

BOARD MEMBERS AND DISTRICT EMPLOYMENT

This memorandum addresses whether it is legally permissible for an employee of the school district to serve on the district's board of education.

While service on the board by a district employee may present a conflict of interest regarding certain matters, there is nothing in state law that prohibits a district employee from serving on the district's board of education. The conflict of interest laws for school board members are essentially disclosure requirements.

State law requires a board member who has a "personal and private interest in any matter proposed or pending before the board" to disclose such interest to the board, abstain from voting and refrain from attempting to influence the decision of other board members on the matter. C.R.S. § 24-18-109(3). The statute does not define "personal or private interest."

We recommend to boards that they adopt a definition of conflict of interest in their own policies that is more precise than the language in state law. At common law, a conflict of interest is a personal, pecuniary interest that is immediate, definite and demonstrable. In our judgment, it is advisable to limit conflict declaration to situations where a board member has a direct, personal and pecuniary interest in the question before the board.

The director *must* disclose a potential conflict of interest at the time the board considers any matter related to that interest. C.R.S. § 24-18-109(3)(a). State law also provides that if a school board director has a conflict of interest, the director *may* voluntarily disclose the nature of any such private interest that might impinge on the director's fiduciary duty and the public trust to the Secretary of State. C.R.S. § 24-18-110. We suggest that the board member send a basic disclosure letter to be kept on file in the Secretary of State's office that states for the record that the person is a member of the board and an employee of the district. The Secretary of State's address is 1700 Broadway, Suite 270, Denver, Colorado 80202.

State law allows board members with a conflict of interest to vote under certain circumstances. According to C.R.S. § 24-18-109(3), board members must refrain from voting on matters in which they have a personal or private interest, *unless* they have made the disclosure to the Secretary of State and to their board *and* participation in the vote is necessary to obtain a quorum or otherwise enable the board to act. The board member must state for the record the fact and nature of the interest at the time of voting. *Id.*

While these laws place restrictions on how board members must proceed when a conflict of interest arises, they do not prevent a district employee from serving on the board. This position is reflected in the sample board policies we make available to school boards throughout the state. In the CASB sample policies on conflict of interest, we provide boards with optional language that would preclude such a dual role by a board member. If a board adopted such a policy and an employee is elected to the board, the employee must decide whether to remain on the board and resign employment with the district or resign as a school board member.

The Colorado Supreme Court determined that a school board can reasonably decide that a conflict of interest is created when a board member is also a teacher. *Montrose County Sch. Dist. RE-IJ v. Lambert*, 826 P.2d 349 (Colo. 1992). Based on this approach, the Court found that the equal protection rights of the board member who was denied employment with the district were not violated.

Finally, the board member with the potential conflict of interest is responsible for determining whether he has a conflict. Thus, there is no procedure in law that permits the board, by motion or otherwise, to prohibit a board member from voting or participating in a meeting, even if the board believes the board member has incorrectly determined that no conflict exists.

Apart from the legal analysis, it should be noted that when a district employee runs for the board, the voters may take the board member's employment status into account if they believe it is important. School board members are elected by the very citizens they serve. If the community believes that the potential conflicts are so great as to make the board member ineffectual, it can be argued that the voters will make that determination at the polls and the employee will not be elected. In smaller school districts, it is quite common to find district employees serving on the board.

In summary, a board member who is also a district employee should take the following steps:

- 1 Send a blanket disclosure letter to be kept on file in the Secretary of State's office that the board member is a school district employee and that items may appear on the agenda periodically which present a conflict of interest.
- 2 Disclose the potential conflict of interest at any board meeting when an agenda item appears that constitutes a conflict of interest under Board policy.
- 3 After disclosing that a potential conflict might exist, the board member should not participate in the discussion and should refrain from influencing any of his fellow board members on the issue.
- 4 The board member must abstain from voting on any issue on which he has disclosed a conflict of interest, unless his participation is necessary for the board to act, as explained above.
- 5 Note the conflict of interest disclosure in the minutes of the meeting.

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