

NAVIGATING THE MINEFIELD

Understanding the Conflict of Interest Laws



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What's on Tap?

- **Incompatible Public Offices**
- **Contracts of Public Servants with Public Entities**
- **MCL 380.1203 (School Board Members)**
- **MCL 380.634 (ISD Specific)**
- **Strategies to Comply**



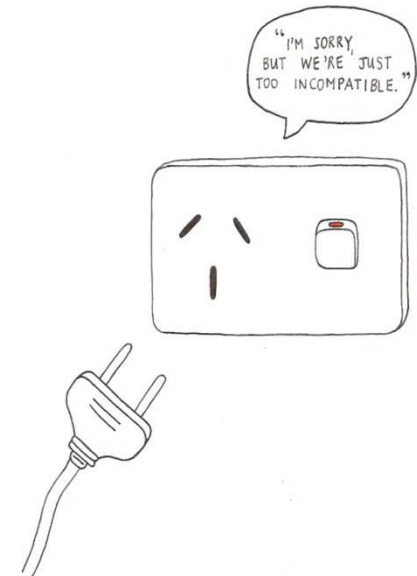
This document is comprised of general information relative to the subject matters discussed herein. It is not intended to give legal advice and does not establish any attorney-client relationship. School Districts facing specific issues should seek the assistance of an attorney.

Incompatible Public Offices – MCL 15.181 *et seq.*

General Rule:

A PUBLIC OFFICER OR PUBLIC EMPLOYEE SHALL NOT HOLD 2 OR MORE INCOMPATIBLE OFFICES AT THE SAME TIME.

- **“Incompatible Offices”** means public offices which, when performing the duties of any of the public offices, results in the following:
 - The subordination of 1 public office to another;
 - The supervision of 1 public office by another; or
 - A breach of duty of public office.
- **“Public Employee”** means a non-elected and non-appointed person who is employed by a public entity, including a school district and ISD.
- **“Public Officer”** means a person elected or appointed to:
 - An office established by State Constitution of 1963
 - A public office of a city, village, township or county
 - A board of a public entity



Incompatible Public Offices – MCL 15.181 *et seq.*

- **Examples of Supervision**
 - Evaluations
 - Approval of Compensation
 - Power to appoint/remove
- **Examples of Breach of Duty**
 - Conflict of, or competing interests
 - Contractual or other legal relationship
- **General Application of Incompatible Public Offices Law**
 - Enforced by State Attorney General and/or County Prosecutor
 - No private cause of action permitted
 - Any action taken while in incompatible offices is not void; only voidable by courts and any relief/remedy shall be prospective only.
- **Conflict of Interest Issues**
 - Abstaining from vote or duty does not resolve conflict of interest.
 - A board member or employee must resign from one of the offices.

Incompatible Public Offices – MCL 15.181 *et seq.*

EXEMPTIONS RELATIVE TO SCHOOLS

- A School Board member may be a superintendent of another school district.
- A School board member/employee may serve on various state/local authorities and commissions (identified in statute).
- A School Board member may serve as volunteer coach/supervisor or student extracurricular activity if all the following conditions are met:
 - No compensation received for services;
 - During period of serving as coach/supervisor, must abstain from voting on any issues that concern the sport/program;
 - No other qualified applicant available; and
 - A fingerprint-based background check is completed through MSP and FBI.
- ISD Superintendent may simultaneously serve as superintendent of local school district, even if it is a constituent school district.

Contracts of Public Servants w/ Public Entities – MCL 15.321 *et seq.*

General Rules:

1. A public servant **shall not be a party**, directly or indirectly, **to any contract** between himself or herself and the public entity of which he or she is an officer or employee.
 2. A public servant **shall not directly or indirectly solicit any contract** between the public entity of which he or she is an officer or employee and any of the following:
 - Himself or herself;
 - Any entity which he/she is a partner, member or employee;
 - Any private corporation which he/she is: (1) a stockholder (>1% of outstanding stock if not listed OR in excess of \$25,000 if listed); or (2) a director, officer or employee; or
 - Any trust of which he/she is a beneficiary or trustee.
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- Under Rule 2 (non-solicitation rule) above, a public servant shall also not:
 - Take part in negotiation/renegotiation, amendment or approval of contract; or
 - Represent either party in the transaction.

