

Conflict of Interest FULL DISCLOSURE

A GUIDE FOR MANITOBA SCHOOL TRUSTEES

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CONFLICT OF INTEREST—FULL DISCLOSURE
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Background

The expenditure of public funds by elected officials has traditionally been watched carefully by citizens and interpreted strictly by the courts where any review takes place. Until recently, most legislation dealt with potential conflict of interest situations by prohibiting any financial transactions between a public body and its elected officials except for specific payments for services such as utilities.

This prohibitive approach mirrored the legal maxim that "Justice Must Not Only Be Done But It Must Be Seen To Be Done." Accordingly, no opportunity was provided for a private interest to be pursued where it could come into conflict with a public duty.

A more equitable approach has emphasized the opportunity for an elected official to provide goods or services to an institution provided that full disclosure takes place within the guidelines of the legislation.

In 1987, the Manitoba Legislature amended *The Public Schools Act* to clarify situations where potential for conflict of interest exists, to outline the action a trustee must take to avoid conflict of interest, and to specify the penalties for a finding of conflict of interest.

This summary is intended to assist trustees in carrying out their duties. It is also intended to direct public officials toward the importance of strict adherence to the full disclosure procedures which avoid conflict of interest.

1. When does conflict of interest occur?

Section 36(1)

When a personal matter (or interest) clashes with a public duty or responsibility there is said to be a conflict of interest. For a school trustee, conflict of interest occurs when a trustee or the dependent of a trustee participates in decisions of the Board of Trustees which result in a direct or indirect pecuniary gain for that trustee or the dependent of that trustee. An exception is permitted when the benefit to the trustee or dependent is identical to that received by any other ordinary citizen, such as through reduced taxes or increased services.

2. What is the definition of dependent?

Section 36(1)

A dependent of a trustee is defined as the spouse of a trustee, or, the person represented as the spouse, and any children residing with the trustee.

3. What is an indirect pecuniary interest?

Section 37(1)

An indirect pecuniary interest occurs when business is conducted between a board of trustees and a corporation or subsidiary of a corporation where:

- (a) the corporation is one in which the trustee or his dependent has an interest that exceeds 5% of the value of the stock; or
- (b) the corporation is one in which the trustee or dependent is a director or officer; or
- (c) the corporation is one in which the trustee or dependent is: i) an employee or partner, ii) a guarantor of a surety, or iii) a creditor.

Section 37(5)(c)

In all cases the benefit must exceed that received by an ordinary citizen and be over the value of \$500.00 in order to be considered significant.

4. Are there exceptions?

Yes. Section 37(3) sets out exceptions to conflict of interest as being:

- a. A trustee or dependent has no conflict of interest when the contract entered into by the board is on terms common to other contracts. This allows a spouse or dependent to be employed by a school division on the same terms as others, including employment as a teacher or in another employee group employed according to the terms of the collective agreement. This would not include the dependent of a person who negotiates a separate employment agreement. A trustee can enter into an agreement to supply services or materials to the board under an agreement common to all others and not be in conflict. An employee of a utility or similar corporation where rates are set through external negotiation can be a trustee without being in conflict.
- b. A person who is involved in the provision of sewer and water connection to a division can be a trustee or dependent of a trustee.
- c. A person can be a contractor or employed by a contractor in the construction of a school building supervised by The Public Schools Finance Board and not be in conflict.
- d. The owner, editor, or employees of a newspaper in which advertising is placed can be a trustee or dependent of a trustee without being in conflict.
- e. A trustee can hold bonds or debentures of a school district and not be in conflict.
- f. In an emergency, a trustee can receive reasonable compensation for work or services without being in conflict.
- g. A trustee can be appointed to serve, as a trustee, on any commission, board or agency without being considered to be in conflict.
- h. A trustee may be an employee of the federal, provincial, or municipal governments, or any other school division or school district and not be in conflict.

5. What does a trustee do when he believes himself to be in conflict of interest?

Section 38(1)

When a matter arises in a meeting in which the trustee or dependent has a direct or indirect pecuniary interest or liability, the trustee shall:

- a. disclose the general nature of the interest or liability.
- b. withdraw from the meeting without participating in the vote or discussion. Withdrawal should be noted in the minutes, and
- c. refrain at all times from attempting to influence the matter.

6. What meetings does this include?

Section 38(2)

The meetings that this procedure governs are:

- a. school board meetings
- b. committee meetings, and
- c. subcommittee meetings.

7. Must the trustee disclose conflict if he/she is not present at the meeting?

Section 38(3)

Yes, absence from a meeting does not mean the trustee can avoid disclosure. The necessary disclosure must be made at the next meeting of the body in question. The trustee must not at any time, before or after the disclosure, attempt to influence the decision.

8. Is a record of disclosure kept?

Section 39(1)

Yes. The secretary-treasurer is responsible for establishing a central register of disclosures. Whenever a disclosure occurs, the clerk of the meeting shall record in the minutes the disclosure, the nature of the direct or indirect pecuniary interest, and the withdrawal of the trustee from the meeting. The clerk records this with the secretary-treasurer in the central registry. Also noted is whether or not the meeting and the minutes of the meeting are open to the public.

9. Is this record open to the public?

Section 39(4)

Yes. The central register is open to the public without charge during regular office hours.

