



## Ethics Quiz

### Test Your Knowledge

Below are several situations you may encounter as a legislator. Following each hypothetical situation, you will be presented with an ethical question and a series of possible answers. Select the answer that you think is the best one. A short explanation will be given about why it is correct.

#### Hypothetical Situation No. 1

Following the regular legislative session, the Governor's Office asks you if you are interested in becoming a voting member of a state board. You are very interested in obtaining a Board of Help Montana Citizens Prosper (HMCP) appointment, but you remember portions of your ethics training regarding Separation of Powers, including certain prohibitions about appointment to Executive, Judicial, or local government offices. The orientation materials contained the full text of Article V, section 9, of the Montana Constitution, which states:

Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

You pull out the Montana Code Annotated, and learn that HMCP is statutorily created and attached to the Department of Public Health and Human Services (for administrative purposes only). It has 18 members that are appointment by the Governor, and it is required to seek federal grant money to help Montana citizens with food and shelter. HMCP approves temporary work programs that are funded with state money and the board promulgates administrative rules regarding grant conditions. The position would pay \$50 per day when the committee meets.

#### Question: Are you permitted to become a member of the Board of HMCP?

- A. No, the \$50 per day salary is an impermissible benefit.
- B. Yes, because a board member is not considered a "civil officer" under the Constitution. While it is important to be cautious, the term "civil officer" is reserved for Department heads, elected officials, and higher positions.

- C. No, it would be a violation of the Constitution to accept an appointment with the Board of HMCP while being a member of the legislature.
- D. Yes, because the regular legislative session is over, and you can always resign from the Board if a special session is called.

### **Answer C**

It would be a violation of the Constitution to accept an appointment with the Board of HMCP while being a member of the legislature. The case of *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 257 P. 411 (1927), is the landmark case in Montana construing the meaning of a civil office within the context of Article V, section 9, of the Montana Constitution. Barney has established a five-part test for determining whether an office is a civil office. The Montana Supreme Court stated:

... we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity and not be only temporary or occasional. *Barney* at 528-29.

For purposes of this hypothetical question, it is important to examine the function of HMCP using the Barney test elements. The Board is statutorily created and attached to the Department of Public Health and Human Services (for administrative purposes only), fulfilling the first element and the fifth element of the Barney test. Additionally, the Board is required to seek federal grant money to help Montana citizens with food and shelter, it approves temporary work programs that are funded with state money, and it promulgates administrative rules regarding grant conditions, fulfilling the second, third, and fourth elements of the Barney test. The Board should be considered a civil office for the purposes of Article V, section 9, of the Montana Constitution. Therefore, a legislator could not be appointed to the Board during that legislator's term of office, and a legislator could not resign from the Legislature and be appointed to the Board.

## Hypothetical Situation No. 2

Following the regular legislative session, the Governor's Office asks you if you are interested in being appointed to the position of Executive Secretary to the Cold Hard Ca\$h Board (CHCB). The orientation materials contained the full text of Article V, section 9, of the Montana Constitution, which provides as follows:

Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

You remember from your orientation materials that *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 257 P. 411 (1927), is the landmark case in Montana construing the meaning of a civil office within the context of Article V, section 9, of the Montana Constitution.

Barney has established a five-part test for determining whether an office is a civil office. The Supreme Court stated:

... we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity and not be only temporary or occasional. *Barney* at 528-29.

You pull out the Montana Code Annotated, and learn that the CHCB is statutorily created and attached to the Department of Commerce (for administrative purposes only), it has 6 voting members that are appointment by the Governor, it is required to provide grant money to local governments for multimillion dollar infrastructure projects, it promulgates numerous administrative rules regarding grant conditions, it is a quasi-judicial board for the purpose of hearing construction

contract grievances, and it has a variety of other important roles. The Executive Secretary position is not constitutionally or statutorily created, but it is common for the Executive Secretary to the Board. The position traditionally pays \$150 per day when the committee meets, but the amount of compensation is determined by the Board.