Contracts of Public Servants w/ Public Entities – MCL 15.321 *et seq.*

Limited EXEMPTION to the Rules for School Board Members and School Employees

- The Rules do not apply to a “public servant” who is paid for working an average of 25 hours or less per week for a public entity PROVIDED THE FOLLOWING ARE MET:
 1. If (1) the **direct benefit** to public servant is **less than \$250 AND less than 5% of the public cost** of the contract and the public servant files a sworn affidavit to that effect with the School Board; **or** (2) the contract is for **emergency repairs or services**; then the public servant must **promptly disclose** any pecuniary interest in the contract to the School Board **at a Board Meeting** and the disclosure is **made a matter of record** in the official minutes.
 2. If contract exceeds or does not meet these thresholds, then the disclosure shall be made by either:
 - a) Written disclosure (that is made a part of the public record) to the Board President (or VP if President is affected public servant) at least 7 days prior to the meeting when vote will be taken; or
 - b) Disclosure at a public meeting of the Board, PROVIDED the vote is taken at a Board Meeting held at least 7 days after the Board Meeting at which the disclosure was made (**MUST BE DONE IF BENEFIT > \$5,000**).

Contracts of Public Servants w/ Public Entities – MCL 15.321 *et seq.*

3. The contract is approved by a vote of not less than 2/3 of the full membership of the Board without vote of disclosing member (if 7 members, must have 5 affirmative votes).
 4. The Board discloses the following summary information in official minutes:
 - a) Name of each party to contract;
 - b) Terms of contract (term, finances and general obligations); and
 - c) The nature of the pecuniary interest disclosed.
- If a conflict of interest exists, a Board Member must abstain; however, the Rules do not prevent a public servant from making or participating in making a governmental decision to the extent required by law.
 - If 2/3 of the Board Members are not eligible to vote on a contract or constitute a quorum under the Rules, a Board Member may be counted for purposes of a quorum and may vote if Board Members pecuniary interest is less than \$250 AND less than 5% of the public cost of the contract.

Contracts of Public Servants w/ Public Entities – MCL 15.321 *et seq.*

EXCEPTIONS TO THE RULES

- The Rules do not prevent an ISD superintendent from serving simultaneously as superintendent of local school district.
- The Rules do not prohibit:
 1. Contracts between public entities;
 2. Contracts awarded to lowest qualified bidder, other than a public servant, upon the receipt of sealed bids received pursuant to public notice;
 3. Contracts for public utility services where rates are regulated; and
 4. Contracts for purchase of residential real property (if public entity has ethics ordinance in place at time of sale).

OTHER ISSUES

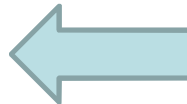
- Violation of Rules is a misdemeanor.
- Rules not intended to penalize innocent persons. Must have actual knowledge.
- Any prohibited activity is not void per se; only voidable by courts.
- School Boards may adopt more stringent policies.

Revised School Code – MCL 380.1203

General Rule

A Board Member of a school district, ISD or PSA who believes or has reason to believe that he/she has a conflict of interest in a contract OR financial transaction that requires Board approval shall **disclose the specific conflict of interest** and **abstain from voting**.

- Presumed to have a “Conflict of Interest” if **Board Member** or his/her “**family member**” has a **financial interest or competing financial interest** in the contract or financial transaction or is an employee of the school district, ISD or PSA.
- A “**family member**” is defined to include a person’s:
 - Spouse;
 - Spouse’s sibling;
 - Spouse’s child;
 - Sibling;
 - Sibling’s spouse;
 - Sibling’s child;
 - Child;
 - Child’s spouse;
 - Parent
 - Parent’s spouse



Includes relationship created by adoption OR marriage

Revised School Code – MCL 380.1203

Exceptions – A “financial interest” does not exist in any of the following:

- A contract or financial transaction between school district, ISD or PSA and:
 1. A corporation which he/she is a stockholder owning 1% or less of outstanding stock (if not listed) OR \$25,000 or less (if listed);
 2. A corporation which a trust (where he/she is beneficiary of trust) owns 1% or less of outstanding stock (if not listed) OR \$25,000 or less (if listed);
 3. A Michigan PLLC if he/she is an employee but not a member;
 4. A corporation in which he/she is not a director, officer or employee;
 5. An entity which he/she is not a partner, member or employee; or
 6. A corporation or firm which has an indebtedness owed to the person.

- A contract between an ISD and a constituent school district.

