



Principles for Good Governance and Ethical Practices

NALEO Arizona Statewide Policy Institute
on School Governance

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Intro

- Who I Am
- A Favor to Ask...



What We Will Cover

- School Board Service In Arizona
 - School Board Code of Ethics (ASBA Model Policy BCA)
 - State Policies That Present Ethical Challenges for State and Local Policymakers
 - Campaign Finance, Reporting and Expenditures
- 



School Board Service in Arizona

- Board member seats at-large
- Non-paid/Qualifications are minimal
- American tradition of community governance of education unique in world
- Board Authority rests with the board as a whole
- Operations vs. Governance

GOVERN

Vision & Goals

Evaluation

Policies

Board Authority

Monitor

Recommend

**Superintendent
Authority**

Progress Reports

Plans & Regulations

Operations

MANAGE



Interference or Disruption of an Educational Institution

■ A.R.S. § 13-2911

- Class 6 or Class 1 misdemeanor
- Interfering with or disrupting the normal operations of an educational institution by either:
 - (a) Threatening to cause physical injury to any employee or student of an educational institution or any person on the property of an educational institution.
 - (b) Threatening to cause damage to any educational institution, the property of any educational institution or the property of any employee or student of an educational institution.
- Intentionally or knowingly entering or remaining on the property of any educational institution for the purpose of interfering with the lawful use of the property or in any manner as to deny or interfere with the lawful use of the property by others.
- Intentionally or knowingly refusing to obey a lawful order given by chief administrative officer



Board Member Code of Ethics

- Adopted by NSBA, ASBA
- Almost all school boards in Arizona have adopted too – part of model policy (BCA)
 - May have your own local policy as well
- Great idea to have a copy and post in board room



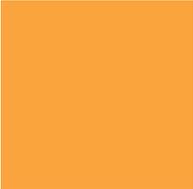
As a member of my local Board of Education I will strive to improve public education, and to that end I will:

- Attend all regularly scheduled Board meetings insofar as possible, and become informed concerning the issues to be considered at those meetings;
- Recognize that a board member should endeavor to make policy decisions only after full discussion at publicly held Board meetings;
- Render all decisions based on the available facts and my independent judgment, and refuse to surrender that judgment to individuals or special interest groups



As a member of my local Board of Education I will strive to improve public education, and to that end I will:

- Encourage the free expression of opinion by all Board members, and seek systematic communications between the Board and students, staff, and all elements of the community;
- Work with other Board members to establish effective Board policies and to delegate authority for the administration of the schools to the Superintendent;
- Communicate to other board members and the Superintendent expression of public reaction to Board policies and school programs;



As a member of my local Board of Education I will strive to improve public education, and to that end I will:

- Inform oneself about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by my state and national school boards association;
- Support the employment of those persons best qualified to serve as school staff, and insist on a regular and impartial evaluation of staff



As a member of my local Board of Education I will strive to improve public education, and to that end I will:

- Avoid being placed in a position of conflict of interest, and refrain from using my Board position for personal or partisan gain;
- Take no private action that will compromise the Board or administration, and respect the confidentiality of information that is privileged under applicable law; AND



As a member of my local Board of Education I will strive to improve public education, and to that end I will:

- Remember **ALWAYS** that my first and greatest concern **MUST** be the educational welfare of the students attending the public schools.



State Policies That Present Ethical Challenges to Elected Officials

- Sunshine Laws
 - Open Meeting Law
 - Public Records
- Conflict of Interest
- Gifts
- Campaign Finance and Disclosure Laws
 - All of these are rooted in maintaining the public trust



The OML

Know the Purpose:

When in doubt, the law favors open meetings

- Any indifference to the OML by a governing board brings scrutiny, suspicion and skepticism by the media and the public
- The law concerns itself with protecting the public's interest – not the interest of board members or school employees



When the OML applies

To any meeting of a quorum of the members of the public body

- ✓ Any “instrumentality” of the board

Quorum is a majority of the board

- ✓ includes conference calls (expressly allowed)
- ✓ cannot vote by proxy
- ✓ physical proximity not required: could have meeting of a quorum by phone or e-mail triggering OML requirements



Gathering of a quorum of members at which they:

- discuss OR
- propose or take legal action OR
- deliberate with respect to any legal action

What is “legal action” under the OML?

- Interpreted broadly: includes any matter pertaining to the governing or school district that foreseeably could become the subject of legal action by the governing board

- 
- Series of one-on-one discussions intended to lead to an agreement among a quorum of members may violate the OML
 - Superintendents can give board members information about management decisions but cannot secure approval for a proposed decision outside of a public meeting



SEVEN Authorized Reasons of Executive Sessions

- Employee Matters
- Legal Advice
- Records exempt from public inspection and information that must be made confidential by state or federal law
- Contract negotiations, pending litigation or settlement discussions
- Negotiating representative
- International/ Interstate negotiations
- Purchase, Sale or Lease of Real Property



Employee Matters

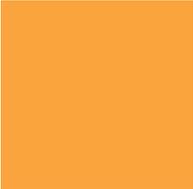
- Have to discuss employee, not a “position”
 - Must deliver written notice to employee at least 24 hours prior
 - Employee may require discussion be done in public
- Employee has no right to attend ES unless purpose is to conduct “due process” hearing
 - Employee has right to review minutes of the ES



Legal Advice

- Attorney must be present
- Must confine discussion to legal advice





Violations

- First Offense: \$500 fine per violation, in addition to attorney's fees and costs, for knowingly aiding, agreeing to aid or attempting to aid another person in an OML violation (no insurance or district indemnity)
- Second offense: \$2500 fine per violation

A court (or the AG through agreement) can remove a governing board member from office for violation of the OML!!!