**Question: Are you permitted to serve as Executive Secretary to the CHCB?**

- A. No, the \$150 per day salary is an impermissible benefit.
- B. Yes, because you desire to use your influence to obtain grants for local governments in your district.
- C. No, it would be a violation of the Constitution to accept an appointment as the Executive Secretary while being a member of the legislature.
- D. Yes, since the Executive Secretary is not considered a "civil officer" under the Constitution.

**Answer D**

The Executive Secretary is not considered a "civil officer" under the Constitution. For purposes of this hypothetical question, it is important to examine the function of the CHCB Executive Secretary using the Barney test elements. The Board is statutorily created, and attached to the Department of Commerce (for administrative purposes only), but the Executive Secretary position is not constitutionally or statutorily created. As such, the first element and the fifth element of the Barney test are not present. Additionally, there is no delegation of sovereign power of the state to the Executive Secretary. This power is retained by the Board. The failure of the position of Executive Secretary to meet these crucial elements negates the possibility that the position is a civil office within the meaning of Article V, section 9, of the Montana Constitution. A legislator may be appointed as Executive Secretary to the CHCB during the legislator's term of office.

**Hypothetical Situation No. 3**

A professional lobbyist that you have worked with in the past offered to buy you and members of your caucus lunch at the Capitol Chicken Club (CCC), which provides a quiet location to dine and discuss business. You and several caucus members agree to have lunch with the lobbyist. While looking over the menu, which has a variety of chicken meals under \$15, the lobbyist informs you that he wants to thank everyone for voting against House Bill No. 1000 by ordering the "DELUXE CHICKEN DINNER" for you and each member of your caucus. You happen to glance down at the menu and see

that each deluxe chicken dinner comes with a bottle of Dom Pérignon that can be packaged to go. The price of the deluxe chicken dinner is not on the menu, but you perform a quick search on your smart phone and learn that the average retail price of Dom Pérignon is between \$100 to \$120 per bottle.

**Question: Do you let the lobbyist pay for the deluxe chicken dinner?**

- A. Yes, because the menu does not indicate the price of the deluxe chicken dinner.
- B. No, it would be a violation of the Montana Code Annotated to accept the meal.
- C. No, because the champagne was not made with Montana agricultural products.
- D. Yes, because the cost of the food is approximately \$15, and it will take at least 3 days to consume the entire bottle of Dom Pérignon, which in turn would lower the amount the lobbyist spent on a per-day basis.

**Answer B**

It would be a violation of the Montana Code Annotated to accept the meal. A legislator may not accept a gift of "substantial value" or a substantial economic benefit that is tantamount to a gift that:

- would tend to improperly influence a reasonable person in that person's position to depart from the faithful and impartial discharge of the person's public duties; or
- the person knows or should know under the circumstances that the gift is primarily to reward the person for official action taken. Section 2-2-104(1), MCA.

Pursuant to state law, a gift of substantial value is a gift with a value of \$50 or more, but does not include:

- A gift that is not used and is returned or delivered to a charitable organization or the state and is not claimed as a charitable contribution for tax purposes;
- Food and beverages that are consumed on a charitable, civic, or community event in which participation is related to the legislator's office or when the legislator is in attendance in an official capacity;
- Educational material directly related to governmental duties;
- An award publicly presented in recognition of public service; or

- Educational activity that does not place the recipient under an obligation, serves the public good, and is not lavish or extravagant.

For purposes of this hypothetical question, it is important to note that the \$115 to \$135 value of the deluxe chicken dinner makes it a gift of substantial value. Additionally, the legislator should be extremely cautious, as the lobbyist wanted to "thank everyone for voting against House Bill No. 1000 by ordering the DELUXE CHICKEN DINNER". This statement should put the legislator on notice that the offer is primarily made to reward the legislator for official action taken on House Bill No. 1000.

