

210 CONFLICT OF INTEREST – GOVERNING BOARD MEMBERS

[Note: The provisions of this policy substantially reflect legal requirements.]

I. PURPOSE

The purpose of this policy is to observe state statutes regarding conflicts of interest and to engage in business activities in a fashion designed to avoid any conflict of interest or the appearance of impropriety.

II. GENERAL STATEMENT OF POLICY

It is the policy of the governing board to contract for goods and services in conformance with statutory conflict of interest laws and in a manner that will avoid any conflict of interest or the appearance thereof. Accordingly, the governing board will contract under the statutory exception provisions only when it is clearly in the best interest of the because of limitations that may exist on goods or services otherwise available to the .

III. GENERAL PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS

- A. A governing board member who is authorized to take part in any manner in making any sale, lease, or contract in his or her official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.
- B. In the following circumstances, however, the governing board may as an exception, by unanimous vote, contract for goods or services with a governing board member of the :
 - 1. In the designation of a bank or savings association, in which a governing board member is interested, as an authorized depository for funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minnesota Statutes chapter. 118A. Any governing board member having said interest shall disclose that interest and the interest shall be entered upon the governing board minutes. Disclosure shall be made when such bank or savings association is first designated as a depository or source of borrowing, or when such governing board member is elected, whichever is later. Disclosure serves as notice of the interest and need only be made once;
 - 2. The designation of an official newspaper, or publication of official matters therein, in which the governing board member is interested when it is the only newspaper complying with statutory requirements relating to the

designation or publication;

3. A contract with a cooperative association of which the governing board member is a shareholder or stockholder but not an officer or manager;
4. A contract for which competitive bids are not required by law. A contract made under this exception will be void unless the following procedures are observed:
 - a. The governing board shall authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the goods or services could be obtained elsewhere.
 - b. In the case of an emergency when the contract cannot be authorized in advance, payment of the claims must be authorized by a like resolution wherein the facts of the emergency are also stated.
 - c. Before a claim is paid, the interested governing board member shall file with the clerk of the governing board an affidavit stating:
 - (1) The name of the governing board member and the office held;
 - (2) An itemization of the goods or services furnished;
 - (3) The contract price;
 - (4) The reasonable value;
 - (5) The interest of the governing board member in the contract; and
 - (6) That to the best of the governing board member's knowledge and belief, the contract price is as low as, or lower than, the price at which the goods or services could be obtained from other sources.
5. A governing board member may contract with the to provide construction materials or services, or both, when the sealed bid process is used. When the contract comes before the governing board for consideration, the interested governing board member may not vote on the contract. (*Note: This section applies only when the education district has a population of 1,000 or less according to the last federal census.*)
6. A governing board member may rent space in a public facility at a rate

commensurate with that paid by other members of the public.

- C. In the following circumstances, the governing board may as an exception, by majority vote at a meeting at which all governing board members are present, contract for services with a governing board member of the : A governing board member may be newly employed or may continue to be employed by the as an employee only if there is a reasonable expectation on July 1, or at the time the contract is entered into or extended, that the amount to be earned by that governing board member under that contract or employment relationship, will not exceed \$20,000 in that fiscal year. If the governing board member does not receive majority approval to be initially employed or to continue in employment at a meeting at which all governing board members are present, that employment is immediately terminated and that governing board member has no further rights to employment while serving as a governing board member in the .
- D. The governing board may contract with a class of employees, such as teachers or custodians, when the spouse of a governing board member is a member of the class of employees contracting with the governing board and the employee spouse receives no special monetary or other benefit that is substantially different from the benefits that other members of the class receive under the employment contract. For the governing board to invoke this exception, it must have a majority of disinterested governing board members vote to approve the contract, direct the governing board member spouse to abstain from voting to approve the contract, and publicly set out the essential facts of the contract at the meeting in which the contract is approved.

IV. LIMITATIONS ON RELATED EMPLOYEES

- A. The governing board must hire or dismiss teachers only at duly called meetings. When a husband and wife, brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher may be made or authorized except upon the unanimous vote of the full governing board.
- B. The governing board may not employ any teacher related by blood or marriage to a governing board member, within the fourth degree as computed by the civil law, except by a unanimous vote of the full governing board.

V. CONFLICTS PRIOR TO TAKING OFFICE

A governing board member with personal financial interest in a sale, lease, or contract with the which was entered before the governing board member took office and presents an actual or potential conflict of interest, shall immediately notify the governing board of such interest. It shall thereafter be the responsibility of the governing board member to refrain from participating in any action relating to the sale, lease, or contract. At the time of renewal of any such sale, lease, or contract, the governing board may enter into or renew such sale, lease, or contract only if it falls within one of the enumerated exceptions for contracts relating to goods or services provided above and if the procedures provided in this policy are followed.

VI. DETERMINATION AS TO WHETHER A CONFLICT OF INTEREST EXISTS

The determination as to whether a conflict of interest exists is to be made by the governing board. Any governing board member who has an actual or potential conflict shall notify the governing board of such conflict immediately. The governing board member shall thereafter cooperate with the governing board as necessary for the governing board to make its determination.

Legal References: Minn. Stat. § 122A.40, Subd. 3 (Employment; Contracts; Termination)
Minn. Stat. § 123B.195 (Board Member's Right to Employment)
Minn. Stat. § 471.87 (Public Officers; Interest in Contract; Penalty)
Minn. Stat. § 471.88, Subds. 2, 3, 4, 5, 12, 13, and 21 (Exceptions)
Minn. Stat. § 471.89 (Contract, When Void)
Op. Atty. Gen. 437-A-4, March 15, 1935
Op. Atty. Gen. 90-C-5, July 30, 1940
Op. Atty. Gen. 90-A, August 14, 1957

Cross References: MSBA/MASA Model Policy 101 (Legal Status of the Governing board)
MSBA/MASA Model Policy 209 (Code of Ethics)