



AVOIDING CONFLICTS OF INTEREST

**A Guide for School
Board Members and
Superintendents**

AVOIDING CONFLICTS OF INTEREST

A Guide for School Board Members and Superintendents

Table of Contents

Introduction	3
Primary Conflict of Interest Legal Principle	5
General Exemptions	5
Business Exemption	5
Employment Exemption	6
Disclosure	6
Remote Interest	6
Penalties	7
Policy Considerations	7
Other Statutory Ethical Obligations	8
Protections Against Corrupt Practices	8
Conclusion	8
Frequently Asked Questions	9

Prepared by the Washington State School Directors' Association, Published November 2022

Introduction

Several years ago, the Legislature adopted the Code of Ethics for Municipal Officers (the “Code”), chapter 42.23 RCW. The purpose of the Code is to make uniform laws regulating conflicts of interest. This is an important area of the law for board members and superintendents, so a current and thorough knowledge of the law is important. (The full text of the Code can be found at: <https://app.leg.wa.gov/rcw/>.)

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 school board members (or the superintendent, beyond their contract) have an ongoing personal financial interest in the district’s operations.

Situations 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 their position. Now, 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 financial interests in contracts, not non-financial 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 school board members and superintendents so that if there is any indication that a conflict exists, they will ask themselves the appropriate questions. For example, will they personally benefit because 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 school director 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 setting out the Code of Ethics, school board members and superintendents are subject to restrictions because they are municipal officers. The Code prohibits municipal officers, such as school board members and superintendents from making contracts that give the officer a beneficial interest in the contract:

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)

General Exemptions

The same Code 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 between a district officer and the bank;
- The school district can publish its legal notices in a newspaper regardless of a connection between a district officer and the newspaper, if it is chosen by public bid or charges the school district the rate charged to the general public or set by law;
- 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 \$1,000 in a calendar month.

However, the Code contains exemptions for business and employment that require attention from school directors and administrators when it comes to adopting and implementing appropriate policies. Those exemptions are discussed in detail in the next two sections.

Business Exemption

The business exemption allows school districts to contract for goods and services with school district officers if the value of the contract does not exceed \$1,500 in a calendar month. The \$1,500 limit only applies to the school district officer or the officer's company. If the total contract is worth more than \$1,500 per month, but the school district officer's portion is under the limit, the contract is still valid under the exception. For instance, a school director could be a subcontractor on a large contract if the value of the subcontract to the school director or their company does not exceed the \$1,500 per month limit.

The business exemption 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 business exemption also does not apply to contracts for legal services. In other words, school directors and superintendents are prohibited from having beneficial interests in contracts for legal services related to their office if they were involved in creating the contract or they receive compensation from another person with a beneficial interest in such a contract. However, school directors and superintendents are not prohibited from receiving reimbursement for expenditures related to legal services contracts.

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

Employment Exemption

There are five exemptions to the general prohibition against school district officers being beneficially interested in a contract made under their authority related to employment:

- Board members and their spouses in second-class school districts may work as school bus drivers if the terms of such contract are commensurate with the school district's operating pay plan or collective bargaining agreement.
- In second class school districts with fewer than 300 students, a board member may be hired as a substitute teacher or substitute educational aide if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the school district, and the school board has found, consistent with board policy, that the school district has a shortage of substitute teachers.
- In all sizes of school districts, the spouse of a school director or the superintendent 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, and the board of directors has found, consistent with board policy, that the school district has a shortage of substitute teachers.
- Regardless of the school district's size, if it already employs a person and their spouse becomes a superintendent or board member, the employee can continue to hold their job so long as the terms of the contract are commensurate with the school district's operating pay plan or collective bargaining agreement.
- As an exception to the previous exemption, in second-class districts with less than 200 students at the start of the school year, the spouse of a board member or the superintendent is not required to be under contract as a certificated or classified employee before the date on which the board member or superintendent assumes office.

Disclosure

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

Remote Interest

A school district officer does not have conflict of interest if only a "remote interest" exists in a contract. A remote interest exists if the school district officer has one of the following relationships with a party that the school district contracts with:

- A no salaried officer of a nonprofit corporation;
- An employee or agent of a company doing business with the school district if their compensation consists entirely of fixed wages or salary;
- A landlord or tenant of someone doing business with the district; or
- A stockholder with less than one percent of the shares of a corporation or cooperative doing business with the school district.

If a school board member or superintendent has a remote interest, they must disclose the remote interest for recording in the board's meeting minutes prior to the contract's formation, and board members must not vote on any business item related to their remote interest. It is recommended that the superintendent not represent the school district in business matters where they have a remote interest with the other party.

The remote interest statute does not apply to a scenario wherein a school board member or superintendent with a remote interest nevertheless influences or attempts to influence another school district officer into approving a contract between the school district and a party with which the board member or superintendent has a remote interest. In such a scenario, the analysis of conflict of interest is based on the general prohibition and exemptions outlined above.

Penalties

Violation of the Code carries significant penalties. First, any contract made in violation of the Code is void. Meaning that neither the district nor the other contracting party are required to perform the duties listed in the contract, including making payments.

