

Board Member Conflict Of Interest, Criminally Speaking



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Board members strive to avoid situations where they may have a conflict of interest in action being considered by the school board. In some cases, the situation may be a conflict of interest under common law, defined by a 1920 Indiana Supreme Court opinion as taking action that has a tendency to injure the public. In other cases, it may be a conflict of interest as perceived by the community. Lastly, the situation might be a conflict of interest as defined in the criminal code, which could result in the board member being prosecuted for a Level 6 felony.

Criminal Conflict of Interest Statute (IC 35-44.1-1-3)

Most board members are familiar with the statute that says it is a crime for a board member to have a pecuniary interest in or derive a profit from a contract entered into or a purchase made by the governmental entity served by the board member. A pecuniary interest is defined as an interest in a contract or purchase that will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant (generally considered to be \$250 or more). This statute absolves the board member from prosecution for a potential criminal conflict of interest if the board member announces the conflict at a public meeting before the contract is entered into or purchase is made and thereafter, the board member files a written disclosure with the school corporation, the State Board of Accounts, and the clerk of the circuit court.

The most common scenario that could lead a school board member to consider whether he/she has a pecuniary interest in a contract is the situation where the school administration recommends the employment of a spouse or child of an individual board member. A spouse and a child under the age of 18 are defined as “dependents” of the public servant and therefore trigger application of the statute. In fact, the ISBA has historically advised school board members to file the conflict of interest form prepared by the State Board of Accounts whenever a dependent of a board member is initially hired, and then every year thereafter.

Recently, however, the law was changed to say that it is not an offense under the statute in cases where the dependent “receives compensation through salary or an employment contract for services provided as a public servant.” As a result of this change, board members no longer need to announce the fact that a proposed employment contract is one that involves a spouse or child and board members no longer need to file the conflict of interest disclosure statements required by the statute.

If a board member is uncertain about having a conflict of interest in a contract or a purchase, the board member should seek the advice of local counsel. Prudence may suggest that a disclosure be made just to be sure the public is aware of the potential conflict of interest.