

Category
Approval

Series 200: Board Governance and Operations

Effective	Administration	Board
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CONFLICT OF INTEREST DISCLOSURE AND AUTHORIZATION
MTC 208

SDCL 3-23-6 states:

“3-23-6. No board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity that receives money from or through the state may have an interest in a contract nor receive a direct benefit from a contract in amount greater than five thousand dollars or multiple contracts in an amount greater than five thousand dollars with the same party within a twelve-month period to which the local service agency, school district, cooperative education service unit, or education service agency is a party except as provided in § 3-23-8.”

I. DEFINITIONS:

- a. “College Official” refers to President, Vice President, Chief Officer, Dean, Director, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars.
- b. “Interest in a contract” is when (1) a College Official, the spouse of a College Official or any other person with whom the College Official lives and commingles assets, is employed by a party to any contract with the College; or (2) the College Official, the spouse of a College Official, or any other person with whom the College Official lives and commingles assets, receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.
- c. “Direct benefit from a contract” is when a College Official, the spouse of a College Official or any other person with whom the College Official lives and commingles assets (1) is a party to or intended beneficiary of the contract between the College and a third party, or (2) has more than a five percent ownership interest in an entity that is a party to the College contract, or (3) acquires property under the contract with the College, or (4) receives compensation, commission, promotion, or other monetary benefit directly attributable to any contract.

II. PROHIBITION:

This policy prohibits College Officials from having an interest in a contract or receiving a direct benefit from one or more contracts between the College and a third party, if the total contract amount is more than \$5,000 within a 12 month period, unless the College Official discloses to the Mitchell School District 17-2 Board his or her interest in the contract, or in the case of a direct benefit from the contract, discloses the direct benefit and receives school board authorization to receive the benefit.

III. EXCEPTIONS:

If any of the following apply, the College Official does not have an interest in the contract and does not derive a direct benefit from a contract, and disclosure (and authorization, if a direct benefit) is not required:

1. when the person's relationship to the contract is based solely on the value associated with the person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the College Official lives or commingles assets;
2. when the person's relationship to the contract is due to participating in a vote or a decision in which the person's only interest arises from an act of general application;
3. when the person's relationship to the contract is due to the person receiving income as an employee or independent contractor of a party with whom the local service agency, school district, cooperative education service unit, or education service agency has a contract, unless the person receives compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;
4. when the contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
5. when the contract is subject to a public bidding process;
6. when the contract is with the official depository as set forth in SDCL 6-1-3;
7. when the person only receives income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred; or
8. when the contract or multiple contracts with the same party within a twelve-month period with whom the College contracts in an amount less than five thousand dollars.

IV. DISCLOSURE

A College Official who has an interest in a contract or who receives a direct benefit from a contract must disclose to the school board the existence of a contract in which the person has an interest or receives a direct benefit.

1. The disclosure must include the following: (i) all parties to the contract, (ii) the person's role in the contract, (iii) the purpose or objective of the contract, (iv) the consideration or benefit conferred or agreed to be conferred upon each party, and (v) the duration of the contract;

2. The disclosure must be in writing;
3. To the extent circumstances allow, disclosure must be given prior to entering into any contract that requires disclosure, and if circumstances do not permit disclosure prior to entering into the contract then within forty-five days after entering into the contract, and if the contract extends into consecutive fiscal years, disclosure shall also be made at the annual reorganization meeting.
4. The school board will have a regular agenda item at the beginning of the school board meeting agenda at which time the school board will address conflict of interest disclosures.
5. Conflict of interest disclosures must be submitted to the Superintendent at least 5 calendar days before the scheduled meeting in order to be included in the posted meeting agenda for the next school board meeting. A copy of the disclosure should also be submitted to the President of MTC for his review. Conflict of interest disclosures submitted to the Superintendent after the proposed agenda has been posted may be deferred until the following school board meeting.

