



Conflicts of Interest for PSAs

The Governor John Engler Center for Charter Schools

Presented by Courtney Kissel

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Overview of Board Role

- What governs the role and responsibilities of a board member?
 - Constitution and Revised School Code
 - Charter Contract
 - University policies
 - Fiduciary duties
 - Code of Conduct
 - **Conflicts of interest laws and ethics**

Remember: As a board member for a PSA, you hold a public office.

Constitutional Oath of Public Office

ARTICLE XI, SECTION I OF THE MICHIGAN CONSTITUTION OF 1963 PROVIDES AS FOLLOWS:

“All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of According to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.”

Duties of Board Members Within the Oath

Care

- Be informed
- Reasonable person standard
- Protect interest of school

Candor

- Inquire and Inform
- Listen and understand
- Reliance on experts

Loyalty

- Allegiance
- No self-dealing

Conflicts of Interest

- Legal Conflicts
 - Contracts with Public Servants with Public Entities Act
 - The Revised School Code
- Contract Conflicts
- Appearance of Impropriety

Contracts with Public Servants with Public Entities Act

- Academy Board members are considered “public servants.” MCL 15.321(a).
- Prohibits public servants from being a party, directly or indirectly, to a contract between himself and the public entity of which he is an officer or employee. MCL 15.322(1).
- Prohibits public servants from directly or indirectly soliciting a contract between the public entity of which he is an employee or officer and herself or any entity of which she is a partner, member, or employee. MCL 15.322(2).
- Prohibits an employee or officer of a public body from taking any part in the negotiations for such a contract, from taking part in the contract approval, or from representing either party in the transaction.
- Violations of the Conflicts Act are punishable as a misdemeanor. MCL 15.327.

Charter Contract

- The Charter Contract requires compliance with conflicts law and deems the following prohibited conflicts of interest:
 - An individual simultaneously serving as an Academy Board member and an owner, officer, director, employee or consultant of an Educational Service Provider or an employee leasing company that has an agreement with the Academy;
 - An individual simultaneously serving as an Academy Board member and an Academy employee;
 - An individual simultaneously serving as an Academy Board member and an independent contractor to the Academy;
 - An individual simultaneously serving as an Academy Board member and a member of the governing board of another public school; and
 - An individual simultaneously serving as an Academy Board member and a University official, employee, or paid consultant, as a representative of the University.

Charter Contract (continued)

- The Board must also prohibit certain familial relationships:
 - No person shall be appointed or reappointed to serve as an Academy Board member if the person's mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, daughter-in-law, sister, sister-in-law, brother, brother-in-law, spouse or same-sex domestic partner:
 - (i) Is employed by the Academy;
 - (ii) Works at or is assigned to the Academy; or
 - (iii) Has an ownership, officer, policymaking, managerial, administrative non-clerical, or other significant role with the Academy's Educational Service Provider or employee leasing company.

Revised School Code

- ***MCL 380.1203***- Academy Board members cannot vote on matters for which they have a conflict.
- ***MCL 380.503(6)(k)***- Contracts between Academy Board and certain individuals prohibited.
- ***MCL 380.507 (3)(b)***- Charter Contract can be revoked for failure to comply with applicable law.

Appearance of Impropriety
“If you have to ask, the answer is ‘no.’”

The spirit of the law...

“The spirit behind the law and public policy of this state in regard to conflicts of interest is that the temptation of impropriety should be avoided, as well as actual impropriety, between government officials and private individuals. Members of governmental boards and agencies at all levels must at all times be scrupulously cognizant of their position of public trust in relation to their private business dealings. If the latter would tempt them to color the performance of their public responsibilities, then they would be in violation of the spirit of the conflict of interest laws in this state.”

July 17, 1972 OAG.

Incompatible Public Offices

The Act prohibits any individual from simultaneously holding incompatible public offices. The Act defines “incompatible offices” as follows:

- “Incompatible offices” means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to the offices held:
 - (i) The subordination of 1 public office to another.
 - (ii) The supervision of 1 public office by another.
 - (iii) A breach of duty of public office.

MCL 15.181(1)(b).



Breach of Duty

- The Supreme Court agreed that a breach of duty arises when a public official cannot “protect, advance, or promote the interest of both offices simultaneously.”
- Preliminary vs actual negotiations
- Examples

Questions?

Thank You!



Courtney Kissel

Member, Bloomfield Hills

ckissel@dykema.com