Why Have Conflicts of Interest Laws?

- “Public officers must have no personal interests in transactions with the government which they represent. The rule is...evolved from the self-evident truth... that no person can, at one and the same time, faithfully serve two masters.” *State v. Bohannon*, 421 P.2d 877 (Ariz. 1967).
- “We cannot have healthy communities when everyone is preoccupied with self-interest. We must recognize that we are part of something larger than ourselves.” Bruce Adams, *The Pauses Between the Notes*



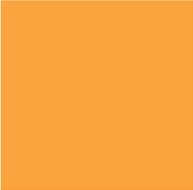
Why Have Conflicts of Interest Laws?

- Remove or limit the possibility of personal influence which might bear upon an official's decision.
- Cannot serve two masters



If you have to ask, you have a problem

- Must vs. Should
- Statutes and Regulations: What you must do
- Integrity and Public Perception: What you should do
- The headline test



Statutory Conflict of Interest

- 15-421 (D): “No employee of a school district or the spouse of such employee may hold membership on a governing board of a school district by which such employee is employed.”
 - Extends to some volunteer positions as well; not those that a parent would be allowed to do



Analyzing a Conflicts Problem

- Who has the interest?
- Is the interest substantial?
- How do I respond to the interest?
- What happens if I mess up?



Conflicts of Interest - Basic Rule

Summary: Any public officer or employee of a public agency who has, or whose relative has, a *substantial interest* in any decision of that agency, shall

- “make known that interest in the official records of such public agency”
- “refrain from voting upon or otherwise participating in any manner as an officer or employee in” the decision.
- A.R.S. § 38-503

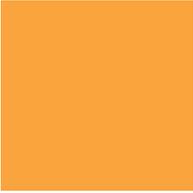


Who is a relative?

- The rules apply if the officer, employee or a relative has a substantial interest
- "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

A.R.S. § 38-502





Who is a relative?

- But there is a special rule for board members.

The interest of a relative of a school board member when the relative involved is not a dependent will *not* create a “substantial interest” that triggers the conflict-of-interest rules. See A.R.S. § 38-502(10)(h).



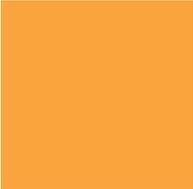
What's a substantial interest?

- “Substantial interest” means any pecuniary or proprietary interest in a matter before the Board, either direct or indirect, other than a remote interest. A.R.S. § 38-502
- “Pecuniary means money and proprietary means ownership.” *Shepherd v. Platt*, 177 Ariz. 63, 65, 865 P.2d 107, 109 (App. 1993)



What's a remote interest?

- (a) That of a non-salaried officer of a nonprofit corporation.
-
- (b) That of a landlord or tenant of the contracting party.
-
- (c) That of an attorney of a contracting party.
-
- (d) That of a member of a nonprofit cooperative marketing association.
-
- (e) **The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.**



What's a remote interest?

- (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
-
- (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
-
- (h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.



Determining Whether Substantial Interest Exists

1. Could the decision affect, either positively or negatively, an interest of the board member or the board member's spouse or dependent child?
2. Is the interest financial? Is it ownership?
3. Is the interest something that is not statutorily designated as a remote interest?



Suggestions for determining if you have a conflict

- If you have or a relative has a financial interest in an issue before the district, check to see if it's a conflict.
- Specific facts are critical. Each issue needs to be resolved on its own facts.
- Call your school lawyer.
- If in doubt, bow out.



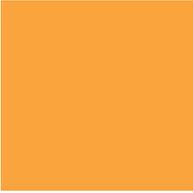
What to do if there is a conflict

- General rule:
- 1. Declare the conflict. Most districts have a form in the policy manual. All must have a file where such documents are kept.
- 2. Don't participate in any way--except that board members may *usually* vote because of a specific statutory exception, to be discussed.



