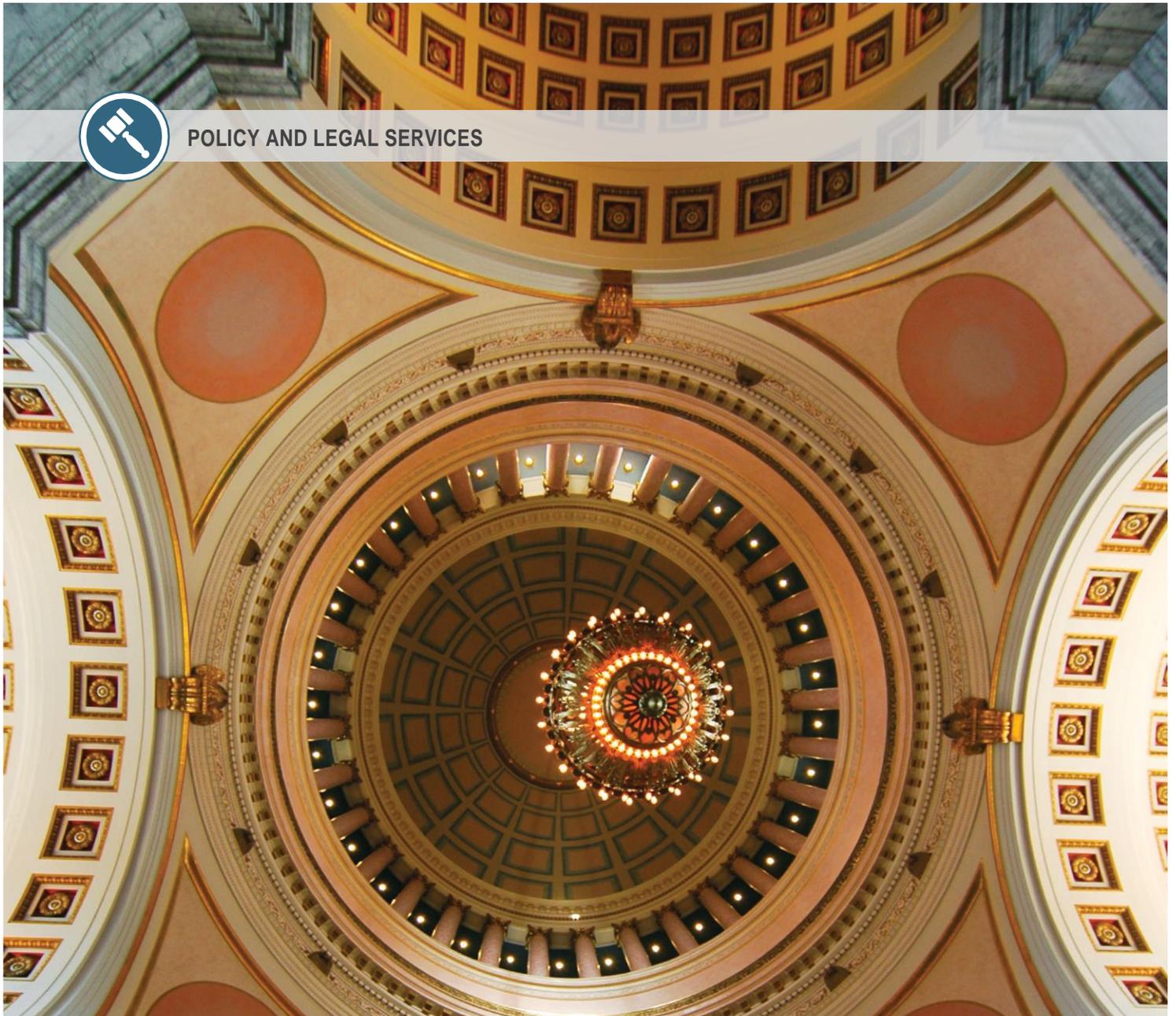




POLICY AND LEGAL SERVICES



# Avoiding Conflicts of Interest

A Guide for School Board Members and Superintendents

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

# Avoiding Conflicts of Interest

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# Introduction

Several years ago, the Legislature adopted significant amendments to the basic conflict of interest statute for local elected officials, primarily in the area of financial thresholds, but also in the area of scope of enforcement. This is an important area of the law for board members and superintendents, so a current and thorough knowledge of the law is important.