#### **Hypothetical Situation No. 4**

The upcoming general election ballot contains several initiatives, including one of which you are highly supportive and want to see passed. The passage of this particular initiative will directly impact the constituents of your district in a positive economic way and is similar to legislation you have long advocated in your legislative role. In response to your inquiry on what you can do to help with the campaign for the initiative's passage, the proponents have suggested that you send a letter to your constituents urging them to vote "YES" on the initiative. This is obviously a task that, given your already extremely busy schedule, is best completed by having staff from the Legislative Services Division draft, copy, and mail during regular business hours at your state capitol building office.

**Question: May you utilize Legislative Services Division staff, equipment, materials, or other legislative resources to send a mass mailing to your constituents urging them to vote "YES" on the initiative?**

- A. No, the Legislative Services Division staff is prohibited from urging voters to vote for or against a ballot measure.
- B. No, the expenditure on legislative staff time, stationery, and equipment exceeds the \$50 statutory gift maximum.
- C. Yes, the prohibition on public employees assisting with the nomination or election of any person to public office using state resources does not apply to legislative efforts supporting or opposing a ballot initiative.
- D. Yes, so long as you reimburse the Legislative Services Division for the total expenditures on the mailing from your personal funds or unexpended campaign contributions in your candidate committee account.

### **Answer A**

The Legislative Services Division staff is prohibited from urging voters to vote for or against a ballot measure. State law clearly and expressly prohibits a "public employee" from using "public time, facilities, equipment, supplies, personnel, or funds" to solicit support for or opposition to a ballot measure. Section 2-2-121(3)(a), MCA. The definition of "public employee" is broad and includes Legislative Services Division staff. Indeed, a "public employee" includes any temporary or permanent employee of the state, any temporary or permanent employee of a local government, a member of a quasijudicial board or commission or of a board, commission, or committee with rulemaking authority, and a person under contract to the state. Section 2-2-102, MCA. Consequently, Legislative Services Division staff is prohibited from urging voters to vote for or against a ballot measure.

### **Hypothetical Situation No. 5**

Two days before the hearing on a bill that would benefit ABC construction company, you receive a call from the owner of ABC construction company who encourages you to approve the bill. The person informs you that it would be good for state jobs and you personally as well. As an added incentive, the caller also said he would be sure to send you a portion of any profits his company received as a result of your support for the bill. You inform the caller that you would be happy to vote for the bill and ask how much you should expect to receive. The next day you vote to approve the bill. So far, you haven't received any payment.

**Question: Can you be held criminally liable for agreeing to accept money in exchange for your vote on the bill?**

- A. No, because the owner of the company is the only one that may have committed a crime.
- B. Yes, because you accepted money in exchange for your vote in favor of the bill.
- C. No, because you hadn't accepted any money prior to your vote in favor of the bill.
- D. Yes, because although you hadn't accepted money at the time of the vote, you agreed to accept the money in exchange for your vote.

### **Answer D**

Yes. Although you hadn't accepted money at the time of the vote, you agreed to accept the money in exchange for your vote.



In Montana, a person commits the offense of bribery under 45-6-101, MCA, if the person purposely or knowingly accepts or agrees to accept any pecuniary benefit as consideration for the recipient's decision or vote. The law defines a pecuniary benefit as "any benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain." See 45-2-101, MCA. In this case, you have expressly agreed to accept compensation in exchange for your vote to approve the bill, even though you hadn't received any money before the actual vote took place. Governmental decisions must be made because they are believed to be in the best interest of the public, not because a decision-maker received an economic benefit in exchange for an official governmental action. Public trust and confidence in governmental institutions is eroded through any action that gives the appearance of impropriety or unfairness in the process. A person convicted of bribery may be imprisoned for up to 10 years or be fined up to \$50,000 or both, and is barred from holding public office in the state.

### **Hypothetical Situation No. 6**

One week after session starts, you are approached by a longtime friend and lobbyist who would like to meet with you about a potential appointment to the ABC board. You agree and take a quick lunch break to meet with your friend and a few of his colleagues. During the meeting you learn that your friend wants you to support a particular person for appointment to the ABC board. Your friend informs you that the person is expected to give highly favorable votes to your friend's company when it applies for several controversial permits to the ABC board in the coming months. He also tells you the person is independently qualified for the position.

