

210 CONFLICT OF INTEREST – SCHOOL BOARD MEMBERS

I. PURPOSE

The purpose of this policy is to provide guidance in observing conflict of interest policies applicable to school board members. This policy governs contractual conflicts of interest involving district contracts and business activities, conflicts involving incompatible offices and both statutory and non-statutory principles and seeks to avoid any conflict of interest or the appearance of impropriety.

II. GENERAL STATEMENT OF POLICY¹

A conflict of interest occurs when an individual has a personal interest in a decision about which he or she has the power to make. A prohibited personal interest may be contractual or non-contractual, financial or non-financial. It includes, but is not limited to, decisions in which personal involvement, gain or financial benefit exist for the decision-maker. In applying these policies, the following should be considered:

- **Contracts.**² Public officers may not have a personal financial interest in any sale, lease, or contract that they are authorized to make in their official capacities. It is the policy of the school 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. Minnesota Statutes Sections 471.87 -89 contains statutory limitations and exceptions governing public officials in contracting. The school board will contract under the statutory exception provisions only when it is clearly in the best interest of the school district because of limitations that may exist on goods or services otherwise available to the school district.

- **Incompatibility of offices.** A public officer may not hold two positions if the positions' functions are inconsistent with one another.

- **Self-interest in non-contractual matters.** Sometimes, elected officials find they have an interest in a non-contractual decision that the school board will make. This type of interest is sometimes of a financial nature, but not always. An interested board member should generally abstain from discussing and voting on these matters.

Recusal. Where a member is recused because of a conflict or appearance of conflict, the

¹ This section has been modified from MSBA Policy 210, which focuses primarily on contractual conflicts.

² These three categories are taken from the League of Minnesota Cities description of the three basic types of conflicts.

member refrains from voting, from participating in deliberations during the Board discussion, and must refrain from directly or indirectly advocating on the matter with any of the Board or District staff.

III. GENERAL CONTRACTING PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS

- A. Part III implements the provisions of Minnesota Statutes sections 471.87-89 regarding government contracting³. A school 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, as authorized by Minnesota Statutes Section 471.88, however, the school board may as an exception, by unanimous vote, contract for goods or services with a school board member of the school district⁴. The school board will contract under the statutory exception provisions only when it is clearly in the best interest of the school district because of limitations that may exist on goods or services otherwise available to the school district.
 - 1. In the designation of a bank or savings association, in which a school board member is interested, as an authorized depository for school district funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minn. Stat. Ch. 118A. Any school board member having said interest shall disclose that interest and the interest shall be entered upon the minutes of the school board. Disclosure must be made when such bank or savings association is first designated as a depository or source of borrowing, or when such school board member is elected, whichever is later. Disclosure serves as notice of the interest and must only be made once;
 - 2. The designation of an official newspaper, or publication of official matters therein, in which the school 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 school board member is a shareholder or stockholder but not an officer or manager;

³ Except as authorized in section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

⁴ The governing body of any port authority, seaway port authority, economic development authority, watershed district, soil and water conservation district, town, school district, hospital district, county, or city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

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 school 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.
 - 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 school board member must file with the clerk of the school board an affidavit stating:
 - (1) The name of the school 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 school 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.
5. A school 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 school board may as an exception, by majority vote at a meeting where all school board members are present, contract for services with a school board member of the school district⁵: A school board

⁵ Notwithstanding section 471.88, subdivision 5, a school board member may be newly employed or may continue to be employed by a school district as an employee only if there is a reasonable expectation at the beginning of the fiscal year or at the time the contract is entered into or extended that the amount to be earned by that officer under that contract or employment relationship will not exceed \$8,000 in that fiscal year. Notwithstanding section 122A.40 or 122A.41 or other law, if the officer does not receive majority approval to be initially employed or to continue in employment at a

member may be newly employed or may continue to be employed by the school district as an employee where 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 school board member under that contract or employment relationship, will not exceed \$8,000 in that fiscal year. If the school board member does not receive majority approval to be initially employed or to continue in employment at a meeting where all school board members are present, that employment must be immediately terminated and that school board member will have no further rights to employment while serving as a school board member in the school district.