This publication reviews basic conflict of interest issues, with particular emphasis on how to structure district policies and board practices to comply with state law and public expectations when one or more board members (or the superintendent, beyond his or her contract) have an ongoing personal financial interest in the district's operations.

Situations continue to arise that require school board members and superintendents to heighten their sensitivity to conflict of interest issues, regardless of the size of their district. State law evolved from simply forbidding most opportunities for financial conflicts of interest, especially those related to employment, in all but the smallest school districts. Now a less restricted approach exists in all districts. For example, the spouse\* of a current district employee may be appointed superintendent or elected to the school board without the employee having to forfeit his or her position, the spouse of a director or superintendent may be a substitute teacher, and a director may have a business contract with the district. Case law has further clarified that the purpose of law is to regulate an officer's interests in contracts not non-pecuniary interests.

These ongoing personal and financial relationships require the superintendent, each board member and, most importantly, the affected board member to remain vigilant in conducting the district's business fairly and with complete transparency. Every district must ensure that its policies and practices are in full compliance with current legal requirements. All districts should make the effort to keep their conflict of interest policies current, since these efforts are always easier before the conflict and community concern arise.

A secondary goal is to raise the awareness of district officers so if there is any indication that a conflict exists, officials will ask themselves the appropriate questions. For example, will their personal interests benefit as a result of their official action? Would a reasonable person conclude that their personal interest impairs their independent and impartial judgment in the exercise of their official duties? If answered in the affirmative, the officer should then take appropriate action to avoid violating the law.

\*RCW 42.23.900 provides that the term "spouse" applies equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as marital relationships and married persons.

# Primary conflict of interest legal principle

Under state law, school board members and superintendents are subject to restrictions because they are municipal officers:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. (RCW 42.23.030. See page 15 for the full text.)

## General exemptions

The statute includes twelve exceptions to the prohibition quoted above. Several of them are not applicable to school districts. Several others are relatively mundane:

- The school board can select a bank or other public depository despite a connection to a district officer;
- A newspaper may be used to publish the district's legal notices if it is chosen by public bid or charges the district the rate set by law or charged to the general public, regardless of the financial interest of a district officer in the publication;
- School directors may be designated the clerk or purchasing agent for the district; and
- Second class school districts (with enrollment under 2,000) may hire district officers or their dependents for unskilled day labor at wages not exceeding \$200 in a calendar month.

## Business exemption

For many years only second class school districts could contract for goods or services with district officers if the value of the contract did not exceed \$750 in a calendar month. Currently, that exemption is available to all school districts and the limit has increased to \$1,500 in a calendar month.

The \$1,500 limit only applies to the municipal officer or the officer's company. If the total contract is worth more than \$1,500 per month, but the officer's portion is under the limit, the contract is still valid under the exception. For instance, an officer could be a subcontractor on a large contract if the value of the subcontract to the officer or the officer's company does not exceed the \$1,500 per month limit.

This exception does not apply to a sale or lease if the district is the one selling or leasing the property or materials. For instance, a school director or superintendent may not lease a facility from the district, even if the monthly lease amount is less than \$1,500.

The district is required to maintain a list of all contracts awarded to an officer of the district under this business exception, and the list must be available for public inspection and copying.

