

CONFLICT OF INTEREST

Colorado conflict of interest statutes do not, on their face, apply to members of charter school boards. However, most contracts between charter schools and their governing districts incorporate the local district conflict of interest policy and/or Colorado conflict of interest statutes. A typical contract clause might provide: “Members of the School’s executive board, any administrators and managers, and other committees of the School shall comply with state law and board policies and regulations regarding ethics and conflict of interest.”

Therefore, while the conflict of interest statutes and district policies are not directly applicable, they are almost always applicable as a matter of contract, and a district may consider a violation of these provisions to be a material breach of the charter contract. This is why charter school board members should be familiar with these rules and careful to abide by them.

State law requires each district board of education to adopt a policy relating to conflicts of interest for members of the board. C.R.S. 22-32-109(1)(y). As noted above, these district policies are usually incorporated into charter school contracts. Therefore, each charter school should obtain and review the specific conflict of interest policy adopted by its chartering district.

In addition to local district policy, charter school board members should be aware of the state statute that establishes rules of conduct and ethical principles for members of the General Assembly, all public officers and local government officials and employees. C.R.S. 24-18-101 *et seq.* Again, this statute is not, on its face, applicable to charter school board members. However, charter school contracts

This law can be divided into four groups of standards: (1) absolute rules of conduct, (2) non-binding guidelines called ethical principles, (3) written disclosure rules, and (4) rules relating to interest by public officials in government contracts.

BOARD MEMBER CONDUCT (C.R.S. 24-18-104)

In carrying out his fiduciary duties, a board member shall not:

- Disclose or use confidential information acquired in the course of his official duties to further substantially his personal financial interests.
- Accept a gift of substantial value (or a substantial economic benefit which is the same as a gift of substantial value) which would tend to improperly influence a reasonable person in his position or which he knows or should know is primarily for the purpose of rewarding him for official action taken. This includes accepting a loan at a rate of interest substantially lower than the prevailing commercial rate and compensation

received for private services rendered at a rate substantially exceeding the fair market value.

- Engage in a substantial financial transaction for his private business purposes with a person whom he supervises in the course of his official duties.
- Perform an official act which directly and substantially confers an economic benefit on a business or other undertaking in which he has a substantial financial interest or in which he is engaged as a counsel, consultant, representative or agent.

It is permissible for a board member to receive:

- Campaign contributions and contributions in kind which are reported under the Campaign Reform Act, C.R.S. 1-45-108. (This is not usually applicable in the charter school context)
- An occasional nonpecuniary gift which is insignificant in value.
- A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service.
- Payment or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which he is scheduled to participate.
- Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is not extraordinary when viewed in light of his position.
- Items of perishable or nonpermanent value including but not limited to meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events.
- Payment for speeches, appearances or publications reported in accordance with public official disclosure law (C.R.S. 24-6-203).

It shall not be considered a breach of conduct for a board member to:

- Use school facilities and equipment to communicate or correspond with constituents, family members or business associates.
- Accept or receive a benefit as an indirect consequence of transacting school business.

ETHICAL PRINCIPLES (C.R.S. 24-18-105)

The following ethical principles for board members “are intended as guides to conduct and do not constitute violations as such of the public trust of office . . .” These principles provide that a board member should not:

- acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially benefited by official action to be taken by the school over which he has substantive contract.
- within six months following the termination of his office, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of office. These matters include rules, other than rules of general application, which he actively helped to formulate and application, claims or contested cases in the consideration of which he was an active participant.
- perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

DISCLOSURE REQUIREMENTS (C.R.S. 24-18-109(3))

A board member, who has a personal or private interest in any matter, proposed or pending before the board shall disclose such interest to the board, shall not vote on the matter and shall refrain from attempting to influence the decisions of other members of the board.

However, a board member may vote if his participation is necessary to obtain a quorum or otherwise enable the board to act and if disclosure has been made to the secretary of state giving the information required by statute. The written disclosure to the secretary of state must include: (1) the amount of his financial interest, (2) the purposes and duration of services rendered, (3) the compensation received, and (4) any other information to describe the interest. C.R.S. 24-18-110. If the board member votes on the matter, the member should make a public disclosure on the record at the time of voting. This disclosure will be an affirmative defense to any civil or criminal sanctions, but will not provide immunity from a lawsuit.

The statute appears to allow a board member to act after making the voluntary disclosure to the Secretary of State even if participation is not needed to obtain a quorum. The most conservative approach regarding the disclosure requirement suggests that a board member should provide written disclosure to the Secretary of State’s office whether he chooses to abstain from voting or decides to participate in the vote.

If a board member has an individual question about conflict of interest, he should consult with his own legal counsel or the school's counsel when determining how to interpret questions arising under this law.

INTEREST IN A CONTRACT (C.R.S. 24-18-201)

The board shall not enter into any contract with any of its members or with a firm or corporation in which a member has a financial interest unless one or more of the following apply:

- The contract is awarded to the lowest responsible bidder based on competitive bidding procedures.
- The merchandise is sold to the highest bidder at a public auction.
- The transaction involves investing or depositing money in a financial institution which is in the business of loaning money or receiving money.
- If, because of geographic restrictions, the school could not otherwise reasonably afford the contract because the additional cost to the school would be greater than ten percent of the contract with the interested member, or if the contract is for services that must be performed within a limited time period and no other contractor can perform the services.
- If the contract is one in which the board member has disclosed a personal interest and is one on which he has not voted or has voted as allowed in state law following disclosure to the secretary of state and to the board.

Except as described above, a board member shall not be a purchaser at any sale or a vendor for any purchase made by the school.¹

¹ The Colorado Association of School Boards is a good source of information regarding this subject, and much of this information is based upon the conflict of interest memorandum at www.casb.org/Word%20files/Conflict_of_interest_memo.doc. Charter school board members should be aware of the differences between school district board members and charter school board members insofar as the applicable statutes and policies apply. Individual questions should be directed to the school's legal counsel.