V. BOARD ACTION UPON DISCLOSURE:

1. Interest in the contract:
 - a. The school board is not required to authorize a College Official's interest in a contract;
 - b. The interest disclosure must be included in the official minutes of the school board (the official minutes are not required to be sent to the auditor-general and attorney general).
2. Direct benefit from a contract:
 - a. The school board shall review the disclosure and decide if the terms of the contract are fair and reasonable, and if the contract is contrary to the public interest.
 - i. If the school board determines the contract terms from which a direct benefit is derived are fair and reasonable, and that the contract is not contrary to the public interest, the school board shall vote to authorize the College Official to derive a direct benefit from the contract.
 - ii. After the school board authorizes a College Official to derive a direct benefit from a contract, no further disclosure or authorization related to the contract is required unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure must be made at the annual reorganization meeting but no new authorization is required.
 - b. If the school board determines the contract terms from which a direct benefit is derived are not fair and reasonable, or is contrary to the public interest, the school board shall vote to not authorize the College Official to derive a direct benefit from the contract. If the school board votes to not authorize a direct benefit, the contract is voidable and subject to disgorgement (i.e., the act of giving up on demand or by

legal compulsion something that was obtained by illegal or unethical acts) or the person may resign from the school district.

- c. The disclosure and school board action is public record.
- d. The official minutes of the school board shall include the school board action on each disclosure and request for authorization to derive a direct benefit from a contract. A copy of the official school board minutes shall be sent to the auditor-general and attorney general within thirty (30) days of board approval of the minutes.
- e. No school board member may participate in or vote upon a relating to a matter in which the school board member derives a direct benefit.

VI. MISCELLANEOUS

1. Consequences for knowingly violating the conflict of interest laws set forth in SDCL Ch. 3-23:
 - a. It is a criminal violation for a College Official to knowingly violate the conflict of interest law.
 - b. A College Official who knowingly violates the conflict of interest law will be removed from office or employment and is disqualified from holding any public office, elective or appointive.
 - c. Any benefit which a College Official derived from the person's knowing violation of the conflict of interest law is subject to forfeiture.
 - d. Any contract made in violation of this policy may be voided by the school board.
2. The School District Attorney represents the College and the school board and may answer questions about the law that address conflict of interest. As the school district attorney does not represent College Officials in their individual capacity, College Officials should consult with their own private attorney related to questions they may have regarding how this policy applies to their individual interests and contracts.

**SCHOOL BOARD ACTION ON
CONFLICT OF INTEREST DISCLOSURE OF A DIRECT BENEFIT**

Conflict of interest disclosure of a direct benefit, dated _____, was received from _____. The disclosure was considered by the Mitchell School District 17-2 Board during a meeting held on _____.

- _____ The request for authorization was denied because the terms of the contract were determined to not be fair and reasonable, and/or were contrary to the public interest.
- _____ The direct benefit from the contract was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest.
- _____ The direct benefit was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted, subject to the following conditions:

Signature of the School Board President/Chairperson

Printed Name

Date

Upon School Board approval of the official minutes of the meeting when the School Board acted upon the above conflict of interest disclosure, a copy of the official minutes will be emailed to the Auditor General and mailed to the Attorney General.

THIS IS A PUBLIC DOCUMENT

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CONFLICT OF INTEREST DISCLOSURE

Date: _____

Name of the College Official requesting the waiver: _____

The disclosure is for the purpose of notifying the School Board of

_____ an interest in a contract

_____ a direct benefit from a contract:

Identify the following:

(1) All parties to the contract

(2) The person's role in the contract

(3) The purpose(s)/objective(s) of the contract

(4) The consideration or benefit conferred or agreed to be conferred upon each party

(5) The length of time of the contract

(6) Any other relevant information

If the disclosure relates to the College Official deriving a direct benefit from a contract, explain how the terms of the contract are fair, reasonable, and not contrary to the public interest such that authorization should be granted by the school board.

Signature of College Official: _____

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