

Policy #: 210
Title: MSA BOARD - CONFLICT OF INTEREST
Date of Initial Approval: 04-25-2019
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Reviewers: MSA Board Policy Committee

I. PURPOSE

The purpose of this policy is to observe state statutes regarding conflicts of interest and to engage in Minnesota State Academies (MSA) 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 MSA 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 MSA board will contract under the statutory exception provisions only when it is clearly in the best interest of MSA because of limitations that may exist on goods or services otherwise available to the academies.

III. GENERAL PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS

- A. A MSA board member who is authorized to take part in any manner in making any sale, lease, or contract in their 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 MSA board may as an exception, by unanimous vote, contract for goods or services with a MSA board member:
 - a. In the designation of a bank or savings association, in which a MSA board member is interested, as an authorized depository for MSA funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minn. Stat. Ch. 118A. Any MSA board member having said interest shall disclose that interest and the interest shall be entered upon the minutes of the MSA board. Disclosure must be made when such bank or savings association is first designated as a depository or source of borrowing, or when such MSA board member is elected, whichever is later. Disclosure serves as notice of the interest and must only be made once;
 - b. A contract with a cooperative association of which the MSA board member is a shareholder or stockholder but not an officer or manager;
 - c. 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:
 - i. The MSA board must 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.

- ii. 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.
 - iii. Before a claim is paid, the interested MSA board member must file with the clerk of the MSA board an affidavit stating:
 - 1. The name of the MSA 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 MSA board member in the contract; and
 - 6. That to the best of the MSA 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.
 - d. A MSA board member may contract with the state of Minnesota to provide construction materials or services, or both, when the sealed bid process is used.
 - e. A MSA board member may rent space from MSA at a rate commensurate with that paid by other members of the public.
- C. In the following circumstances, the MSA board may as an exception, by majority vote at a meeting where all MSA board members are present, contract for services or approve employment of a MSA board member: A MSA board member may be newly employed or may continue to be employed by MSA as an employee where there is a reasonable expectation on July 1, or at the time the contract or employment is entered into or extended, that the amount to be earned by that MSA board member under that contract or employment relationship, will not exceed \$8,000 in that fiscal year (July 1st through June 30th). If the MSA board member does not receive majority approval to be initially employed or to continue in employment at a meeting where all MSA board members are present, that employment must be immediately terminated and that MSA board member will have no further rights to employment at MSA while serving as a MSA board member.
- D. The MSA board may approve employment or short-term assignments (i.e.; extracurricular assignments) of spouses and/or children of a MSA board member if the spouse/child receives no special monetary or other benefit that is substantially different from the benefits that other employees receive. In order for the MSA board to invoke this exception, it must have a majority of disinterested MSA board members vote to approve the employment and direct the MSA board member spouse to abstain from voting. (*Refer to MSA Policy # 426 – Nepotism in Employment*)

IV. CONFLICTS PRIOR TO TAKING OFFICE

A MSA board member with personal financial interest in a sale, lease, or contract with MSA which was entered before the MSA board member took office and presents an actual or potential conflict of interest, shall immediately notify the MSA board of such

interest. It shall thereafter be the responsibility of the MSA 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 MSA 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.

V. 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 MSA board. Any MSA board member who has an actual or potential conflict shall notify the MSA board of such conflict immediately. The MSA board member shall thereafter cooperate with the MSA board as necessary for the MSA board to make its determination.

Legal References:

Minn. Stat. § 122A.40, Subd. 3 (Teacher Hiring, Dismissal)

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. 90-A (Aug. 14, 1957)

Op. Atty. Gen. 90-C-5 (July 30, 1940)

Op. Atty. Gen. 437-A-4 (March 15, 1935)

Cross References:

MSBA/MASA Model Policy 209 (Code of Ethics)