's roles do not create an ethical conflict for the Governor's office or the DMCC. As chief of staff, Ms. Smith holds tremendous influence over the Governor's legislative agenda and administration of state agencies. As chair of the DMCC Board, she will oversee the creation of the corporation's development plan and guide the board as it oversees the administration and financing of the project, and negotiates with local partners. If the DMCC seeks additional aid, policy changes, or opposes policies pursued by legislators or the governor, Ms. Smith is in a precarious spot. She is in a position to be lobbied by the local partners and the Legislature in both capacities, possibly for competing interests, and to lobby for and be lobbied by the DMCC.

In light of this, I requested that the Legislative Auditor, Mr. James Nobles, examine Ms. Smith's roles and determine whether a conflict of interest exists as a result of her appointment to the board. Mr. Nobles found that state law governing *financial* conflicts of interest does not apply to Ms. Smith's appointment. However, it was deeply disturbing to learn that the law creating the DMCC exempts its board from the duty of care requirement to which all other Minnesota non-profit board members are held, and contains no duty of loyalty standard.



Minnesota law requires private non-profit corporation directors to "discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." Minn. Stat. 317A.251, Subd. 1. It makes little sense that in a public-private partnership such as the DMCC, the state would set a lower standard of conduct than a private non-profit board.

Similarly, the DMCC legislation did not contain a "duty of loyalty" standard commonly required of non-profit board members. This is particularly troubling given that most board members represent interests that will often compete with the objective of the DMCC. The Midwest Center for Non-profit Leadership's legal guidance for non-profit boards advises that duty of loyalty "constrains a board member from participating in board discussions and decisions when they as an individual have a conflict of interest (i.e., their personal interests conflict with organizational interests, or they serve multiple organizations whose interest conflict)." In light of this standard it is clearly impossible for Ms. Smith to participate in board decisions, let alone lead them as the board chair.

Further, the Attorney General's office publishes a model conflict of interest policy for non-profit organizations. Section three of the policy describes "areas in which conflict may arise" as including "relations of directors, officers, and management employees with... agencies, organizations, and associations which affect the operations of [the non-profit]." The policy describes the "nature of conflicting interest" as including "holding office, serving on the board, participating in management or being employed... with any third party dealing with [the non-profit]." Replace 'non-profit' with 'DMCC' or 'Governor's office' and it is clear that Ms. Smith's roles place her within the Attorney General's definition of a conflict of interest.

Only last year, a similar situation played out when former House Speaker Steve Sviggum took a post with the Minnesota Senate while serving on the University of Minnesota's Board of Regents. At that time, you described Mr. Sviggum holding both positions as an "embarrassment" to him and the university. According to a media report, you also advised him that "he should make a decision between one [job] or the other." As chief of staff to the Governor, rather than communications director for a legislative body, the conflict of loyalty is plainly obvious in Ms. Smith's situation.

We both want the Rochester-Mayo DMCC to succeed. However, the governor's office must maintain its independence when setting the state's priorities and managing its finances. Recusal from certain activities will not suffice as a resolution. Based on the obvious ethical concerns and your own past statements, you must request that Ms. Smith resign as chief of staff or as chair of the DMCC Board. Additionally, I hope that you will support legislation next year that guards against these ethical conflicts. Anything less requires a clear explanation to the people of Minnesota as to why you are willing to allow this peculiar arrangement to continue.

Please do not hesitate to contact me with any questions. I look forward to your response.

Sincerely,



Representative Peggy Scott
District 35B

Cc: Ms. Tina Smith, Office of the Governor

Enclosures (2)