# Employment exemption

The business exemption and the following employment exemptions require the most attention from board members and administrators when it comes to adopting and implementing appropriate policies. There are five exemptions to the general rule that a municipal officer not be beneficially interested in a contract made under his or her authority that are related to employment:

1. Board members and their spouses in second class school districts may work as school bus drivers if they are paid no more than the other bus drivers.
2. In districts with fewer than 200 students, the board may hire the spouse of a director or the superintendent, if the spouse is paid no more than other employees in similar positions.
3. In all sizes of school districts the spouse of a director or the superintendent may be hired as a substitute teacher if the district has a policy stating that there is a shortage of substitutes and the pay is the same as for other substitutes.
4. Regardless of the size of the district, if a person is already employed by the district and his or her spouse becomes a superintendent or board member, the employee can continue to hold his or her job.
5. In districts with less than 200 students, a board member may be hired as a substitute teacher or a substitute educational aide. Consistent with the district's written policy, the terms of the board members' pay plan and contract must be commensurate with other substitutes in the district.

## Disclosure

### REQUIRED

If a municipal officer has a permissible interest in a contract under one of the twelve exceptions, the officer may not vote on the authorization, approval or ratification of the contract. The officer's interest in the contract must be disclosed to the school board and noted in the minutes of the board before the contract is made.

### PENALTIES

The penalty for violating the conflict of interest law is a \$500 fine and other civil and criminal penalties that may be provided by law. The district cannot be required to pay or perform its part of a contract made when an officer has a conflict of interest; the contract is void.

A contract violation of the conflict of interest statute is not an automatic forfeiture of office. The law states that any violation of the act "may" be grounds for forfeiture. This provision is enforced by the courts and it is not clear what standard they will use to decide if a violation is serious enough to merit forfeiture of office.

# Remote interest

A municipal officer does not have conflict of interest if only a “remote interest” exists in a contract. The conflict of interest statute defines “remote interests” that district officers may have as follows:

- Nonsalaried officers of nonprofit corporations with a business relationship with the district;
- Employees or agents of a company doing business with the district if the employee/district officer’s wages or salary are fixed;
- A landlord or tenant of someone employed by or doing business with the district; or
- A stockholder with less than one percent of the shares of a company doing business with the district.

If a board member or superintendent has a remote interest, he or she must disclose the remote interest for recording in the minutes prior to the formation of the contract, and board members may not vote on any business item related to their remote interest. It is recommended that the superintendent not represent the district in business matters where he or she has a remote interest with the other party. Additionally, a board member or superintendent may be in violation of the statute and subject to the penalties outlined above, if they have a remote interest and influences or attempts to influence any other officer of the district into approving the contract.

## Policy considerations

### POLICY REQUIREMENT

State law requires that second class school districts have a policy ensuring fairness and the appearance of fairness in the kinds of employment contracts described in the previous section. (See RCW 28A.330.240, page 20.) It is highly recommended that first class districts have similar policies. When RCW 28A.330.240 was adopted only second class districts could issue the various kinds of employment contracts described above.

### POLICY ISSUES

It is important for board members and superintendents to stay current with statutory changes in the conflict of interest law and to keep policies in this area up to date. It can be extremely damaging to public confidence if the board or superintendent is perceived as personally benefiting from office, especially if the action involves a violation of law. It will not look unwitting to those who examine it with hindsight.

Perhaps the most important element of a sufficient conflict of interest policy is the provision that establishes how the board will deal with employment contracts between the district and the spouse of a district officer, a board member or a financially dependent family member. The WSSDA Policy Service recommends the following paragraph:

Whenever a director, his or her spouse or dependent is employed by the district, the director shall refrain from participating in or attempting to influence any board action affecting the employment status of the director, spouse or dependent. Actions affecting employment status include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, considering or imposing discipline and termination.

Remember that the law itself prohibits municipal officers with these kinds of interests from authorizing, approving or ratifying the contract that would benefit them.

While more districts than ever are facing the situation of having board members with spouses employed by the district and the fairness and appearance of fairness questions that situation raises, it is mathematically possible that all or a majority of board could face that sort of conflict. One district has already faced the problem with four of five board members with spouses in one collective bargaining unit. Voting on a collective bargaining agreement when a board member has a spouse in the union would normally be a violation of the policy recommended above, which created a significant dilemma for the board in question. It is best that this contingency be addressed in policy before it actually arises, when possible, so that any board in this difficult position not increase the perception that it is self-serving.