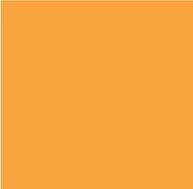
Exceptions for school boards

- Notwithstanding any other provision of law, a governing board member is eligible to vote on any budgetary, personnel or other question which comes before the board, except:
 - It shall be unlawful for a member to vote on a specific item which concerns the appointment, employment or remuneration of such member or any person related to such member who is a spouse or a dependent as defined in section 43-1001.
 - No member may vote on the employment of a person who is a member of the governing board or who is the spouse of a member of the governing board and whose membership on the board and employment are prohibited by section 15-421, subsection D.
 - A.R.S. § 15-323



Scope of the exception

- “Notwithstanding any other provision of law, a governing board member is eligible to *vote*”
- The conflict must still be declared
- The member must still refrain from participating in any way other than voting
- There is no such exceptions for employees



Refraining from participation

- Refraining from participation: The board member or employee must not participate *in any way* in the decision. He or she must not make recommendations, give advice, or otherwise communicate in any manner with anyone involved in the decision-making process.

Ariz. Op. Att’y Gen. 103-005



Penalties and remedies

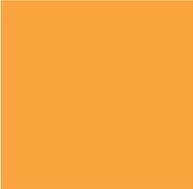
- **A.** A person who:

1. **Intentionally or knowingly** violates any provision of § § 38-503 through 38-505 is guilty of a **class 6 felony**.

2. **Recklessly or negligently** violates any provision of § § 38-503 through 38-505 is guilty of a **class 1 misdemeanor**.

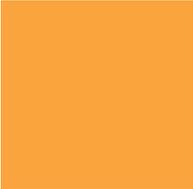
B. A person found guilty of an offense described in subsection A of this section shall **forfeit his public office** or employment if any.

A.R.S. § 38-510



Penalties and remedies

- **A.** In addition to any other remedies provided by law, any **contract entered into by a public agency in violation of this article is voidable** at the instance of the public agency.
- **B.** Any person affected by a decision of a public agency may **commence a civil suit** in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- **C.** The court may in its discretion order payment of costs, including reasonable **attorney's fees**, to the prevailing party in an action brought under subsection B.
- A.R.S. § 38-506

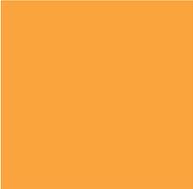


Penalties and remedies

The state, its political subdivisions or any department or agency of either may, **within three years after its execution, cancel any contract**, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

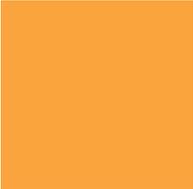
....Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

A.R.S. § 38-511



Gifts

- Adopt a **Clear Policy** that employees can follow.
- Know what “nominal value” is.
- Know and follow the test set out in A.R.S. § 38-504(C).



Gifts

Not all gifts or benefits constitute a conflict
but all conflicts involve a gift or benefit.



Gifts

When is a gift or benefit okay?

On a personal level, “gift or benefit” means a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property.

Gift or benefit **does not** include either:

(a) Food or beverage.

(b) Expenses or sponsorships relating to a special event or function to which persons participating in a procurement decision are invited.

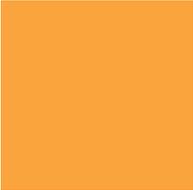


Gifts

When is a gift or benefit okay?

“A GIFT OR BENEFIT DOES NOT INCLUDE AN ITEM OF NOMINAL VALUE SUCH AS A GREETING CARD, T SHIRT, MUG OR PEN.”

A.R.S. § 15-213(N).



Gifts

Title 15 Prohibition

A **person** who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or a **person** who supervises or participates in the planning, recommending, selecting or contracting for materials, services, goods, construction, or construction services of a school district or school purchasing cooperative. A.R.S. § 15-213(N).

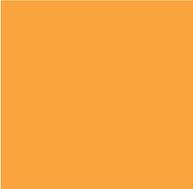
- Board members—that may include you.
- Evaluation committee members.
- Administrators and employees who participate in the decision to acquire services, goods or construction.



Gifts

- Note: Gifts or benefits to a foundation.
- Ariz. Op. Atty. Gen. No. I18-012 ,
November 2018.

“Donations to an independent foundation that supports the school district do not fall within the definition of “personal gift or benefit.”



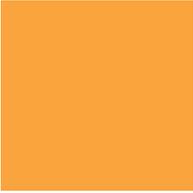
Gifts

But remember, Title 15 does not end the inquiry.

Although the Legislature changed A.R.S. § 15-213 in 2018, the Conflict of Interest laws in Title 38 still apply to ALL public employees and officers.

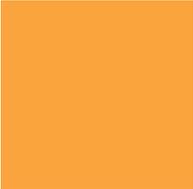
That means the standard conflict of interest laws.

This includes A.R.S. § 38-504(C).



Campaign Finance and Reporting

- Establishment of Campaign Committee and Campaign Specific Bank Accounts (A.R.S. § § 16-906, 16-907)
 - Know the definition of what a campaign expense is (A.R.S. § 16-921)
 - Do not borrow for personal expenses
 - Maintain control of credit/debit cards
- Headline test



Campaign Finance and Reporting

- Contents of Reports
 - A.R.S. § 16-926
- Frequency/Schedule of Reports
 - A.R.S. § 16-927
- Get to know your county elections people and ask lots of questions
- Put reminders on your calendar and file a few days before deadline so you can correct errors
- **KEEP GOOD RECORDS!**



ADDITIONAL QUESTIONS?

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