- Contracts awarded to lowest qualified bidder, other than a public servant, upon the receipt of sealed bids received pursuant to public notice.

Revised School Code – MCL 380.1203

Other Issues

- If a majority of the Board Members are required to abstain, the remaining members constitute a quorum, and notwithstanding any other provision of law, a majority of those is required for approval. However, if a majority of the Board is able to vote, then must have majority of full Board approve pursuant to MCL 380.11a(5).

Question: Assuming a 7-member Board, if 3 Board Members must abstain under Section 1203, how many of the 4 remaining Board members must vote “yes” to approve?

- This law is in addition to any other provision of law that addresses conflict of interest.

Revised School Code – MCL 380.634 (ISDs ONLY)

- **Prohibits** ISD Board Members and Administrators from accepting any money, goods or services in excess of \$55.00 (FY 2013-14 amount) from any person who does or is seeking to do business with the ISD.
- **Prohibits** ISDs from entering into a contract if a Board Member or Administrator has a “substantial conflict of interest” in the contract.
- **Requires** ISDs to adopt and implement a conflict of interest policy.
- **Requires** ISDs to adopt and implement a policy that prohibits the use of ISD or other public funds under control of ISD for purchasing alcoholic beverages, jewelry, gifts, fees for golf or any item the purchase of which is illegal. Employee recognition gifts/awards < \$100 are OK.
- **Requires** ISDs to include a provision in each Administrator’s employment contract that prohibits engaging in conduct involving moral turpitude AND allows voiding of the contract for violation of such provision
- A “**substantial conflict of interest**” means “a conflict of interest on the part of an intermediate school board member or intermediate school district administrator in respect to a contract with the intermediate school district that is of such substance as to induce action on his or her part to promote the contract for his or her own personal benefit.”

Revised School Code – MCL 380.634 (ISDs ONLY)

Exceptions – A “substantial conflict of interest” does not exist in any of the following:

- A contract between the ISD and:
 1. A corporation which he/she is a stockholder owning 1% or less of outstanding stock (if not listed) OR \$25,000 or less (if listed);
 2. A corporation which a trust (where he/she is beneficiary of trust) owns 1% or less of outstanding stock (if not listed) OR \$25,000 or less (if listed);
 3. A Michigan PLLC if he/she is an employee but not a member;
 4. A corporation in which he/she is not a director, officer or employee;
 5. An entity which he/she is not a partner, member or employee; or
 6. A corporation or firm which has an indebtedness owed to the person.

- A contract between an ISD and a constituent school district.

- Contracts awarded to lowest qualified bidder upon the receipt of sealed bids received pursuant to public notice, unless public notice does not bar, unless allowed by law, any qualified entity from bidding.

Revised School Code – MCL 380.634 (ISDs ONLY)

- If an ISD Board Member, Administrator or employee who recommends, negotiates, or is authorized to sign a contract on behalf of the ISD is either employed by, or knows he/she has a family member who is employed by, a business enterprise with which the ISD is considering entering into a contract with, then:
 - Board Member, Administrator or employee must disclose this fact to the Board at a public meeting before the ISD enters into the contract.
 - Board must vote at a public meeting to:
 - 1) Determine if a conflict of interest exists; and
 - 2) Vote on whether to enter into the contract.

- A “family member” is defined to include a person’s:
 - Spouse; Spouse’s Sibling; Spouse’s Child
 - Sibling; Sibling’s spouse; Sibling’s Child
 - Child; Child’s Spouse
 - Parent; Parent’s Spouse

*****Includes relationships created by adoption OR marriage*****

Violation of MCL 380.1203 or 380.634

An individual who violates the provisions of MCL 380.1203 or 380.634 is subject to criminal penalty as follows:

- MCL 380.1804

Except as otherwise provided in [the Revised School Code], a school official or member of a school board or intermediate school board or other person who neglects or refuses to do or perform an act required by the [Revised School Code], or who violates or knowingly permits or consents to a violation of the [Revised School Code], is guilty of a misdemeanor punishable by a fine not more than \$500.00, or imprisonment for not more than 3 months, or both.



Strategies to Comply

- **Adopt or Update Board Policy to be compliant with all applicable laws.**
- **Train/Educate Board Members, Administrators & Employees of laws and obligations thereunder.**
- **If a conflict is suspected, do not wait until last minute to raise.**
- **Do not automatically assume that abstaining from a vote is the correct answer.**

THANK YOU! Any Questions?



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