If at least one or two board members do not have a permissible conflict with a specific contract, then those one or two vote to either approve or disapprove the contract. This is permissible under parliamentary procedure. A quorum of the board must be present for a valid meeting to continue, but if a majority of the board refuses or cannot act, in most cases a majority of those voting can pass a motion forming a contract. In the case described above, the collective bargaining agreement would have been approved or disapproved on a one to zero vote, with four abstaining due to a permissible conflict of interest. It is not clear under current law what will happen if all five (seven in Seattle) board members are unable to vote on a contract due to a permissible conflict of interest.

# Other statutory ethical obligations

The Legislature has also created some statutory ethical obligations for municipal officers, including school directors and superintendents. These provisions are important and good practice:

- No school board member or superintendent can use his or her office to secure special privileges for him or herself, or for others;
- No school board member or superintendent may accept any compensation, gift, reward or gratuity for a matter connected with or related to the officer's position, except from the district;
- No school board member or superintendent may accept employment or engage in business or professional activities that might lead to the disclosure of confidential information acquired through his or her position with the district; and
- No school board member or superintendent may disclose confidential information gained through his or her office, or use such information for personal gain or benefit.

The Legislature has made violations of these requirements subject to the same penalties that contractual conflicts of interest are subject to, a \$500 fine and possible forfeiture of office, plus any other civil or criminal penalties otherwise imposed by law.

For decades school board members have been advised that they must keep confidential information, including that learned in executive sessions, private—from everyone. The reasons were primarily one of personal ethics and the fiduciary responsibility of the district. Disclosure of information gained in executive sessions could be extremely damaging to the district's legal position and the confidence of the community.

When confronted with a board member who did not keep confidential information private, there was, however, no legal remedy. Legislative amendments seem to have changed that. Now board members have a personal and financial reason to maintain confidentiality. Violation of the requirement that municipal officers not disclose confidential information can result in a \$500 fine and possible forfeiture of office.

## Conclusion

Due to significant changes in state law, it is now more important than ever that board members and superintendents in all sizes of districts know and understand the most recent provisions of state law regarding conflicts of interest and the code of ethics for municipal officers. By giving boards more flexibility to hire the spouses of district officers and do business with board members, the Legislature has increased the responsibility of school boards to manage all of the district's financial relationships fairly and with the appearance of fairness. Board members with "legal conflicts" need to be the most sensitive, but all school district officers should be attune to the legal, ethical and community relations nuances these issues raise.

# Frequently asked questions\*

## **Q. Can my spouse be a substitute teacher in the district where I am a board member?**

- A. Regardless of school district size, the spouse of a director may be hired as a substitute teacher if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees, consistent with board policy, and there is a shortage of substitutes. In addition, a board member may not vote in the authorization, approval or ratification of a contract in which he or she is beneficially interested. The interest of the board member must be disclosed to the board of directors and noted in the official minutes of the board before the formation of the contract. (RCW 42.23.030(10))

## **Q. Can my son/daughter work for the school district where I am a board member?**

- A. A school director's son/daughter may work for the school district where he or she sits on the board if the board member does not directly or indirectly benefit from the son/daughter's employee contract. For example, a board member could receive a pecuniary benefit from his/her child working in the district if that child lived in the same household as the board member. (RCW 42.23.030)

## **Q. Can a board member's son-in-law/daughter-in-law apply for and be offered a position in the district?**

- A. Similar to the previous question, a school director's son-in-law or daughter-in-law may work for the board member's school district if the board member does not directly or indirectly benefit from the contract. For example, a board member could receive a pecuniary benefit from a son-in-law working in the district if he lived in the same household as the board member. In addition, a school director may not vote in the authorization, approval or ratification of a contract in which he or she is beneficially interested. The interest of the board member must be disclosed to the board of directors and noted in the official minutes of the board before the formation of the contract. (RCW 42.23.030)

A board member is also prohibited from using his or her position to influence the hiring of his or her son-in-law/daughter-in-law. (RCW 42.23.070)

