



CALIFORNIA STATE UNIVERSITY

LONG BEACH

49^{ER} FOUNDATION

Conflict of Interest Policy

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Purpose:

To provide guidelines to prevent persons having a financial interest in the activities of the board while having an opportunity to influence these documents.

Policy:

Except in certain circumstances, a Board member must avoid transactions of the board in which the Board member has a financial interest (*Cal Ed Code Section 89906*). Organization directors, officers, employees, volunteers or designated agents or other representatives shall not engage in self-dealing actions or transactions in which they have a personal pecuniary interest. Examples include acceptance of compensation, advances, discounts, loans, gifts, entertainment, or other favors in actual or perceived exchange for or to influence organization actions, judgments, or transactions.

The term, ***transactions of the board*** includes contracts approved by the Board of Directors. A violation is considered “misconduct in office” and the transaction breaching this prohibition is void, unless it meets a two-element circumstance test (*Ibid Section 89907*):

- Is the transaction just and reasonable as to the organization *when approved*; and
- Was the financial interest disclosed or known to the Board and noted in the meeting minutes, followed by a favorable, good faith Board vote sufficient for the action without including the interested director(s)?

There are several ***circumstance exceptions*** to the application of the above two-element test, any one of which revives the prohibition:

- The transaction is directly between the interested Board member(s) and the organization (*Ibid Section 89908(a)*).
- The transaction is between the organization and a partnership or unincorporated association in which a Board member(s) holds an ownership, partnership, or other proprietary interest (*Ibid Section 89908(b)*).
- The transaction is between the organization and a corporation in which the interested Board member(s) owns or directly or indirectly holds more than a 5 percent (5%) of the outstanding common stock (*Ibid Section 89908(c)*).
- The Board member(s) fail(s) to disclose to the Board the financial interest in the transaction at a public meeting, then influences or attempts to influence one or more Board members in entering into the transaction (*Ibid Section 89908(d)*).

Thus, in summary, the following transactions are specifically deemed ***impermissible***:

- Any transaction, other than an employment contract, directly between the organization and a Board member.
- Any transactions between the organization and a partnership or unincorporated association in which a Board member is a partner, or owner, or holder, directly or indirectly, of a proprietorship interest.

- Any transaction between the organization and a for-profit corporation in which the organization's Board member is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

On the other hand, the following transactions are permissible if the Board follows the procedure described below:

- Transactions between the organization and a for-profit corporation in which a Board member is the owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a for-profit corporation on whose governing body a Board member serves as a director and owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a nonprofit corporation on whose governing body a Board member serves as a director.

The organization encourages the prompt disclosure of any such conflict, real or perceived, to the Chief Executive Officer for review and determination. In the case of the Chief Executive Officer, disclosure shall be made to the Board Chair for review and determination consistent with this policy statement.

It is unlawful (*Ibid*, Section 89909) and against organization policy for any person, including Board members, employees, volunteers, or organization agents or other representatives to utilize any information that is not a matter of public record and is received by the person by reason of his or her membership on the Board of Directors, organization employment, or relationship with the organization for personal pecuniary gain, regardless of whether he or she is or is not a Board member, employee, or otherwise engaged with the organization at the time such gain is realized.

Education Code Sections 89906-09; and Corporations Code Sections 5233.

Every Board member has an affirmative duty to know and understand the conflict of interest standards, to disclose to the Board any real or perceived transaction conflict, and to step aside from Board deliberations and actions on such matters.

Procedure for Disclosing a Conflict

Any Board member with a financial interest in a permissible transaction before the Board of Directors shall promptly disclose to the Board the nature and scope of that interest, and thereupon be recused from participating in any deliberations or actions by the Board on that matter. The Board meeting minutes shall note the disclosure and recusal. The Board shall then make a determination whether or not the proposed transaction is just and reasonable for the organization at that time and under the circumstances of the disclosure. If so, the Board may then authorize, approve, or ratify the transaction in good faith by a vote sufficient for the purpose of the action without counting the vote(s) of such financially interested Board member(s).

Upon the disclosure by any Board member with a financial interest in an *impermissible* transaction before the Board, no action to approve, authorize, or ratify the transaction shall be taken, and the meeting minutes shall note the circumstances attending the matter.

Board Member Initial and Annual Certification

Each Board member shall initially and annually thereafter receive, review, complete, sign, and return a Related Party Questionnaire and Conflict of Interest Certification in accordance with written procedures established by the Chief Operating Officer implementing this policy statement.

Procedure for Obtaining Conflict of Interest Statements

The Operations Analyst will be responsible for obtaining the Conflict of Interest Statement annually from each Board Member at the fall board meeting. This will require follow up for any board member who does not attend, or somehow leaves before signing the document.

This document shall also be obtained from all new board members on or before their first board meeting. These documents shall be scanned and stored in the 49er Foundation permanent records folder/directory.

Purchasing/Expenditure Authorization Certification

Organization employees or others with purchasing and expenditure authority shall receive, review, sign and return the *Signature Authorization Certification*, in a form prescribed by written procedures, acknowledging the following prohibitions and certifying that they will avoid them:

- Engaging in or having any personal pecuniary interest in any business, transaction, or incurring any obligation which conflicts with or gives the appearance of conflicting with or impairing independent judgment in the discharge of duties owed the organization;
- Accepting money, tips, or other considerations for work required or expected in the regular course of organization duties;
- Self-referring organization clients, donors, or customers, or recommending others with whom there is a personal pecuniary interest;
- Accepting gifts, gratuities or other favors from those having a business relationship, or prospect of a relationship, with the organization; or
- Disclosing organization information, not a matter of public record, without authority, or using such information for pecuniary gain.