



Conflict of Interest/Conflict of Commitment

INTRODUCTION

The goal of the Santos Manuel Student Union of California State University, San Bernardino (hereinafter “SMSU”) is to provide programs and services which enhance and advance the educational mission of California State University, San Bernardino (hereinafter CSUSB.) The SMSU’s commitment to the involvement of students, faculty, alumni and CSUSB administration in the governance of the SMSU through its board of directors is integral to the achievement of this goal.

This shared responsibility brings with it possibilities for conflicts of interest and conflicts of commitment, referred to jointly hereinafter as “conflicts.” Conflicts may arise from the different but related positions that individual board members hold on the CSUSB campus and in other organizations or entities.

SMSU Board of Directors members may find themselves in a position they may be called on to vote on matters that affect an organization or entity that they represent in another capacity. This concern includes voting on such matters, as well as taking part in discussions, being present during deliberations, or other actions that may benefit the other organization or harm the SMSU.

Additionally, board members may find that they have access to information held by the SMSU that could be used to negatively affect the future operations, goals or status of the SMSU or to benefit another organization or entity. Conversely, board members may find that they have access to information held by another organization that could be used to negatively affect the future operations, goals or status of the SMSU.

The basis for this policy is found in the California Education Code and the California Corporations Code. The policy seeks to define conflicts such that board members are better able to structure their relationships with other organizations and entities in view of their fiduciary responsibility to the SMSU, as well as provide a mechanism by which board members can assess their activities within the SMSU and with other organizations and entities.

It is the intent of this policy to enable board members to recognize situations that may be subject to question and ensure that such situations are properly disclosed and, if necessary, reviewed and resolved, rather than regulate or eliminate all conflicts. Thus, an integral part of the policy is a disclosure mechanism whereby board members regularly review their roles on other boards and activities with their responsibilities to the SMSU clearly in mind.

DEFINITIONS

Conflicts of Commitment

By accepting an appointment to the SMSU Board of Directors, an individual makes a commitment to the SMSU that is understood to be a commitment in the most inclusive sense. Board members are expected to act with professional loyalty with their roles as members of the SMSU Board of Directors. Accordingly, board members should arrange outside activities, loyalties and financial interests so as not to interfere with this responsibility.

General Duty of Care: Directors of Public Benefit Corporations, such as the SMSU, are held to a general duty of care. This standard requires that a board member follow the “prudent person” rule. The board member must act in good faith, in the best interests of the corporation, after reasonable inquiry, with the care of an ordinary prudent person under similar circumstances. Board members should use this standard to gauge their involvement in other organizations or entities. Most important is the legal requirement to act in the best interest of the SMSU. (CA Corp. Code 5231(a))

Outside Directorships and Activities: The SMSU Board of Directors recognizes that its members may participate as officers and board members of other campus organizations and entities. The SMSU encourages such involvement to the extent that these activities serve the SMSU’s interest as well as those of the participant.

Participation in Decisions Affecting Other Interests: Board members must be aware that situations may arise where they may be asked by the SMSU Board of Directors to participate in a decision that may affect an organization or entity which that board member represents in another capacity. Likewise, a board member may be asked by another organization to participate in a similar decision affecting the SMSU. This includes participation in discussions, voting, or the mere presence during deliberations, discussions or voting on such matters. In such cases, board members must act in a manner consistent with their professional loyalty and fiduciary obligation to the SMSU. If uncertain that a conflict exists, board members should recuse themselves from discussions, deliberations and voting on the matter or follow the disclosure procedures outlined under **Disclosure and Review Procedures**.

Board members have a duty to present to the board of directors information that they may obtain which could potentially hurt the SMSU, including but not limited to, its current and future operations, goals or status, even if it involves another member of the board (i.e., a vendor recommended by a fellow board member is a relative of the board member, or a fellow board member has submitted a false expense report.) All board members shall maintain the confidentiality of any and all sensitive or confidential matters discussed by the board of directors or its sub-committees, as well as issues discussed in closed sessions of the board of directors.