## **Q. My spouse currently works for the school district. Can I run for a position on the board?**

- A. Yes, regardless of the size of the district, if a person is already under contract as a certificated or classified employee with the school district before the date the board member takes office and the terms of the employee contract are commensurate with the pay plan or collective bargaining agreement operating in the district. In addition, a board member may not vote in the authorization, approval or ratification of a contract in which he or she is beneficially interested. The interest of the board member must be disclosed to the board of directors and noted in the official minutes of the board before the formation of the contract. (RCW 42.23.030(11))

## **Q. Can my spouse be hired as a full time permanent teacher while I am serving on the board?**

- A. If the board member serves in a second class district with less than 200 FTE students, the board member's spouse may be hired as an employee after the board member assumes office. In districts larger than 200 FTE students this exception does not apply. (RCW 42.23.030(11)) It is worth emphasizing that, in those instances when the spouse of the board member is employed by the district or the board member is fulfilling a district contract, it is imperative that the board member not vote on the authorization, approval, or ratification of the contract and that the interest is disclosed to the board and noted in the official minutes.

## **Q. I am a board member. Can I serve as a substitute teacher?**

- A. Yes, if you are in a district of 200 or less FTE students, the board declares a shortage of substitutes and the contract issued is commensurate with other substitute contracts. (RCW 42.23.030(9))

*Questions continued on next page*

\*In situations where a conflict of interest exemption applies, the director must disclose any relationship, abstain from the vote and have that information reflected in the official minutes. Additionally, the district must maintain a list of the contracts awarded to directors and make the list available for public inspection and copying. 7

**Q. Can a board member who owns a business contract with the district where he or she is serving?**

A. Yes, all size school districts may contract for goods and services with district board members, if the value of the member's contract does not exceed \$1,500 in a calendar month. The district is required to maintain a list of all contracts awarded to board members in the district under the business exception of the conflict of interest statute. The list must be available for public inspection and copying. In addition, a board member may not vote in the authorization, approval or ratification of a contract in which he or she is beneficially interested. The interest of the board member must be disclosed to the board of directors and noted in the official minutes of the board before the formation of the contract. (RCW 42.23.030(6)(a)(d))

**Q. Is it okay for a board member to be president of a union at the same time he or she is on the board?**

A. Legally, a board member who works in another district may serve as president of the union where he/she is a member. From a practical standpoint, holding both positions may present challenges for the individual board member and the board.

**Q. Can a school board member volunteer in the classroom?**

A. School board members may volunteer in the classroom as long as they do not use their position to secure special privileges or exemptions for themselves or others. Although volunteering is legally permissible, it is advisable for board members to proceed cautiously because their status as a school director may make it uncomfortable for others in the school or classroom setting. (RCW 42.23.070)

**Q. Can a school bus driver run for the board?**

A. Maybe. There is a specific exemption allowing a school bus driver in a second-class district to serve as a school director. In a first class district, if the board member earns less than \$1,500 in a calendar month, the law allows that individual to contract with the district. (RCW 42.23.030(8))

**Q. Can the district employ a board member as a coach?**

A. A board member may be employed by the district if the value of the contract does not exceed \$1,500 in any calendar month. This value includes any additional payments that may be received from district supporters such as booster clubs. Although legally permissible, the district and board member must carefully consider the practical ramifications of such a relationship and the challenging perceptions that must be confronted. (RCW 42.23.030(6)(a))

**Q. I am both a board member and the owner of a construction company. Can my company bid on the district's upcoming construction project?**

A. No, a board member's construction company is not permitted to bid on a construction project because the approval of such a contract would substantially benefit her and her company. The same rule applies if the board member is a subcontractor. In both instances, the board member would need to resign or forfeit the opportunity for her company to bid on the contract. (RCW 42.23.030)

**Q. I am a board member. May I obtain a supplemental contract with the district?**

A. Yes, but the contract may not exceed \$1,500 in any calendar month. Additional funding received from affiliated district organizations, such as a PTA, PTO, or a booster club, must be included in determining the \$1,500 limit. (RCW 42.23.030(6)(a))

# Chapter 42.23 Revised

## Code of Washington (Code of Ethics for Municipal Officers – Contract Interests)

RCW 42.23.010

### **Declaration of purpose.**

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It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in chapter 268, Laws of 1961, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve.

