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# School Board Conflict of Interest

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## Disclaimer...

This presentation is intended for educational purposes only. It is not intended to convey legal advice pertaining to any particular situation and is not a substitute for legal advice from your own school attorney.



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## SDCL 13-7-3

No elective county, municipal, or state officer or the holder of any other office, the duties of which are incompatible or inconsistent with the duties of a school board member, shall be eligible for such membership.



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# Interest in Matter Before the Board



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## SDCL 6-1-17

- No school official may discuss or vote on any issue in which the official has a conflict of interest
- Each official must decide if any potential conflict of interest requires him/her to be disqualified from participating in discussion or voting
- However, the official cannot participate in discussing or vote on an issue if...



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## SDCL 6-1-17 (Cont.)

1. The official has a direct pecuniary interest in the matter before the board; or
2. At least 2/3 of the board votes that an official has an identifiable conflict of interest that should prohibit him/her from voting on a specific matter.



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## SDCL 6-1-17 (Cont.)

If an official with a direct pecuniary interest participates in discussion or votes on a matter before the board, the legal sole remedy is to invalidate his/her vote.



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## 4 Types of Conflicts Requiring Disqualification:

1. Direct pecuniary interests
2. Indirect pecuniary interests
3. Direct personal interests
4. Indirect personal interests





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If a board member's interest fits within one of these categories, that board member either has an actual bias or an *unacceptable risk* of actual bias.

-Hanig v. City of Winner (SD 2005)



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## Armstrong v. Turner County (SD 2009)

- Official must be disinterested and free from bias or predisposition of the outcome [of the hearing] and the very appearance of complete fairness must be present.
- Official must be disqualified from participation if actual bias or an unacceptable risk of actual bias or prejudgment exists.
- **“Disqualifying Interest:”** The interest must be different from the interest of members of the general public.
  - If the interest is different, would a reasonably-minded citizen conclude that the official’s interest or relationship create a potential to influence his/her impartiality.



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A school board member cannot have an interest in the sale of educational materials or school equipment to any school

SD Constitution Art. VIII Section 17

SDCL 13-20-2.1



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# Conflict of Interest in Contract



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Can board members be  
substitute teachers?



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SDCL 13-43-1: No person employed to teach or to draw public money as a teacher may serve as a board member in the same school district.

SDCL 13-42-1(7): “Teacher” is a person whose assigned duties require the person to be issued a certificate as a teacher.



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Can board members be coaches  
or bus drivers?



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## SDCL 6-1-1 and SDCL 6-1-2

- Unlawful for school board member to be interested, either by himself or agent, in the purchase of any school district real/personal property or any contract entered into by the school district
  - For labor, services, purchase of commodities, materials, supplies, or equipment of any kind
  - The expense, price, or consideration of which is paid from public funds





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## Exceptions Are\*:

1. Any contract involving \$5,000 or less.
2. Any contract involving more than \$5,000 but less than the amount for which competitive bidding is required and there is no other source of supplies or services available within the school district, if the consideration is reasonable and just and the total of such contracts paid during the fiscal year does not exceed [\$25,000].

\*At the time the contract was entered into, these need to be fully satisfied or present.



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## Exceptions Are\*:

3. Any contract with any firm, association, corporation, or cooperative association for which bidding is not required and where other sources of supplies and services are available within the school district and the consideration is reasonable and just, unless the majority of the board have a controlling interest or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association.
4. Any contract for which competitive bidding procedures are followed and more than one bid is submitted.

\*At the time the contract was entered into, these need to be fully satisfied or present.



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## Exceptions Are\*:

5. Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of such entity is a board member, whether or not other sources of such services are available within the school district, if the consideration for such services is reasonable and just.
6. A contract for commodities, materials, supplies, or equipment found in the state contract list at that price or less.
7. A contract with a corporation, association, or firm, IF the bidding procedures were followed, IF only one bid is submitted, AND IF the bid notice was on the central bid exchange for 2 weeks prior to bid opening, AND IF the board determines the consideration is reasonable and just.

\*At the time the contract was entered into, these need to be fully satisfied or present.



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SDCL 3-23-6: No board member, business manager, CFO, superintendent, CEO, or other person with the authority to enter into a contract or spend money in an amount greater than \$5,000 may have an interest in a contract or receive a direct benefit from a contract or multiple contracts in an amount greater than \$5,000 with the same party within a 12 month period in which the school district is a party, except as provided in SDCL 3-23-8.



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# Disclosure and Remedies



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**A school can authorize a person to have a direct benefit from a contract if:**

- 1) the person has provided full written disclosure; and
- 2) the board finds that the terms of the contract are fair, reasonable, not contrary to public interest.

~SDCL 3-23-8

*Note: See SDCL 3-23-7.2 for situations where a person does not derive a direct benefit or have an interest in a contract.*



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# Items to remember about disclosure and board approval:

- The request for authorization and board action are public records.
- The board action must be included in the minutes and must be filed with the auditor general and attorney general.
- Request must be made prior to entering into the contract or within 45 days after.
- If the contract extends into consecutive fiscal years, disclosure must be made annually at the annual reorganization meeting but no new authorization is required. ~SDCL 3-23-8

➤ Still need to follow the law. Can't circumvent the COI laws by taking board action to authorize the COI.



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**A board member who has an interest in a contract must disclose the contract and his/her role in the contract**

- **But no board authorization is required**

~SDCL 3-23-8





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SDCL 3-23-8.1: Each school district/educational cooperative shall develop a written COI policy, including any disclosure and authorization form that includes the list of any disclosable interest in contracts or direct benefits.



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What is the remedy for a conflict of interest violation?

-Invalidate the official's vote? (SDCL 6-1-17)

Or

-Void the action and place the complainant back into the same position had the violation of due process because of the COI not occurred and hold a new hearing? (Hanig v. City of Winner, SD 2005)

\*choice of most school attorneys

-And contract could be declared void



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## SDCL 3-23-9

Any person who knowingly violates SDCL 3-23-6 to 3-23-8 shall be removed from office and is guilty of a Class 1 misdemeanor.

(Plus other consequences for other COI offenses are outlined in this statute)



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## SDCL 13-46-1

From a decision made by any school board or in respect to any act in which such officer or board purports or assumes to act, an appeal may be taken to the circuit court by any person aggrieved within 90 days.



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- Disclosure is Required...or is Good Practice
- Can't Participate in Discussion
- Can't Vote
- Stay Away



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# Thank You

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