10. What is the procedure when withdrawals reduce the number of trustees below the number required for a quorum?

Section 39.1(1)

In the matters being dealt with by the school board the following occurs:

a) School Board Meetings

- (i) If two trustees remain they constitute a quorum for a board meeting.
- (ii) If there are fewer than two trustees remaining, the trustees apply to the Minister who refers the matter to the Board of Reference which will hear the matter and make a decision on conflict of interest in the matter.

b) Committees or Subcommittee Meetings

When the matter is being dealt with in a committee or subcommittee and there are fewer than two trustees remaining, the matter goes to the school board for decision.

11. What happens to a contract when one or more trustees act in conflict of interest?

Section 39.2

The existence of a conflict of interest does not automatically void a contract. The school board can void such a contract within two years of the decision except where the contract was made in good faith and the conflict was unknown at the time. If the board were to void a contract, the errant trustees could then be subject to personal suit.

The good faith provision allows the board to "save" the contract if it wishes, without incurring additional risk for voting in favor of an illegal expenditure.

12. What action must a trustee undertake in addition to withdrawal?

Section 39.3(1)

The law requires filing of statements disclosing assets and interests of the trustee and dependents prior to taking the oath of office by the trustee and within thirty days of acquiring or disposing of such assets by the trustee or dependent, thereafter.

13. What assets and interest must be disclosed?

Section 39.3(4)

- a. All land that the trustee or his/her dependent owns or in which she/he has any interest including any mortgage, licence or interest under a sale or option agreement, excluding the principal residence.
- b. Any shares or interest in a corporation where the value is 5% or more of the capital stock of a corporation which has land in that school division.
- c. Any corporation where the trustee or dependent has 5% or more of the value of the issued capital stock.
- d. The name of every person, corporation, partnership or organization that remunerates the trustee or dependent for services performed as an officer, director, manager, proprietor, partner or employee.
- e. Bonds and debentures excluding those issued by any government at the federal, provincial or municipal level in Canada.
- f. Holdings in investment funds, mutual funds, investment trust or similar securities excluding Retirement Saving Plans, Home Ownership Savings Plans, accounts and term deposits held in banks, credit unions or other financial institutions, pension plans and insurance policies.
- g. Any "real" property in which the trustee or dependents might have an interest through a trust or in which one has an interest as executor of an estate.
- h. Any gift and the identity of the donor, given to a trustee or dependent after July 20, 1987, except
 - (i) gifts from a family member
 - (ii) gifts already reported
 - (iii) gifts received prior to being elected as a trustee.

Any contract between the trustee or dependent or corporation in which either have an interest and the school division or school district except:

- (i) when the contract was entered into prior to the first election of the trustee to the school board
- (ii) any contract previously disclosed
- (iii) any contract in which the trustee or dependent is exempt from reporting under the act.

14. What action is taken if the trustee fails to comply?

Section 39.3(2)

If the trustee does not file the statement prior to assuming office the secretary-treasurer shall notify the trustee in writing of the omission and the trustee has 30 days after receiving the notification to do so. If the trustee fails to comply, it is regarded as a violation of the act and the school board begins proceedings to disqualify the trustee.

15. Are all gifts, assets and interests to be disclosed:

Section 39.3(5)

No. Trustees do not report the following:

- a. Gifts worth less than \$250.00 unless the total value of gifts from the donor to the trustee and dependents exceeds \$250.00.
- b. An asset or interest less than \$500.00
- c. Any assets or interests acquired by a dependent prior to January 1, 1984, in the case of a trustee elected prior to January 1, 1987, or more than two years prior to first election to the school board for those elected after January 1, 1987.

16. Are these statements open to the public?

Section 39.3(7)

No, the secretary-treasurer may not reveal the contents to any person. They are open on request to the trustee. However, if a person details a possible violation to the secretary-treasurer, including a specific asset or interest related to the violation, the secretary-treasurer must examine the statement filed by the trustee and inform the complainant in writing whether or not the statements disclose that asset.

17. Can a trustee use his position to gain information valuable to himself or others?

Section 39.4(1)

No. A trustee cannot use for personal gain, or the gain of any other person, information that the trustee obtains through his position as a trustee and is not available to the public. No trustee can receive compensation, directly or indirectly, for services rendered in influencing a decision of a board or in attempting to influence other trustees, officers, or employees of the school board, nor, can he/she have any direct or indirect gain from such action.

18. Can a trustee appear before the board of trustees on his own behalf?

Section 39.5(1)

Yes, but the trustee may not vote on any such matter.

19. What is the penalty for violating the act?

Section 39.6(1)

A trustee who violates the act is disqualified from holding office and his/her seat becomes vacant.

20. What is the procedure for enforcing the act?

Section 39.7(1)

The procedure begins when:

- a. the school board directs the secretary-treasurer to apply to a Judge of the Court of Queens' Bench for a declaration of violation, or
- b. an elector applies to a Judge of the Court of Queens' Bench for an ex parte declaration of violation, after having filed an affidavit showing details of the violation, and paying to the court \$300.00 as security.

If the Judge finds there has been a violation, he declares the seat vacant and may order the trustee to pay restitution if he finds that the trustee has received pecuniary gain. The Judge has the option to find that the breach of the law was inadvertent and not impose any penalty.

21. Is there a limitation on the period for starting procedures?

Section 39.7(11)

Yes. No application for a declaration of violation may be brought more than six years after the date of the violation and no order for restitution may be made more than six years after the violation.

22. When does a trustee's seat become vacant?

Section 39.8

The seat becomes vacant when:

- a. the trustee is deceased,
- b. the trustee has submitted a written letter of resignation,
- c. the trustee fails to attend three consecutive school board meetings without authorization by resolution of the school board,
- d. the trustee is disqualified under the Act, or
- e. the trustee ceases to be a resident of the school division or school district.