RCW 42.23.020

### **Definitions.**

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For the purpose of chapter 268, Laws of 1961:

- (1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;
- (2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;
- (3) "Contract" shall include any contract, sale, lease or purchase;
- (4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

RCW 42.23.030

### **Interest in contracts prohibited – Exceptions.**

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No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

- (1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

- (2) The designation of public depositaries for municipal funds;
- (3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;
- (4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;
- (5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;
- (6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.
  - (b) However, in the case of a particular officer of a second-class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.
  - (c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.
    - (ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.
- (d) The exceptions provided in this subsection (6) do not apply to:
  - (i) A sale or lease by the municipality as the seller or lessor;
  - (ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or
  - (iii) Contracts for legal services, except for reimbursement of expenditures.

- (e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;
- (7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;
- (8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;
- (9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;
- (10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;
- (11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;
- (12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

42.23.040

### **Remote interests.**

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A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section “remote interest” means:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party;
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer’s interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

RCW 42.23.050

### **Prohibited contracts void – Penalties for violation of chapter.**

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Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.

RCW 42.23.060

### **Local charter controls chapter.**

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If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

RCW 42.23.070

**Prohibited acts.**

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- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- (4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

RCW 42.23.900

**Construction – Chapter applicable to state registered domestic partnerships – 2009 c 521.**

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For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

# Chapter 28A.330 Revised Code of Washington (Provisions applicable to school district)

RCW 28A.330.240

## **Employment contracts**

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The board of directors of each second class school district shall adopt a written policy governing procedures for the letting of any employment contract authorized under RCW 42.23.030. This policy shall include provisions to ensure fairness and the appearance of fairness in all matters pertaining to employment contracts so authorized.

# WSSDA Model Policies

## Model Policy 1610

### Conflicts of Interest: 1st Class Districts

Section: 1000 – Board of Directors

No school director or the superintendent may benefit, directly or indirectly, in any contract made by, through or under the supervision of the director or superintendent, except as provided below:

- A. Any contract, purchase of materials, or activity paid for from school funds if the total volume received by the district officer or his or her business does not exceed \$1,500.00 in any calendar month. The district will maintain a list of all contracts covered under this paragraph and the list will be available for public inspection and copying;
- B. An individual director may be designated as clerk and/or purchasing agent at the prevailing hourly wage;
- C. The spouse of a director or the superintendent may be employed as a substitute teacher on the same terms and at the same compensation as other substitute teachers in the district. The superintendent must find that the number of qualified substitute teachers in the district is insufficient to meet the anticipated needs for short-term and one-day substitute teachers, and the superintendent must ensure that substitute teachers are assigned to available positions in a fair and impartial manner;
- D. Prior to approval of the employment of a director or spouse of a school director or superintendent, the board of directors will be advised of the number of other individuals who are qualified for and interested in the position(s) to be filled. The district will not discriminate in any way against any applicant for a certified position or any certificated employee on the basis of a family relationship with a school director or the superintendent. All employment decisions will be made on the basis of choosing the applicant which furthers the best interest of the school district;
- E. If a person is employed by the district under contract as a classified or certificated employee before his or her spouse becomes a director or superintendent, the contract can be renewed for further employment, provided that the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for that position; or
- F. The director or officer has only a remote interest in a contract and the interest is disclosed prior to board action and recorded in the official minutes.

A director may not vote on the authorization, approval or ratification of a contract in which he or she is beneficially interested and to which one of the exemptions described above applies.

Whenever a director, or his or her spouse or dependent is employed by the district, the director will refrain from participating in or attempting to influence any board action affecting the employment status of the director, spouse or dependent. Actions affecting employment status include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, considering or imposing discipline and termination.