Second, any school board member or superintendent violating the Code is liable to the school district for a penalty in the amount of \$500, in addition to such other civil or criminal liability or penalty as may otherwise be imposed on the officer by law.

Third, a school board member's violation of the Code may be grounds for forfeiture of office. This provision is regulated by the courts. However, since case law interpreting this provision is scarce, it is unclear what standard the courts would use to determine whether a violation is serious enough to warrant forfeiture of office.

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 employment exemption section above. (RCW 28A.330.240) Despite not being subject to this statutory requirement, 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 school board members and superintendents to stay current with statutory changes to the Code 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 school district and the spouse or a financially dependent family member of a school board member or the superintendent. WSSDA provides two model policies addressing conflicts of interest: one for districts with 2,000 or more students and one for districts with fewer than 2,000 students. The provisions establishing how the board will deal with conflict of interest employment contracts differs between the two model policies. For districts with 2,000 or more students, the model policy uses this paragraph:

Whenever a director or his or her spouse 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 or his or her spouse. Actions affecting employment status include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, and considering or imposing discipline and termination. (See Model Policy 1610)

For districts with fewer than 2,000 students, the model policy uses this paragraph:

Whenever a director, or his or her spouse, or his or her 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, his or her spouse, or his or her dependent. Actions affecting employment status include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, and considering or imposing discipline and termination. (See Model Policy 1611)

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

Other Statutory Ethical Obligations

Beyond the proscriptions on contractual relationships discussed above, the Legislature also prohibited municipal officers, including school directors and superintendents from taking other actions. These prohibited acts include:

- No school board member or superintendent can use their office to secure special privileges for themselves or others;
- No school board member or superintendent may, directly or indirectly, give or agree to receive 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 their position with the district; and
- No school board member or superintendent may disclose confidential information gained through their office or use such information for their personal gain or benefit.

Because the Legislature included these prohibitions in the Code, they are 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.

Prohibition Against Corrupt Practices

Related to the actions prohibited by the Code is the prohibition of certain practices of school officials in RCW 28A.635.050. Under that section, it is unlawful for a school board member, superintendent, or principal to request or receive, directly or indirectly, anything of value for or on account of their influence with respect to any act or proceeding of the state board of education, the office of the superintendent of public instruction, any office of educational service district superintendent, or any school district when such act or proceeding shall benefit those offering or giving the thing of value. Any willful violation of RCW 28A.635.050 is a misdemeanor.

Conclusion

It is important that school board members and superintendents in all sizes of districts know and understand the provisions of state law regarding conflicts of interest and the code of ethics for municipal officers. In exchange for giving school boards flexibility to hire the spouses of district officers and do business with board members, the Legislature increased the responsibility of school boards to manage all of the district's financial relationships fairly and with the appearance of fairness. School board members with "legal conflicts" need to be the most sensitive, but all school district officers should be attuned 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 school 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, and the board has found, consistent with board policy, that there is a shortage of substitute teachers in the district. In addition, a board member may not vote in the authorization, approval, or ratification of a contract in which the board member 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)

Q. Can my child work for the school district where I am a board member?

A. A school director's child may work for the school district where they sit on the board if the board member does not directly or indirectly benefit financially from the child's employee contract. For example, a board member could receive a pecuniary benefit from their 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 financially 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 they are 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 their position to influence the hiring of their son-in-law or 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 they are 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)

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 full-time students at the start of the school year, the board member's spouse may be hired as an employee after the board member assumes office. In that instance, the board member would still be subject to the same disclosure and recusal requirements outlined above. In school districts larger than 200 full-time students, this exception does not apply. (RCW 42.23.030)

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

A. Yes, if you are in a school district of 300 or less full-time students, the board declares a substitute shortage consistent with written board policy, and the contract issued is commensurate with the school district's operating pay plan or collective bargaining agreement. (RCW 42.23.030) It is worth emphasizing that, in those instances when the school district employs the spouse of a board member or when a 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. Can the school district contract with a business owned by one of its school board members?

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 school district is required to maintain a list of all contracts it awards to board members under the business exception of the Code. The list must be available for public inspection and copying. In addition, a school board member may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested. The school board member's interest must be disclosed and included in the official board meeting minutes before the contract's formation. (RCW 42.23.030)

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 they are 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 according to the same process as other members of the community, however, school board members must 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)

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

A. The school district may employ a board member 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)

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. Generally, no. In most cases, a board member's construction company would not be permitted to bid on a construction project because the approval of such a contract would substantially benefit their company. In this instance, the board member would need to resign or forfeit the opportunity for their company to bid on the contract. The caveat to the general answer is where a board member's construction company is hired as a subcontractor and the company is paid \$1,500 a month or less under 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)



The Washington State School Directors' Association provides its members research-based leadership development resources, policy and legal guidance, and legislative advocacy. WSSDA builds leaders by empowering its members with tools, knowledge, and skills to govern with excellence and advocate for public education.

PO Box 5248,
Lacey, Washington 98509

360-890-5781
mail@wssda.org
wssda.org

