

BCB - School Board Member Conflict of Interest

NOTE: Colorado school boards are required by state law to adopt a policy on this subject, however the specifics of the policy are not set forth in state law. Colorado school districts that receive federal funds are required by federal law to have "written standards of conduct covering conflicts of interest" applicable to board members and the selection, award and administration of federally funded contracts. This sample contains the content/language that CASB believes best meets the intent of the law. However, the board should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.

Public office is a trust created in the interest of the common good and for the benefit of the people. A conflict of interest can arise when a public officer is unable to devote himself/herself with complete loyalty and singleness of purpose to the general public interest.

It is the intent of this policy to protect the public trust placed in directors of this school district. For purposes of this policy, the Board declares that a conflict of interest is a personal, pecuniary interest that is immediate, definite and demonstrable and which is or may be in conflict with the public interest.

A Board member who has a personal or private interest in a matter proposed or pending before the Board shall disclose such interest to the Board, shall not vote on it and shall not attempt to influence the decisions of other Board members in voting on the matter.

However, if a Board member has complied with statutory disclosure requirements by notifying the secretary of state of an interest in the matter, the member may vote if participation is necessary to obtain a quorum or otherwise enable the Board to act. If a member votes under these circumstances, that member shall state for the record the fact and summary nature of the potential conflict of interest.

The written disclosure to the secretary of state shall list as applicable the amount of the member's financial interest, the purpose and duration of any services rendered, compensation received for services or such other information necessary to describe the interest.

NOTE: The Colorado Supreme Court has held that a local board of education has the authority to adopt a conflict of interest policy prohibiting district employment while serving on the Board. *Montrose County Sch. Dist. RE-1J v. Lambert*, 826 P.2d 349 (Colo. 1992). Accordingly, the following paragraph is optional language which may be included at the Board's discretion.

The Board considers it a conflict of interest for a Board member to also be employed by the district. Therefore, the Board shall not hire any of its members as an employee of the district nor shall the Board approve any compensation for a member for services rendered to the district as an employee except for services rendered to the Board as provided by law. [State law allows the Board to compensate certain officers of the Board for services rendered in the

course of their official Board duties, including the Board secretary, assistant secretary, treasurer and assistant treasurer.] Therefore, an employee elected to the Board shall be required to relinquish employment with the district prior to taking office. Employees are encouraged to consider this prior to running for the Board.

Members may be reimbursed for authorized expenses in carrying out Board duties as provided by law.

The Board shall not enter into any contract with any of its members or with a firm or corporation in which a member has a financial interest unless one or more of the following apply:

1. The contract is awarded to the lowest responsible bidder based on competitive bidding procedures.
2. The merchandise is sold to the highest bidder at a public auction.
3. The transaction involves investing or depositing money in a financial institution which is in the business of loaning money or receiving money.
4. If, because of geographic restrictions, the district could not otherwise reasonably afford the contract because the additional cost to the district would be greater than 10 percent of the contract with the interested member or if the contract is for services that must be performed within a limited time period and no other contractor can perform the services.
5. If the contract is one in which the Board member has disclosed a personal interest and is one on which the member has not voted or has voted as allowed in state law following disclosure to the secretary of state and to the Board.

Except as described above, a Board member shall not be a purchaser at any sale or a vendor for any district purchase made with non-federal funds.

NOTE: Federal law requires districts that receive federal funds to have "written standards of conduct covering conflicts of interest" applicable to Board members and the selection, award and administration of federally funded contracts. 2 C.F.R. 300.18(c). Thus, if the district receives federal funds, we recommend including the following section to meet this requirement.

Conflict of interest - federally funded transactions

Separate from state law and the Board's policies concerning the Board's standards of conduct and conflict of interest, federal law imposes restrictions on the conduct of Board members whenever the transaction in question is supported by federal funds subject to the Uniform Grant Guidance (UGG).

Under the UGG, a Board member shall not participate in the selection, award or administration of a contract supported by a federal award if the Board member has a conflict of interest as defined by the UGG.

A conflict of interest arises under the UGG when the Board member, any member of his or her immediate family, his or her business partner, or an organization which employs or is

about to employ any of the aforementioned parties has a substantial financial or other interest in or would obtain a substantial tangible personal benefit from a firm considered for a contract.

In addition, the UGG prohibits Board members from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to subcontracts that are federally funded, unless the gift is an unsolicited item of nominal value.

For purposes of this policy section only, "immediate family" means the Board member's spouse, partner in a civil union, children and parents. In determining whether a financial or other interest is "substantial," or whether anything solicited or accepted for private benefit is of "nominal value," the Board shall follow the standards of conduct and corresponding definitions applicable to local public officials under state law.

These minimum federal requirements are not waivable in connection with any transaction or contract to which they apply.

A Board member who violates the standards of conduct set forth in this policy's section may be subject to censure or other disciplinary action, in accordance with the Board's authority and state law.

(Adoption date)

LEGAL REFS.: 2 C.F.R. 200.318 (c) (Uniform Grant Guidance - written standards of conduct covering conflicts of interest required concerning the selection, award and administration of contracts supported by federal funds)

Colorado Constitution, Article X, Section 13

C.R.S. 22-32-109 (1)(y) (duty of board to adopt bylaws on conflicts of interest)

C.R.S. 24-18-109 (government rules of conduct)

C.R.S. 24-18-110 (voluntary disclosure)

C.R.S. 24-18-201 (standards of conduct - interests in contracts)

C.R.S. 24-18-202 (standards of conduct - interests in sales)

CROSS REFS.: [BC](#), School Board Member Conduct

[BCA-E-1](#), Code of Ethics for School Board Member

[BEDF](#), Voting Method

[BID/BIE](#), School Board Member Compensation/Insurance/Expenses/
Liability

[DJE](#), Bidding Procedures

[DKC](#), Expense Authorization/Reimbursement (Mileage and Travel)

NOTE: C.R.S. 22-32-109 (1)(y) which was enacted in 1984 provided that a board of education would be exempt from C.R.S. 18-8-308 (1), the criminal law pertaining to failure to disclose a conflict of interest, if the board filed a copy of its conflict of interest policy with the Colorado

Department of Education and received an acknowledgment of receipt of the policy. Although C.R.S. 22-32-109 (1)(y) was not repealed by H.B. 1209 in 1988, for all practical purposes it has been superseded by the new statutory provisions. However, CASB recommends that a board continue to file its conflict of interest policy with the Department of Education to be absolutely certain that the exemption from the criminal statute will continue.

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