You aren't completely sold that the person is the best candidate for the ABC board, but your friend insists that the person is qualified and that all you do is recommend the person for appointment to your Senate colleagues. Your friend also says that he knows you are termed out of your current seat and that he would certainly give you a job after the session is over if you could help him out. You are qualified for the position he mentions anyway so you offer to recommend the person for appointment to the ABC board but don't agree to accept any post-session employment. Before you make any recommendations, you learn the potential appointee to ABC board has withdrawn his name for consideration.

**Question: Can you be held criminally liable for your actions?**



- A. No, because you are qualified for the position in your friend's company any way, so it wouldn't be wrong to offer to make a recommendation.
- B. No, because you only offered to make a recommendation and the person withdrew his name from consideration.
- C. No, because you never agreed to accept the position with your friend's company.
- D. Yes, because you agreed to recommend the person to your colleagues.

**Answer C**

No, because you never agreed to accept the position with your friend's company.

State law prohibits elected officials or other public servants from knowingly soliciting, accepting, or agreeing to accept any pecuniary benefit accruing to the person, the person's political campaign, or the person's political party for giving or offering to give a decision, opinion, recommendation, or vote favorable to another. Section 45-7-103, MCA. However, in this case, while you did agree to recommend the person for appointment to ABC board, you did not agree to accept the position with your friend's company in exchange for your recommendation. Had you agreed to make a recommendation in exchange for future employment, you could have been convicted of criminal use of office or position in violation of 45-7-103, MCA. A person convicted of criminal use of office or position may be fined up to \$500 and be imprisoned for 6 months.

**Hypothetical Situation No. 7**

As a member of a legislative committee, you hear that a bill is going to come before the committee that would directly benefit your friend's company. You contact your friend and say that you will always be friends, but that you could use a venue for your daughter's upcoming wedding reception and that you can't afford to pay full price. As a side job, your friend owns and operates a popular events center that was previously booked the day of your daughter's wedding. You mention the impending vote on the bill and say that you would vote for it if he could help you out with the cost. He agrees and sends you confirmation of the date that was previously unavailable in the mail. The attached invoice shows that you owe half the cost of the regularly price for using the venue, which is normally \$5,000. Unfortunately, your daughter changes her mind and decides to book a different venue for her reception and the bill was cancelled.

**Question: Can you be held criminally liable for your actions?**

- A. No, because you only received a 50% discount and not the full amount.
- B. No, because your daughter changed her mind and decided to book a different venue.
- C. No, because the bill ultimately never came up for a vote in the committee, so you didn't actually do anything wrong.
- D. Yes, because you knowingly solicited a reduced or free rate for the reception in exchange for offering to vote in favor of the bill.

**Answer D**

Yes, because you knowingly solicited a reduced or free rate for the reception in exchange for offering to vote in favor of the bill. State law clearly prohibits elected officials or other public servants from knowingly accepting or agreeing to accept any pecuniary benefit for giving or offering to give a decision, opinion, recommendation, or vote favorable to someone else. However, state law also prohibits a person from knowingly soliciting a pecuniary benefit as well. Section 45-7-103, MCA. In this case, you knowingly solicited a reduced fee for a wedding reception venue for your daughter in exchange for a vote that would have been favorable to your friend. The fact that your daughter changed her mind and did not ultimately book the venue is irrelevant; the crime lies in the fact that you knowingly solicited an economic benefit for a vote that was favorable to someone else. A person convicted of criminal use of office or position may be fined up to \$500 and be imprisoned for 6 months.

**Hypothetical Situation No. 8**

As a veteran legislator, you are keenly aware of party politics and of the upcoming election cycle. To get jump on the process, you specifically direct nonpartisan legislative staff in the Legislative Services Division to begin conducting research for your campaign. As part of your strategy, you ask these eager-to-please legislative staffers to solicit campaign contributions from potential donors and to do other campaign and election related work using state time and state resources, even though you know such activities are prohibited by law.

