

School Board

Board Member Conflict of Interest 1

No School Board member shall: (1) have a beneficial interest directly or indirectly in any contract, work, or business of the District unless permitted by State or federal law; 2 or (2) solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

1 State law and federal regulations controls this policy's content. Conflict of interest is comprehensively discussed in the Ill. Council of School Attorneys' publication, **Answers to FAQs, Conflict of Interest and Incompatible Offices**, www.iasb.com/law/COI_FAQ.pdf www.iasb.com/law/conflict.cfm.

2 The School Code prohibits a school board member from having an interest in a contract with the district he or she serves. Exceptions to this rule permit a board member to provide materials, merchandise, property, services, or labor if: (1) the board member has less than a 7½% share in the ownership of the business; the board member publicly discloses the interest; the board member abstains from voting on the contract; the contract is approved by a majority vote; the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and the award of the contract would not cause the aggregate amount of all such contracts so awarded in the same fiscal year to exceed \$25,000; OR (2) the contract is approved by a majority vote, provided that any such interested member shall abstain from voting; the amount of the contract does not exceed \$1000 or the award of the contract does not cause the aggregate amount of such contracts to the same individual to exceed \$2000 in the same fiscal year, or \$5,000 in the same fiscal year if the labor or materials to be provided are not otherwise available in the district; and the interested member publicly discloses the interest. See 105 ILCS 5/10-9 for other exceptions.

A board member does not have a prohibited interest in a contract with the district he or she serves "if the board member is an employee of a business that is involved in the transaction of business with the school district, provided that the board member has no financial interests other than as an employee," (105 ILCS 5/10-9).

The Public Officer Prohibited Activities Act prohibits a governing body member from being "in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote," (50 ILCS 105/3). Exceptions to this prohibition are similar to those in the School Code.

Generally, an individual may be a board member at a school district that employs his or her spouse. Indeed, 105 ILCS 5/10-22.3a specifically allows a board member to participate in a group health insurance program provided to a district employee if the board member is that employee's dependent, i.e., spouse or child. However, this is a fact-sensitive inquiry; a board member should seek legal counsel before voting on anything related to his or her spouse. See the **Answers to FAQs**, referenced in f/n 1.

A violation of the School Code or Public Officer Prohibited Activities Act is a Class 4 felony. Due to the severity of this penalty as well as to avoid the appearance of impropriety, a legal opinion should be obtained before a board member becomes financially interested in any contract with his or her district. Abstaining on the vote, or absence from the meeting when the vote is taken, does not negate an otherwise illegal conflict of interest.

2 C.F.R. §200.318(c)(1) prohibits employees, officers, or agents of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. Conflicts of interest arise when one of the following individuals has a financial or other interest in the entity selected for the award:

- a. School district employee, officer, or agent;
- b. Any member of the employee, officer, or agent's immediate family;
- c. The employee, officer, or agent's business partner; and
- d. An organization that employs or is about to employ one of above.

For a discussion of what an apparent conflict of interest means, see the discussion about avoiding the appearance of impropriety discussed in the Ill. Council of School Attorneys' publication, **Answers to FAQs, Conflict of Interest and Incompatible Offices** cited above in f/n 1.

If the district has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. §200.318(c)(2).

agreements or contracts with the District.³ Situations in which the interest is not substantial or the gift is an unsolicited item of nominal value must comply with State law and Board policy 2:105, *Ethics and Gift Ban*.⁴

Board members must annually file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act.⁵ Each Board member is responsible for filing the statement with the county clerk of the county in which the District's main office is located by May 1.

LEGAL REF.: 5 ILCS 420/4A-101, 420/4A-105, 420/4A-106, and 420/4A-107.
50 ILCS 105/3.
105 ILCS 5/10-9.
2 C.F.R. §200.318(c)(1).

CROSS REF.: 2:105 (Ethics and Gift Ban), 4:60 (Purchases and Contracts), 5:120 (Employee Ethics; ~~and~~ Conduct; and Conflict of Interest)

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

3 2 C.F.R. §200.318(c)(1).

4 Id. The rule provides flexibility for school districts to “set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value,” along with “disciplinary actions to be applied for violations.” Referring to sample policy 2:105, *Ethics and Gift Ban* for these standards provides clarity and consistency. Policy 2:105, *Ethics and Gift Ban* refers to **Limitations on Receiving Gifts** in the Ethics Act at 5 ILCS 430/10-10 – 10-30, along with discussion of the specific penalties available under the Ethics Act at 5 ILCS 430/50-5 in its Enforcement subhead.

⁵ 5 ILCS 420/4A-101 and 4A-105 through 107. Any county clerk may implement a system of Internet-based filing for economic interest statements, ~~(5 ILCS 420/4A-108, amended by P.A. 99-108)~~. If an Internet-based filing system is used, the clerk must post the statements, without filers' addresses or signatures, on a publicly accessible website, ~~(Id.)~~.

Each candidate for the school board must file with the county clerk or the county board of election commissioners, whichever is applicable, a receipt from the county clerk showing that the candidate has filed a *Statement of Economic Interests* as required by the Ill. Governmental Ethics Act, ~~(5 ILCS 420/4A)~~. A candidate's name will be stricken from the ballot if he or she files the incorrect *Statement of Economic Interests* form, ~~(Ferrand v. Chicago Bd of Election Comm., 2014 Ill.App.1st 140225 (2-13-2014); Cortez v. Municipal Officers Electoral Board, 986 N.E.2d 689 (Ill. App., 2-25-2013))~~.