

# Boardsmanship Review

## Conflict of Interest

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At every meeting, state board members vote on motions that affect the spending of tax dollars and people's lives. They may decide whether an educator gets to retain his license. They may vote to open or close schools. Because state board members are also doctors, lawyers, business owners, and educators, they may also be asked to vote on a matter in which they could gain financially.

Because state board members are public officials, the public has a right to expect that all of these decisions will be made impartially, based on what board members believe to be the best interest of the public. If it appears that the self-interest of board members influences their vote more than the public interest of citizens, citizens will no longer trust the board. Such decisions may reflect poorly on the board's integrity and transparency, undermining public confidence in its ability to carry out its duties fairly.

In any of these cases, board members need to avoid any conflict of interest. While state definitions vary, Alabama's definition is clear:

A "conflict of interest" is "a conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

State board members are rightly subject to the same conflict of interest rules as other public officials. They should avoid both actual conflicts of interest and the appearance of such conflicts. Actual conflicts of interest are rare. They occur when private interests and official responsibilities of a person in a position of trust are inherently in conflict. For this reason, a member of a state board of education in most states cannot also serve as a member of the state legislature.

Potential conflicts of interest are much more common. They are also the most misunderstood concept in public service ethics. The North Carolina Board of Ethics describes a potential conflict of interest this way:

"Potential" means "capable of being but not yet in existence"—*possible*. Thus, when a covered Public Official has a *potential* conflict of interest due to some financial, familial, or personal situation, that means that such Official must exercise appropriate caution (sometimes extreme caution) to ensure that the unrealized, possible conflict does not "ripen" into a forbidden actual conflict in violation of his or her public responsibility.

This is usually done by the Official removing himself or herself from the situation to an appropriate degree (commonly in the form of "recusing" himself or herself from a particular vote). Rather than a source of embarrassment or anger, an evaluation that an Official has a potential conflict of interest should be viewed as an ethical "red flag," a warning that he or she must be careful when whatever is causing the potential conflict comes before the Official for public action [*italics in original*].

### RECOGNIZING A CONFLICT OF INTEREST

If there is any question about whether a conflict of interest may be present, a board member should disclose the details of the situation to the board. In any case, board members should disclose the following:

- a board member stands to benefit from any policy or decision if it is approved;
- a board member would receive goods, services, or payment as a state board member for upholding or approving a policy or procedure;
- a board member's personal organization would receive goods, services, or payment for the state board member's action in upholding or approving a policy or procedure; or
- a board member would benefit directly from an action, even though the benefit was not the intended consequence of the policy or procedure.

In some states, board members would still be allowed to vote on these issues as long as they disclosed the information about the nature of their interest in the matter. As a general rule, NASBE advises erring on the side of caution. But it is always a good idea to check with your board attorney.

In most states, conflict of interest rules also

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POTENTIAL CONFLICT	POSSIBLE SOLUTION
The board must make a decision on whether to revoke the charter of a school owned by a board member's spouse.	The board member should make public the potential conflict and then recuse himself from consideration of the issue.
A school superintendent serves on a state board that is revising standards for licensing administrators.	Since these regulations apply equally to all superintendents, it is likely that there is no conflict. Check with the board attorney.
A state board is considering whether to hire a large local business to do highly specialized work. One board member is employed by that business.	The rules governing such a transaction will vary from state to state, so check with the board attorney. In any case, the board should scrupulously follow the state's procurement rules. The board member should not participate in discussions nor vote on the issue.
A state board is considering a new state summative evaluation. One of the vendors offers a board member a vacation trip.	The board member should not accept the gift (even if it is technically allowed) and should report the offer to the board attorney.

apply to the spouse of a board member. Other family members and business associates may also be included, so be sure you are aware of the rules in your state. Examples of potential conflicts of interest and some ways board members could handle them are included in the table.

The NASBE Board of Directors has adopted conflict of interest policies and procedures to increase NASBE's reliability and transparency. These policies are intended to limit decisions to those board members who are impartial toward a particular decision and prevent personal interests from interfering with state board members' duties to their state. Many state boards of education have similar policies.

### WHAT STATE BOARD MEMBERS SHOULD DO

So what should you do if you think you could have a conflict of interest?

**Educate yourself.** A copy of a state board of education's conflict of interest policies should be given to all board members at the beginning of their terms. If you have not received the policy, ask for a copy.

**Consult the state board's attorney.** Laws governing conflict of interest vary from state to state, so the board attorney is the best source of information and advice on your individual situation.

**Be transparent.** Work with the board attorney to write a statement explaining your potential conflict of interest and why you did (or did not) determine that a conflict exists. Read this before the board takes up the issue, whether you plan to vote on it or not.

**If a conflict exists, recuse yourself.** If you and the board attorney conclude that a conflict of interest exists, you should neither discuss nor vote on the issue. You may want to leave the board table during the discussion and vote to make it clear to the public that you are not participating.

**Be aware of the appearance of a conflict of interest.** It is paramount to maintain the public's trust that the board is working in the public interest.

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### EXAMPLE: NEBRASKA POLICY

"49-1499.02. Executive branch; discharge of official duties; potential conflict; actions required.

(1) An official or employee of the executive branch of state government who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any....

(2) This section does not prevent such a person from (a) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board....

49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated...."