The superintendent will maintain a log of any contract subject to this policy and annually or when a new director assumes office, will inform the board of the existence of all such contracts.

**CROSS REFERENCES:**

6230

Relations with Vendors

**LEGAL REFERENCES:**

RCW 28A.405.250

Certificated employees, applicants for certificated position, not to be discriminated against —  
Right to inspect personnel file

RCW 28A.635.050

Certain corrupt practices of school officials — Penalty

RCW 42.23.030

Interest in contracts prohibited — Exception

RCW 42.23.040

Remote Interests

Adoption Date:

School District Name:

Classification: Priority

Revised Dates: 08.99; 02.02; 12.11

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## **Model Policy 1610**

### **Conflicts of Interest: 2nd Class Districts**

Section: 1000 – Board of Directors

Individual directors and the superintendent will have no pecuniary interest, directly or indirectly, in any contract, the purchase of any goods or services, or any other activity paid from school district funds, except as permitted in the following:

- A. A director, or his or her spouse or dependents, or the spouse or dependents of the superintendent may be paid no more than \$200 in any calendar month for unskilled day labor;
- B. A director may be employed as a bus driver at the same compensation and on the same terms as other district bus drivers;
- C. A director may enter into non-salaried financial transactions not to exceed \$1,500 in any calendar month. The district will maintain a list of all contracts covered under this paragraph and the list will be available for public inspection and copying;
- D. A school director may be designated as district clerk and/or purchasing agent;
- E. The spouse of a director or the superintendent may be employed as a substitute teacher on the same terms and at the same compensation as other substitute teachers in the district, if the following conditions are met: the superintendent finds that the number of qualified substitute teachers in the school district is insufficient to meet anticipated needs for short-term and one-day substitute teachers; and the superintendent ensures that assignments of substitute teachers to available positions is done in a fair and impartial manner;
- F. If a person is employed by the district under contract as a classified or certificated employee before his or her spouse becomes a director or superintendent, the contract can be renewed for further employment, provided that the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for that position;
- G. In school districts with fewer than 200 FTE students, the board may employ the spouse of a director or the superintendent as a certificated or classified staff member; or
- H. A director may be employed as a substitute teacher or a substitute educational aide in school districts with 200 or less FTE students, provided that the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for that position. The board must find that the number of qualified substitute teachers and educational aides in the district is insufficient to meet anticipated needs.

A director may not vote on the authorization, approval or ratification of a contract in which he or she is beneficially interested and to which one of the exemptions described above applies.

Prior to approval of the employment of the spouse of a school director or the superintendent, the board of directors will be advised of the number of other individuals who are qualified for and interested in the position(s) to be filled. The district will not discriminate in any way against any applicant for a certificated position or any certificated employee on the basis of a family relationship with a school director or the superintendent. All employment decisions will be made on the basis of choosing the applicant which furthers the best interests of the school district.

Whenever a director, or his or her spouse or dependent is employed by the district, the director will refrain from participating in or attempting to influence any board action affecting the employment status of the director, spouse or dependent. Actions affecting employment status include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, considering or imposing discipline and termination.

The superintendent will maintain a log of any contract subject to this policy and annually, or when a new director assumes office, will inform the board of the existence of all such contracts.

**CROSS REFERENCES:**

6230

Relations with Vendors

**LEGAL REFERENCES:**

RCW 28A.330.240

Employment contracts

RCW 28A.405.250

Certificated employees, applicants for certificated position, not to be discriminated against —  
Right to inspect personnel file

RCW 28A.635.050

Certain corrupt practices of school officials Penalty

RCW 42.23.030

Interest in Contracts Prohibited

RCW 42.23.040

Remote interests

Adoption Date:

School District:

Classification: Priority

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The Washington State School Directors' Association provides leadership and advocacy, and empowers its members with knowledge and skills to govern with excellence.

221 College Street NE  
Olympia, Washington 98516  
360.493.9231 • 800.562.8927  
[mail@wssda.org](mailto:mail@wssda.org)  
[wssda.org](http://wssda.org)