

Nerstrand Elementary School Policy 209
Independent Charter School District #4055

Adopted: 9/10/2001

Ammended: 7/14/2003

209 Fraud Policy

I. PURPOSE

The purpose of this policy is to observe state statutes regarding conflict of interest and to engage in school district business activities in a fashion designed to avoid any conflict of interest or the appearance of impropriety.

II. GENERAL STATEMENT OF POLICY

It is the policy of the school board to contract for goods and services in conformance with statutory conflict of interest laws and, in addition, in a manner that will avoid any conflict of interest or the appearance thereof. Accordingly, the school board will contract under the statutory exception provisions only when it is clearly in the best interest of the school district because of limitations that may exist on goods or services otherwise available to the school district.

III. GENERAL PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS

- A. A school board member who is authorized to take part in any manner in making any sale, lease, or contract in his or her official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially there from.
- B. In the following circumstances, however, the school board may as an exception, by unanimous vote, contract for goods or services with a school board member of the school district:
 - 1. In the designation of a bank or savings association, in which a school board member is interested, as an authorized depository for school district funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minn. Stat. Ch. 118. Any school board member having said interest shall disclose that interest and the interest shall be entered upon the minutes of the school board. Disclosure must be made when such bank or savings association is first designated as a depository or source of borrowing, or when such school board member is elected,

whichever is later. Disclosure serves as notice of the interest and must only be made once;

2. The designation of an official newspaper, or publication of official matters therein, in which the school board member is interested when it is the only newspaper complying with statutory requirements relating to the designation or publication;
3. A contract with a cooperative association of which the school board member is a shareholder or stockholder but not an officer or manager;
4. A contract for which competitive bids are not required by law;
5. A school board member may contract with the school district to provide construction materials or services, or both, when the sealed bid process is used. When the contract comes before the school board for consideration, the interested school board member may not vote on the contract. (Note: *This section applies only where the school district has a population of 1,000 or less according to the last federal census.*)
6. A school board member may rent space in a public facility at a rate commensurate with that paid by other members of the public.
7. A school board member may be newly employed or may continue to be employed by the school district as an employee where there is a reasonable expectation on July 1, or at the time the contract is entered into or extended, that the amount to be earned by that school board member under that contract or employment relationship, will not exceed \$5,000 in that fiscal year. If the school board member does not receive unanimous approval to continue in employment at a meeting where all school board members are present, that employment must be immediately terminated and that school board member will have no further right to employment while serving as a school board member in the school district.

C. A contract made pursuant to the aforementioned exceptions will be void unless the following procedure is observed.

1. The school board must authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the goods or services could be obtained elsewhere.

2. In the case of an emergency when the contract cannot be authorized in advance, payment of the claims must be authorized by a like resolution wherein the facts of the emergency are also stated.
3. Before a claim is paid, the interested school board member must file with the clerk of the school board an affidavit stating:
 - a. The name of the school board member and the office held;
 - b. An itemization of the goods or services furnished;
 - c. The current price;
 - d. The reasonable value;
 - e. The interest of the school board member in the contract; and
 - f. That to the best of the school board member's knowledge and belief, the contract price is as low as, or lower than, the price at which the goods or services could be obtained from other sources.

IV. LIMITATIONS ON RELATED EMPLOYEES

- A. The school board can hire or dismiss teachers only at duly called meetings. Where a husband and wife, brother and sister, constitute a quorum, no contract employing a teacher may be made or authorized except upon the unanimous vote of the full school board.
- B. The school board may not employ any teacher related by blood or marriage, within the fourth degree, computed by the civil law, to a school board member except by a unanimous vote of the full school board.

V. CONFLICTS PRIOR TO TAKING OFFICE

A school board member with personal financial interest in a sale, lease, or contract with the school district, which was entered before the school board member took office and presents an actual or potential conflict of interest, shall immediately notify the school board of such interest. It shall thereafter be the responsibility of the school board member to refrain from participating in any action relating to the sale, lease, or contract. At the time of renewal of any such sale, lease, or contract, the school board may enter into or renew such sale, lease, or contract only if it falls within one of the enumerated exceptions for contracts relating to goods or services provided above and if the procedures provided in this policy are followed.

VI. DETERMINATION AS TO WHETHER A CONFLICT OF INTEREST EXISTS

The determination as to whether a conflict of interest exists is to be made by the school board. Any school board member who has an actual or potential conflict shall notify the school board of such conflict immediately. The school board member shall thereafter cooperate with the school board as necessary for the school board to make its determination.

Legal References:

Minn. Stat. 125.12, Subd. 2 (Teacher hiring, dismissal)

Minn. Stat. 471.87 (Public Officers; Interest in Contract; Penalty)

Minn. Stat. 471.88, Subd. 2,3,4,5,12,13,16 (Exceptions)

Minn. Stat. 471.89 (Contract, When Void)

Op. Atty. Gen. 437-A-4, March 15, 1935

Op. Atty. Gen. 90-C-5, July 30, 1940

Op. Atty. Gen. 90-A, August 14, 1957

Cross References:

MSBA Model Policy 101 (Legal Status of the School Board)

MSBA Model Policy 209 (Code of Ethics)

MSBA Service Manual, Chapter 3, The School Board and Its Powers