Adopted: MSBA/MASA Model Policy 210

Revised: 2022 (Originated 1995)

210 Conflict of Interest – Brightworks 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 service cooperative 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 BrightWorks 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 BrightWorks board will contract under the statutory exception provisions only when it is clearly in the best interest of the service cooperative because of limitations that may exist on goods or services otherwise available to the school district.

III. GENERAL PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS

A. A service cooperative 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 BrightWorks board may as an exception, by unanimous vote, contract for goods or services with a BrightWorks board member of the school district:

1. In the designation of a bank or savings association, in which a BrightWorks board member is interested, as an authorized depository for service cooperative funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minnesota Statutes chapter 118A. Any BrightWorks Board member having said interest shall disclose that interest, and the interest shall be entered upon the BrightWorks 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 BrightWorks board member is elected or appointed, whichever is later. Disclosure serves as notice of the interest and need only be made once;

2. A contract with a cooperative association of which the BrightWorks board

member is a shareholder or stockholder but not an officer or manager;

3. 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 BrightWorks 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 BrightWorks board member shall file with the clerk of the BrightWorks board an affidavit stating:

        (1) The name of the BrightWorks 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 BrightWorks board member in the contract; and

        (6) That to the best of the school 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.

4. A BrightWorks 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 BrightWorks board may as an exception, by majority vote at a meeting at which all BrightWorks board members are present, contract for services with a BrightWorks board member of the district service cooperative: A BrightWorks board member may be newly employed or may continue to be employed by the service cooperative 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 BrightWorks board member under that contract or employment relationship, will not exceed $20,000 in that fiscal year. If the BrightWorks board member does not receive majority approval

to be initially employed or to continue in employment at a meeting at which all BrightWorks board members are present, that employment is immediately be terminated and that BrightWorks board member has no further rights to employment while serving as a school board member in the school district. ***[Note: The $8,000 figure increased to $20,000 effective July 1, 2022]***

D. The BrightWorks board may contract with a class of service cooperative employees, such as teachers or custodians, when the spouse of a school board member is a member of the class of employees contracting with the BrightWorks 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 BrightWorks board to invoke this exception, it must have a majority of disinterested board members vote to approve the contract, direct the 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 BrightWorks board must hire or dismiss staff 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 staff may be made or authorized except upon the unanimous vote of the full board.

B. The BrightWorks board may not employ any staff related by blood or marriage to a board member, within the fourth degree as computed by the civil law, except by a unanimous vote of the full board.

V. CONFLICTS PRIOR TO TAKING OFFICE

A BrightWorks board member with personal financial interest in a sale, lease, or contract with BrightWorks which was entered before the board member took office and presents an actual or potential conflict of interest, shall immediately notify the board of such interest. It shall thereafter be the responsibility of the 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 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 BrightWorks board. Any board member who has an actual or potential conflict shall notify the board of such conflict immediately. The board member shall thereafter cooperate with the board as necessary for the 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 School Board)

MSBA/MASA Model Policy 209 (Code of Ethics)