**Question: Can you be convicted of official misconduct?**

- A. No, because you didn't actually use state time or resources to conduct campaign related activities.

- B. No, because using state time and resources to conduct campaign related activities is not prohibited by law.
- C. Yes, because you knew it was against the law to use state time and resources to conduct campaign work, and you directed legislative staff to undertake the activities anyway.
- D. No, because it's unclear whether your campaign received any benefit as a result of staff's activities.

### **Answer C**

Yes, because you knew it was against the law to use state time and resources to conduct campaign work, and you directed legislative staff to undertake the activities anyway. You could be convicted of official misconduct for directing staff to violate state laws that prohibit state employees from using state resources to solicit support for the election of a person to public office. Section 2-2-121, MCA, states that a public officer or public employee may not use public time, facilities, equipment, supplies, or funds to solicit support for the election of any person to public office. The facts indicate that you knew it was against state law for staff to use state resources and time for election activities but directed them to undertake such activities anyway. Section 47-7-401, MCA, states that a public servant commits the offense of official misconduct when in an official capacity the public servant knowingly performs an act that the public servant knows is forbidden law. A public servant convicted of official misconduct may be fined up to \$500, be imprisoned for 6 months, and must permanently forfeit the public servant's office.

### **Hypothetical Situation No. 9**

As a new legislator, and because you are somewhat unsure of protocol, you decide to make a personal address during a floor session regarding individuals who had commented on a proposed bill. The individuals who commented on the bill are from your district and you know them well. During a point of personal privilege, you rise to address the body and proceed to name the individuals personally. You also claim the individuals have been dishonest in their representations and point out examples of their dishonesty in your district. Later, you find out the individuals are very upset about having their character discussed during official legislative proceedings that are broadcast around the state and are considering filing a defamation lawsuit against you.

**Question: Can you be held civilly liable for your statements?**

- A. Yes, because you personally named the individuals, and it's possible the information was untrue.
- B. Yes, because legislators cannot discuss individuals by name during the legislative process.
- C. No, because legislators cannot be held liable for anything while they are an elected official.
- D. No, because the Montana Constitution grants legislators with immunity from suit for legislative acts, including speech or debate during the legislative process.

**Answer D**

No, because the Montana Constitution grants legislators with immunity from suit for legislative acts, including speech or debate during the legislative process.

Article V, section 8 of the Montana Constitution states in part that a member of the legislature "shall not be questioned in any other place for any speech or debate in the legislature." The speech or debate clause, as it is known, protects statements made by legislators during legislative proceedings. The clause is designed to protect the integrity of the legislative process and to safeguard the independence of individual legislators. The clause is also designed to encourage legislators to speak freely without fear of liability.

The Montana Supreme Court has upheld immunity for statements made during the legislative process, but legislators should nevertheless be cautious about using the legislative platform to discuss individuals or to conduct other acts. As elected officials, legislators are accountable to the body, to their constituents, and to the public. While a legislator may not suffer personal liability for certain statements made during the legislative process, such comments may not be beneficial to the institution or the legislative process.

**Hypothetical Situation No. 10**

You are hearing a bill on second reading that would establish a self-help law center in each county in the state. The bill provides funding to hire a full-time attorney to staff each center. You are an attorney and are very interested in applying for this position should the bill pass.

**Question: Does a conflict of interest exist?**

- A. Yes, but only if you vote in favor of the bill.

- B. Yes, a potential occupational benefit is present.
- C. No, there's no guarantee you'll get the position, even though you are an excellent candidate.
- D. No, the bill does not directly or distinctively impact you.

**Answer D**

No, the bill does not directly or distinctively impact you. A conflict of interest does not arise from legislation affecting a legislator's membership in a profession unless the membership is so narrow that the vote will have a direct and distinctive personal impact on the legislator. Because the bill affects the legal profession and does not have any more of a direct or distinctive impact on you than anyone else who is an attorney, a conflict of interest does not exist.

