



**KANSAS ASSOCIATION
OF SCHOOL BOARDS**

Serving Educational Leaders, Inspiring Student Success

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Testimony before the
Special Committee on Ethics, Elections and Local Government
on
School Board Conflict of Interest Issues

by

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Mr. Chairman, Members of the Committee:

Thank you for the opportunity to share information about current school board conflict of interest laws on behalf of the Kansas Association of School Boards.

KASB is a membership organization for the boards of education of local school districts and other education agencies. In addition to representing local boards in the political process and providing information on educational and government issues to our members, KASB offers a number of other services from research to insurance. We are funded by membership dues that entitle members to various benefits at no additional charge, as well as fees charged for specific services.

Among our most important and widely-used services are legal advice, training and representation, and leadership services providing training, goal-setting, planning, and other assistance to local boards and the district administrative team. Our legal staff answers literally thousands of phone calls and emails annually, and works closely with our leadership staff to make sure board members understand their duties and responsibilities under state and federal law. This includes the area of conflict of interest.

I have attached a copy of our staff's description of conflict of interest issues. This information is shared with our members in a variety of ways.

Most new board members (generally around 80 percent) attend one of our New Board Member Workshops held at various locations around the state following local elections. We also provide similar workshops or special trainings for individual boards in their own district. This information is also included in our annual training sessions for school board presidents who are elected annually. The same information is provided when board members or administrators call with questions about this topic. We

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include the information in publications such as the School Law Handbook and periodically include articles on this subject in the monthly Clerks' News for board clerks. Finally, our legal staff is a resource for local attorneys working with school boards.

Under current Kansas law, a legally defined conflict of interest is when a board member and/or spouse has a "substantial interest" in a business contracting with the board of education on which the member serves. In other words, a board member may not vote on a contract that would provide a financial benefit to a business or other organization in which the member has a significant or substantial interest.

It is up to the individual member to declare this conflict and refrain from voting; other board members cannot require the member to declare a conflict. However, if convicted of violating the conflict of interest statute, the member can be removed from office. In addition, of course, in many districts there is considerable knowledge of board member activities by the public and the individual can be voted out of office.

There are several exceptions to the conflict of interest requirement.

First, a member may participate in voting for contracts under the state bid law, where the board is accepting the lowest responsible bid.

Second, a member may participate in voting for contracts where the price or rate is set by law.

Third, it has been held by the Kansas Governmental Ethics Commission that a board member whose spouse is employed as a teacher in the district may participate in the teachers negotiations process. The commission's ruling was based on the definition of a business in the conflict of interest statute, but it should also be noted that a teacher master agreement generally provides a schedule of compensation for all teachers, and does not fix salaries of individual teachers.

Note also that board of education members may not receive any compensation from the district where they serve as a board member, but may be employed by ANOTHER district.

Keep in mind these are the cases where a board member is legally prohibited from voting. Many board members choose to remove themselves from what they believe may be even an appearance of a conflict. In any case, KASB advises board members not only to abstain but to leave the meeting. If a board member is present, an abstention is counted as a "no" vote under state law.

The KASB legal staff reports very few concerns or complaints about the current law.

Thank you for your consideration. I will be happy to answer any questions.

Conflict of Interest

Q. If I have a conflict of interest and do not wish to vote, what should I do?

A. Leave the meeting until voting on the issue has concluded. Because K.S.A. 72-8205 requires an abstaining vote to count as a “no” vote, this is the recommended procedure a board member should follow when there is a conflict of interest.

Q. When does a board member have a conflict of interest?

A. Legally a board member has a conflict of interest only if the board member has a substantial interest in a contract. There may be other issues in which there is an ethical or moral conflict, but there are no legal restrictions on a board member's actions on these issues.

Q. What is a substantial interest in a contract?

A. K.S.A. 75-4301a defines “substantial interest.” An individual is deemed to have a substantial interest in the following situations:

- (1) If an individual or his or her spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5 percent of any business, whichever is less;
- (2) If an individual or his or her spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses;
- (3) If an individual or his or her spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses;
- (4) If an individual or his or her spouse holds the position of officer, director, associate, partner or proprietor of any business, other than certain 501(c) tax exempt organizations, irrespective of the amount of compensation received by the individual or individual's spouse; and
- (5) If an individual or his or her spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business from which fees or commissions the individual or his or her spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

Q. How is a business defined?

A. “Business” means any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income.

Can the board require that a board member declare a conflict of interest?

A. No. The duty is on the board member to declare the conflict.

Q. Can I, as a board member, do anything if I believe a board member has a conflict and refuses to do anything?

A. You may talk with the board member about your concerns.

Q. Can we get an opinion from anyone on whether certain actions would create a conflict?

A. You may seek an opinion from the Kansas Governmental Ethics Commission. A request for an advisory opinion should be sent to the Secretary of State who in turn notifies the Commission. K.S.A. 75-4303a.

Q. Does this mean a board member can never contract with the school district?

A. No. It simply means the board member cannot participate as a board member in the making of the contract. A local governmental officer or employee does not make or participate in the making of a contract if the officer or employee abstains from any action in regard to the contract. Further, the prohibition does not apply to:

- (1) Contracts let after competitive bidding has been advertised for by published notice; and
- (2) Contracts for property or services for which the price or rate is fixed by law. K.S.A. 75-4304.

Q. What happens if a board member violates the conflict of interest law?

A. If convicted, the board member would forfeit his or her board office. K.S.A. 75-4304(e).

Q. Can a board member participate in negotiations if his or her spouse is a teacher in the same school district?

A. Yes. This question was posed to the Kansas Governmental Ethics Commission in Opinion No. 1991-17. The Commission noted that the law prohibits a school board member from participating in the making of a contract with any person or business by which the board member is employed or in whose business the board member has a substantial interest. Because a governmental unit is not included in the definition of "business" under the conflict of interest law that applies to local units of government, the Commission concluded a board member is not precluded from serving on the board's negotiating team in this circumstance.