Conflict of Interest

Financial Interest: Board members are considered to have a conflict of interest when they, any family member or any associated entity possesses a financial interest in an activity that involves their responsibilities as members of the SMSU Board of Directors. No member of the board shall be financially interested in any contract or other transaction entered into by the board of which he/she is a member, and any contract or transaction entered into in violation of this section is void. (CA Education Code 89906)

No contract or other transaction entered into shall be void, nor shall any member of the board be disqualified or deemed guilty of misconduct if:

1. Such financial interest is disclosed or known to the governing board and noted in the minutes, and the governing board thereafter authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose, without counting the vote or votes of such financially interested member or members, and
2. The contract or transaction is just and reasonable for the SMSU at the time it is authorized and approved. (CA Education Code 89907 (a)(b))

These exceptions will not apply if one of the following circumstances exists:

1. The contract or transaction is between the SMSU and a member of the SMSU Board of Directors.
2. The contract or transaction is between the SMSU and a partnership or unincorporated association of which any member of the board of directors is a partner, or in which he/she is the owner, holder, directly or indirectly, or a proprietorship interest.
3. The contract or transaction is between the SMSU and a corporation in which any member of the board of directors is the owner, holder, directly or indirectly, of five percent (5%) or more of the common stock.
4. A board member is interested in a contract or transaction, and without first disclosing such interest to the board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction. (CA Education Code 89908 (a) (b) (c) (d))

Utilization of Public Information: It is unlawful for any person to utilize any information, not a matter of public record, which is received by him/her by reason of his/her membership on the SMSU Board of Directors, for personal pecuniary gain, regardless of whether he/she is not a member of the board at the time such gain is realized. (CA Education Code 89909)

Self-Dealing Transactions: Member of the board are prohibited by law from engaging in self-dealing transactions to which the SMSU is a party and in which one or more

members have a material financial interest. A mere common directorship is not in itself a material financial interest. (CA Corp. Code 5233(a), 5234) Exceptions from the definition of self-dealing transactions are:

1. Actions fixing the compensation of board members;
2. Transactions that are part of public or charitable programs that benefit a class of which board members or their families are members;
3. Transactions of which interested board members had no actual knowledge and which do not exceed one percent (1%) of the SMSU's gross annual receipts or \$100,000, whichever is smaller. (CA Corp. Code 5233(b)(1)(2)(3))

Board members are thus liable to the SMSU for self-dealing transactions unless the transaction was approved by one of the following:

1. Approval by the Attorney General, or by the court in an action in which the Attorney General was an indispensable party, either before or after consummation of the transaction;
2. Approval before the consummation of the transaction by a disinterested board, under the following circumstances:
 - a. The SMSU entered into the transaction for its own benefit.
 - b. The transaction was fair and reasonable to the SMSU.
 - c. A more advantageous arrangement could not have been made with reasonable effort.
 - d. Interim approval by a committee having authority for the board where immediate action was needed and action by the full board was not feasible, and ratification by the full board at its next meeting, under the circumstances listed in (2) above. (CA Corp. Code 5233 (d)(1)(2)(3))

DISCLOSURE AND REVIEW PROCEDURE

If a board member finds that he or she is faced with a possible conflict, the board member shall inform the Chair of the board, in writing, who shall have the affirmative duty to advise the Policies & Procedures Committee of the conflict as soon as possible.

The Policies & Procedures Committee, in consultation with the SMSU's attorneys, all review the circumstances surrounding the possible conflict and shall make a determination if an actual conflict exists. If a conflict is found to exist, the committee shall present the information to the board member, with a recommendation that the board member shall recuse himself or herself from any further discussions, deliberations, voting or presence on the matter to alleviate or avoid the conflict or potential conflict, or take other appropriate action as required.

If a board member has knowledge of a possible or actual conflict involving another member of the board, the board member who has acquired the information has an affirmative duty to disclose, in writing, such information to the Chair of the board.

Procedures as outline above shall subsequently be followed. In such cases where such a possible or actual conflict involves the Chair of the board, the disclosure shall be made, in writing, to at least one member of the Policies and Procedures Committee, who shall then follow the procedures above and inform the Chair if a conflict is determined to exist, and a recommendation as described above.

If the Policies and Procedures Committee determines that a board member has knowingly violated this Conflict of Interest Policy by failing to disclose a possible conflict of interest, by ignoring the board's directive to cease or modify activities or conduct posing a conflict or potential conflict, or in any other manner knowingly and purposefully acted in a way that violated the spirit or purpose of this Conflict of Interest Policy, the committee shall recommend disciplinary action to the board. Such action shall include, but not be limited to, a notice to the board member's appointing constituency or body of the specific activities or conduct which constitute the violation, the specific provisions of this Conflict of Interest Policy which have been violated, with a recommendation for an appropriate sanction or sanctions by that constituency or body.

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