A conflict of interest arises from a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter. A private interest is an interest held by an individual that is:

- an ownership interest in a business;
- a creditor interest in an insolvent business;
- an employment or prospective employment for which negotiations have begun;
- an ownership interest in real property;
- a loan or other debtor interest; or
- a directorship or officership in a business.

A conflict of interest does not arise from legislation or legislative duties affecting the legislator's membership in a profession, occupation, or class unless the membership is so narrow that the vote will have a direct and distinctive personal impact on the legislator.

In determining whether a conflict of interest exists, a legislator shall consider:

- whether the conflict impedes the legislator's independence of judgment;
- the effect of the legislator's participation on public confidence in the integrity of the legislature;
- whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and

- whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict of interest, the legislator shall disclose the conflict of interest prior to participating in the official action.

### **Hypothetical Situation No. 11**

You are hearing a bill on second reading that would establish a self-help law center in each county in the state. The bill provides funding to hire a full-time attorney to staff each center. You are an attorney and are very interested in applying for this position should the bill pass.

Now suppose that the bill requires each county to hire an attorney who has resided in and practiced in that county for the immediate past 5 years. You know that you are the only attorney in your county who meets these requirements.

### **Question: Does a conflict of interest exist?**

- A. Probably, but only if you are hired for the position.
- B. No, the sponsor of the bill did not know that you were the only attorney practicing in your county when she requested the draft.
- C. Yes, the restriction on who is eligible for the position narrows the class down so that your vote will have a direct and distinctive personal impact.
- D. No, because you'd be taking a large pay cut if you accepted the position.

### **Answer C**

Yes, the restriction on who is eligible for the position narrows the class down so that your vote will have a direct and distinctive personal impact.

While a conflict of interest generally does not arise from legislation affecting a legislator's membership in a profession, a conflict of interest may arise if the membership is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A conflict of interest is present under these facts because the bill's residency and practice requirements narrow the class so that you are the only qualified applicant, resulting in a direct and distinctive personal impact.

Remember, if you are not sure whether a conflict of interest exists, you may consult leadership or Legislative Services legal staff for advice. You may also consult your chamber's ethics committees.

**Hypothetical Situation No. 12** (same situation as No. 11)

You are hearing a bill on second reading that would establish a self-help law center in each county in the state. The bill provides funding to hire a full-time attorney to staff each center. You are an attorney and are very interested in applying for this position should the bill pass.

Now suppose that the bill requires each county to hire an attorney who has resided in and practiced in that county for the immediate past 5 years. You know that you are the only attorney in your county who meets these requirements.

**Question: Assuming you determine that a conflict of interest exists, do you have to disclose the conflict of interest before voting on the bill?**

- A. Yes, you are required to disclose a conflict of interest before voting.
- B. No, as long as you vote against the bill.
- C. No, you would have voted for the bill even if you were not eligible for the position.
- D. No, it is not your fault that there are no other qualified attorneys in your county to fill the position.

**Answer A**

Yes, you are required to disclose a conflict of interest before voting. You are required by law and rule to disclose a conflict of interest before voting on a bill. Joint Rule 10-60 requires that you disclose the conflict of interest to the house to which you belong.

**Hypothetical Situation No. 13** (same situation as in No. 11 and 12)

You are hearing a bill on second reading that would establish a self-help law center in each county in the state. The bill provides funding to hire a full-time attorney to staff each center. You are an attorney and are very interested in applying for this position should the bill pass.



Now suppose that the bill requires each county to hire an attorney who has resided in and practiced in that county for the immediate past 5 years. You know that you are the only attorney in your county who meets these requirements.

**Question: Assuming you disclose the conflict of interest, can you vote on the bill?**

- A. Yes, but only if you vote against the bill.
- B. Yes, but only if you are in the Senate.
- C. Yes, regardless of whether you are in the Senate or the House.
- D. Yes, regardless of whether you vote for or against the bill and whether you're in the Senate or the House.

**Answer D**

Yes, regardless of whether you vote for or against the bill and whether you're in the Senate or the House. A legislator may, subject to legislative rule, vote after disclosing a conflict of interest. Please note that in the Senate, a legislator is required to vote even when a conflict of interest is disclosed. In the House, a legislator is not required to vote if a conflict of interest is disclosed but may choose to do so.

