

## FREQUENTLY ASKED QUESTIONS: CONFLICTS OF INTEREST

### **1. Are board of education members subject to conflict of interest restrictions?**

Yes, board of education members are subject to a statute (PA 317 of 1968, M.C.L. 15.321 et seq) that regulates the conduct of public servants with respect to contracts with public entities. Subsection (1) of M.C.L. 15.322 explicitly prohibits a public servant from being a party, directly or indirectly, to any contract between himself or herself and a public entity which he or she is an officer or employee. Additionally, subsection (2) of M.C.L. 15.322 sets forth four scenarios that specifically limit a public servant's ability to solicit a contract for a public entity which he or she is serving. If any one of the four situations applies, the public servant cannot represent either party in the contractual transaction, and cannot take part in negotiating or approving the contract in question.

However, under specific circumstances, M.C.L. 15.323 limits the above prohibitions and restrictions by selectively narrowing the application of M.C.L. 15.322 to public servants who work more than 25 hours a week for a public entity that is not a public institution of higher education. To be exempted from the application of subsections (1), (2), and (3) of M.C.L.15.322, all other public servants, such as school board members, who are personally interested as a direct or indirect party in a contract being considered by the public entity, or who have a conflict of interest as outlined in subsection (2), must disclose their personal interest to the board.

There is also a provision in the Michigan Constitution that provides that no state officer "shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest" (1963 Const, Art IV, Section 10). The Attorney General has ruled that this prohibition applies to school board members (Op.Atty.Gen.1967, No.4555).

Further, Section 169b of the State School Aid Act of 1979 (M.C.L. 388.1769b) should also be taken into consideration when a board is confronted with a conflict of interest situation. Section 169b generally requires a board member to abstain from voting on any contract in which the board member has a conflict of interest.

### **2. How does a board of education member disclose a financial conflict of interest?**

When a board member is required under law to disclose a financial interest in a contract, the disclosure and the vote on the contract must be carried out by one of two methods:

- (a) If the benefit of the contract to the board member is \$5,000 or more, the board member must disclose his or her interest at a board meeting. However, the board is not allowed to vote on the contract at the meeting where this disclosure is made, but will have to schedule another meeting for the vote. The board must wait at least

sevent days following the meeting at which the conflict is disclosed before voting on the contract (M.C.L. 15.323(2)(a)(ii)).

- (b) If the benefit from the contract to the board member is at least \$250 or 5 percent or more of the contract cost, but not \$5,000 or more, the board member must make a written disclosure to the president of the board at least seven days before the meeting at which the vote will be taken on the contract, and the disclosure must be made public in the same manner that public notice is given for the board meeting; or in the alternative, the board member may choose to disclose the benefit at a board meeting in the same manner as described in the first method (M.C.L. 15.323(2)(a)(i)).

If the contract is for emergency repairs or services, or the board member who discloses the conflict does not benefit financially from the contract by \$250 or more or by 5 percent or more of the public cost of the contract and files a sworn affidavit with the board stating so, the notice requirements do not apply (M.C.L. 15.323(2)(a)). In these two situations, the disclosure of the conflict and the vote on the contract may still occur at the same meeting.

**3. Does the disclosure of the financial conflict of interest have to be recorded in a board of education's minutes?**

Yes, the minutes must show the following:

- (a) The name of each party involved in the contract.
- (b) The terms of the contract (duration, financial consideration, facilities or services of the school district included in the contract, and nature and degree of assignment of district employees for fulfilling the contract).
- (c) The nature of any pecuniary interest (M.C.L. 15.323(2)(c)).

**4. What is voting threshold for approving a contract that involves a financial conflict of interest?**

In order to approve a contract that involves a financial conflict of interest, a board of education must approve the contract by a two-thirds' vote of the full board in open session, minus the vote of the board member who disclosed the pecuniary interest (M.C.L. 15.323(2)(b)). In the case of a seven-member board of education, there must five affirmative votes in order to approve the contract.

**5. Are there specific provisions in the law that cover ethical conflicts of interests?**

Unlike financial conflicts of interests, ethical conflicts are not defined by law. An ethical conflict of interest could arise when personal interests place a board of education member in a position where he or she cannot carry out the public duties of the office without affecting his or private interests. In most cases, boards of education adopt codes of conduct that cover situations when a board member must abstain from voting due to an ethical conflict of interest.

**6. Does an abstention count as a “yes” or “no” vote?**

Unlike some other states, Michigan law does not permit abstentions to be counted either as “yes” or “no” votes. If a board member abstains from voting, the minutes of the board meeting will show the “yes” votes, the “no” votes, and the abstentions. If there are less than four “yes” votes, the motion fails.

**7. May a board member abstain from voting in the absence of a legal or ethical conflict of interest?**

There have been court decisions in other states suggesting it is improper for a school board member to abstain from voting when there is no actual conflict of interest. The general rationale underlying such interpretations of the law is that when a school board member elected by the people abstains from voting he or she is disenfranchising those citizens who elected him or her to office, or that abstentions should not be used as a means of avoiding controversial or difficult issues. While there are no Michigan judicial decisions along these lines, board of education members in Michigan must still carry out their responsibilities as promised in their oath of office. The oath states, in part, that each board member will “faithfully discharge the duties of the office.” One clear duty of a school board trustee in our State is to vote on motions and other items of business required for board action. Thus, it is my opinion that a school board member who abstains from voting in the absence of a valid reason is shirking not only his or her responsibility to the remaining board members, who have the right to expect every board member’s participation in the decision-making process, but also the board member’s obligation to the community, as reflected in the oath of office he or she took upon becoming a public officer.