- D. The school board may contract with a class of school district employees, such as teachers or custodians, where the spouse of a school board member is a member of the class of employees contracting with the school 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. In order for the school board to invoke this exception, it must have a majority of disinterested school board members vote to approve the contract, direct the school board member spouse to abstain from voting to approve the contract, and publicly set out the essential facts of the contract at the meeting where the contract is approved.

IV. LIMITATIONS ON RELATED EMPLOYEES

- A. The school board can hire or dismiss teachers only at duly called meetings. Where 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 school board.
- B. The school board may not employ any teacher related by blood or marriage to a school board member, within the fourth degree as computed by the civil law, except by a unanimous vote of the full school board⁶.

V. CONFLICTS PRIOR TO TAKING OFFICE

A school board member with personal financial interest in a sale, lease, or contract with the school district which was entered before the school board member took office and presents an actual or potential conflict of interest, shall immediately notify the school board of such interest. It shall thereafter be the responsibility of the school board member to refrain from participating in any action relating to the sale, lease, or contract.

meeting at which all board members are present, that employment is immediately terminated and that officer has no further rights to employment while serving as a school board member in the district.

⁶ School boards must hire or dismiss teachers at duly called meetings. Where a husband and wife, brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher shall be made or authorized except upon the unanimous vote of the full board. A teacher related by blood or marriage, within the fourth degree, computed by the civil law, to a board member shall not be employed except by a unanimous vote of the full board. Minn. Stat. 122A.40 subdiv 3.

At the time of renewal of any such sale, lease, or contract, the school 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. NON-CONTRACTUAL CONFLICTS

A. Incompatible Offices. Minnesota Law makes certain offices incompatible. Board members, or candidates, who may potentially hold incompatible offices should consult the detailed available resources⁷ for further information, or consult an attorney.

B. Conflicts of Interest in Non-Contractual Situations A school board member who has personal financial interest in an official non-contractual action is generally disqualified from participating in the action. When a school board member owns personal interest that is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter the member is likewise disqualified from participating in the action.

VII. 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 school board. Any school board member who has an actual or potential conflict shall notify the school board of such conflict immediately and explain the proposed resolution. The school board member shall thereafter cooperate with the school board as necessary for the school 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. 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: Board Policy 101 (Legal Status of the School Board)
Board Policy 209 (Code of Ethics)
MSBA Service Manual, Chapter 1, School District Governance, Powers and Duties
League of Minnesota Cities, Official Conflict of Interest.

Attachment: Conflict of Interest Disclosure Form

⁷ See Minnesota House of Representatives Information Brief, Compatibility of Offices (2012) <http://www.house.leg.state.mn.us/hrd/pubs/comptoff.pdf>

BOARD POLICY 210

St. Cloud Area School District 742
St. Cloud, Minnesota

Adopted: March 26, 2015
Revised: December 7, 2016
Reviewed/No Change: May, 2019

Board Policy 210
Conflict of Interest Disclosure Form

Annual School Board Conflict of Interest Disclosure Form

Date: _____

Name: _____

Please describe below any relationships, transactions, or positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest or split loyalties between School District 742 and your personal interests or those of the other organization(s).

_____ I have no conflict of interests to report _____(initial and sign below)

_____ I have the following possible conflicts of interest or split loyalties to report.
(Note: Please specify other nonprofits and for-profits you, or your significant other, sit on; any for-profit businesses for which you or an immediate family member are an officer, director or majority shareholder; and the name of your employer and any businesses you or a family member own.

1. _____

2. _____

3. _____

4. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the School Board Policy on Conflict of Interest.

Signature: _____

Date: _____

NOTE: If changes occur during the year, it is the responsibility of the board member to revise.