#### **Hypothetical Situation No. 14**

Using a competitive bidding process, the State of Montana through the Legislative Council will be considering proposals from vendors for a contract to create a new bill drafting system for the Legislature. You are a member of the House and serve on Legislative Council, which meets during the interim between legislative sessions and is responsible for reviewing proposals from vendors and ultimately making the final selection of a vendor.

You are also the 51% owner of a closely held software development corporation, LawMaker, which builds and creates bill drafting system software. LawMaker submits a bid for the contract and is likely to be awarded the contract as the lowest bidder.

**Question: As a member of Legislative Council, does disclosing your personal interest in LawMaker and subsequently voting on the contract award for LawMaker during the competitive bid process protect you from liability under Montana law?**

- A. Yes, because disclosing your personal interest in the bid and the contract puts you in compliance with Montana law.
- B. Yes, because voting on the selection of LawMaker and on the subsequent contract puts you in compliance with Montana law.
- C. Yes, because both disclosing your personal interest and voting on the selection of LawMaker and the subsequent contract puts you in compliance with Montana law.
- D. No, because neither disclosing your personal interest nor voting on the selection of LawMaker or the subsequent contract puts you in compliance with Montana law.

**Answer D**

Neither disclosing your personal interest nor voting on the selection of LawMaker or the subsequent contract puts you in compliance with Montana law. The best option is for the legislator to disclose the legislator's interest in the contract and then abstain from voting, discussing, or participating in the vendor selection process during the Legislative Council meetings.

Section 2-2-201, MCA, prohibits members of the Legislature from being "interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract."

Because under this hypothetical question the legislator has a 51% ownership interest in LawMaker, the legislator would be considered "interested" in the contract under section 2-2-201(2)(a), MCA. The legislator would also likely be considered to be "directly involved" in the contract since as member of Legislative Council, the legislator would likely directly monitor the contract, potentially extend or amend the contract, potentially audit the contractor, and be responsible for conducting the procurement and evaluating proposals or vendor responsibilities.

The provisions of section 2-2-201, MCA, specifically exclude from the definition of "contracts" those "contracts awarded based on competitive procurement procedures conducted after the date of employment termination". The contract in this hypothetical question was awarded to LawMaker based on a competitive procurement process that occurred before there was any termination of the legislator's ownership interest (employment) in LawMaker. Therefore, this contract is not excluded from the provisions of section 2-2-201, MCA.

Ultimately, the legislator in this hypothetical question has a private interest in the vendor selection process and in the subsequent contract and must disclose this interest and refrain from voting on, discussing, and participating in the vendor selection process and the contract process during all Legislative Council meetings.

### **Hypothetical Situation No. 15**

As a state Senator, you have decided that you need to hire a temporary legislative aide for the 2015 session to assist you with constituent services and legislative policy matters. You have had two people approach you about the legislative aide position. One individual is your uncle's son, who has no experience or aptitude for the position, and the other individual, who is not related to you, is clearly qualified for the position.

**Question: Can you hire your uncle's son for the temporary legislative aide position during the legislative session?**

- A. No, because hiring your uncle's son would be bestowing political patronage by reason of relationship rather than of merit and would be in violation of Montana law prohibiting nepotism.
- B. No, because your uncle's son has no experience or aptitude for the position and because the other person is clearly qualified for the position.
- C. No, because your uncle's son has bad body odor.
- D. Yes, because under Montana law, you may hire temporary legislative session staff that are related to you regardless of merit.

### **Answer D**

Yes, because under Montana law, you may hire temporary legislative session staff that are related to you regardless of merit. State law clearly prohibits a person from bestowing political patronage by reason of relationship rather than of merit. (2-2-301 and 2-2-302, MCA). However, state law allows for certain exceptions to this prohibition on nepotism, and one of these exceptions is the employment of legislative pages or temporary session staff by the Legislature.