**8. May a person who holds another public office serve on a board of education?**

The Michigan Constitution prohibits members of the state legislature and judges from serving on boards of education (Const. 1963, Art. VI, § 21 and Art. IV, § 8). For other public offices, it would depend if the two positions are incompatible with one another under Michigan’s Incompatible Public Offices Act, which prohibits one person from simultaneously holding two or more incompatible public positions (1978 P.A. 566, M.C.L. 15.181 et. seq.). In determining if an incompatible situation exists, courts will examine the purpose and function of each position to determine whether the exercise of the powers of one office would prevent the proper fulfillment of the duties of the other by resulting in: (1) the subordination of one public office to another; (2) the supervision of one public office by another; or (3) a breach of duty of public office (M.C.L. 15.181(b)).

**9. May current school system employees serve on a board of education?**

No. Michigan’s Attorney General has ruled that, under the Incompatible Offices Act, a school employee, such as a part-time athletic coach or school bus driver, may not serve as a member

of the Board of Education of the district where he or she is employed (Op.Atty.Gen.1990, No.6642). The rationale underlying this conclusion is that persons hired by a school district are not able to function as employees and serve on the board of education at the same time. An employee sitting as a member of the Board in such a situation would have control over the terms of employment of his or her own position.

**10. May a volunteer athletic coach in the school system serve on the board of education?**

The Incompatible Public Offices law includes a provision that permits a board of education member, under certain conditions, to serve as a volunteer coach or supervisor of an extracurricular activity in the school district (M.C.L. 15.183(9)). The provision in the law applies only when all of the following conditions are met:

- (a) The school board member receives no compensation for service as a volunteer coach or supervisor.
- (b) The school board member abstains from voting on issues concerning the specific extracurricular program during the period he or she is volunteering.
- (c) There is no qualified applicant available to fill the vacant position if the school board member is excluded.
- (d) A criminal history check and a criminal records check are conducted on the school board member.

**11. May a spouse or other relative of a board of education member be employed by the school system?**

Yes, Michigan’s conflict of interest laws do not specifically prohibit the employment of a person who is related to a school board member.

**12. May a school board member vote on a contract or financial transaction that involves a family member?**

No. Public Act 606 of 2012, now Section 1203 of the Revised School Code, is a new conflict of interest law that applies to a board member who “believes or has reason to believe” s/he has a conflict of interest regarding a contract or financial transaction that requires the board’s approval.

A board member is presumed to have a conflict if the board member or his family member has a financial interest or a competing financial interest in a contract or financial transaction with the school or if the board member’s family member is an employee of the district.

The law defines “family member” as a person’s spouse or spouse’s sibling or child; a person’s sibling or sibling’s spouse or child; a person’s child or child’s spouse; or a person’s parent or parent’s spouse, and includes these relationships as created by adoption or marriage. The law

makes clear that having a child who is a student in the district does not create a conflict for the board member.

The law also applies to legal counsel, advisors and consultants. It requires a board member to disclose the conflict of interest and to abstain from voting on the contract or financial transaction in question.

Public Act 606 trumps a 1930 Michigan Supreme Court case in which the court held that it was not against public policy for a husband, who was a school board member, to sign the contract of employment to hire his wife as a teacher in the school district. *Thompson v School District No. 1 of Moorland Township*, 252 Mich 629 (1930). The new law also trumps an Attorney General Opinion that states that a member of a public board may “lawfully vote on proposals that directly or indirectly affect the functions of the facility or program funded or directly controlled by the board which employs the spouse of the board member in question” (Op.Atty.Gen.1984, No.6206).

**13. Does Public Act 606 of 2012 require recusal from discussions or closed session negotiations involving a collective bargaining agreement that applies to a board member’s family member?**

The law is silent on the issue of whether a school board member must completely recuse himself/herself from all *discussions* relating to a contract or financial transaction that involves a conflict of interest. Thus, Public Act 606 does not require a board member to remove himself/herself from discussions or closed session negotiations relating to a contract that involves a family member of the board member. However, a school board could adopt a policy that goes above and beyond the law and prohibits a board member participating in the discussions or deliberations that relate to the contract or financial transaction that involves the conflict of interest. Such a policy would be similar to a policy that bans the use of tobacco on school property at all times (The law allows the use of tobacco on school property outside of school buildings after the instructional day and on non-instructional days.), or a policy that prevents a school board member from being employed by the school district until he or she has been off the board a year or some other length in time.

**14. When does a school board member not have a financial conflict of interest under Public Act 606?**

Under Public Act 606, an individual does not have a financial conflict of interest in the following situations:

- The person is a stockholder owning 1 percent or less of total stock if the stock is not listed on a stock exchange or less than \$25,000 market value if the stock is listed on a stock exchange.
- The person is a beneficiary of a trust under the same financial standards as above.

- The person is an employee (and not a member) of a professional limited liability company (LLC).
- Contracts involving a corporation or a firm that does not include a board member or an administrator as a director, officer, member or employee.
- Contracts between the ISD and constituent school districts.