

ETHICS

An Introduction to Statutory Ethics
for School Board Members

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Goals for This Presentation

- You will become a statutory ethics issue spotter and understand the relevant definitions of “family,” “financial interest” and “administrator” as used in the law.
- If your board is contemplating doing business with an insider in spite of the statutory prohibition, you will know how to accomplish this within the law.
- You will understand the restrictions on the initial hiring or promotion of a school board member’s family member.

Introduction: Two kinds of ethics: Moral and Statutory

Moral

- Authority comes from a belief system
- Enforced by individual's conscience, social pressure
- At stake: self perception, that of others that "right thing" was done

Statutory

- Authority comes from law
- Enforced by law enforcement or regulatory authority
- At stake: potential legal liability for felony violation

This presentation: Statutory Ethics

- Arkansas Code Annotated 6-24-101 through 6-24-120
- Originally enacted in 2001

General Rules

- Applies to school districts, Co-ops, charter schools
- No “insider” deals, sales, purchases
- No “buddy” transactions
- Strict rules prohibit most hiring of school board members’ relatives except in extraordinary circumstances
- There is a provision where a local board can grant permission for some transactions; others must be given by the Commissioner of Education

Wait--- “Permission?”

- A board can “grant permission” for an otherwise prohibited transaction.
- This takes the form of a board resolution, and makes the case in that format. (More on this later)
- A majority of the board must vote to create this resolution
- Depending on the dollar amount and situation, it is either filed locally (local resolution) or sent to the Commissioner of Education at ADE and the board waits for permission to come from there.

Hang on—how do you even know there is a conflict?

- In the ADE rules (Arkansas Department of Education Rules and Regulations Governing Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board members and Other Parties, March 2014) there are supplemental forms.
- Form A is a notification form, putting board members and employees on notice that they have a duty to disclose relationships with vendors or potential vendors.
- Form B is the disclosure form where relationships with vendors are detailed.

On the subject of filing . . .

- Board members must annually file a Statement of Financial Interest, as required by ACA 21-8-701 et seq.

See <http://www.arkansasethics.com>.

- This is due by January 31 of each year, filed with County Clerk.
- Superintendents, as members of their Co-op Board of Directors, must file this also.
- Failing to file this form means a violation of both ACA 21-8-701, but also the school ethics laws, ACA 6-24-101 et seq.

Ethical Guidelines and Prohibitions For Educational Administrators, Employees and Board Members

ACA 6-24-101 et seq.

Definitions are important in this law!

Administrator means any superintendent or assistant superintendent or his or her equivalent, school district treasurer, business manager or any other individual directly responsible for entity-wide purchasing.

- This is a counter intuitive definition, that could include an athletic director and food service director, and exclude a principal or other person widely regarded as an “administrator.”

Definitions, continued

Contract means any transaction or agreement for the purchase, lease, transfer or use of real property or personal property or personal or professional services

- This is a “lawyer” definition of contract, includes formal written contracts as well as informal “call now, expected to pay later” agreements
- Includes deposits, investments
- Includes both buying and selling (think of surplus property, or used vehicles)

Definitions, continued

- Family means
 - Spouse
 - Children, including step-children
 - Parents, and parents-in-law
 - Siblings, siblings of your spouse
 - Anyone who lives in your house or your spouse's house
 - Your agent (person who acts for you) or your spouse's agent

Quick—grab a piece of paper!

Board members, write down:

Where your SPOUSE works

Where each child or step-child works

Where each spouse of a child or step-child works

Do your parents or parents-in-law work? Write down where

Where your brother or sister or your spouse's siblings work

Does someone live in your house? Where does that person work

More on “Family”

- Family does NOT include
 - Siblings-in-law by marriage
 - Grandchildren or grandparents
 - Cousins
 - Nieces, nephews
 - Aunts, uncles

If these people do not live in the house with a board member or administrator, you can do business with them. If they are related to (but don't live with) a board member, they can be hired.

Definitions, continued

- Financial Interest means 5% or greater ownership, OR officer/director/trustee/partner OR top level management OR compensation based in whole or in part from transactions with the school district
- Directly interested means receiving compensation or other benefits personal or to an individual's household from the person, business or entity contracting with the school district

Application.

- Family means
 - Spouse
 - Children, including step-children
 - Parents, and parents-in-law
 - Siblings, siblings of your spouse
 - Anyone who lives in your house or your spouse's house
 - Your agent (person who acts for you) or your spouse's agent

Martha is a board member. Mary is her sister. Mary is married to George, who is a math teacher. Can Martha's district hire her brother-in-law to teach math?

New Employment Hires

New Hires: Administrators

- Rules are different for administrators (remember definition) and board members!
- Cannot hire member of immediate family of administrator or spouse or former spouse of administrator as disbursing officer/bookkeeper
 - Reason for this is concern about fiscal controls and checks and balances
- All other administrator family members can be hired: spouse of superintendent, child of principal, etc.
- No law prohibits relatives supervising or evaluating relatives, but you may have an (optional) policy on this.

New Hires: Family of board members

- Can work for 30 days in a fiscal year as a substitute.
- Cannot make more than \$5000 without resolution/approval.
- SubTeach or similar staffing agency OK, doesn't count (business relationship is with the staffing agency, that is where paycheck comes from)

New Hires: Family of board members

- Can request a waiver in “limited and unusual circumstances.”
- ADE very strict, usually says no
- Best case: good search, only applicant, unique skill set, critical shortage area
- Worst case: no search, multiple qualified applicants, just want to do a favor for a board member

What are examples of these situations?

- Summer work for students, board member's child
- Board member is an athletic official, could be assigned to district game
- New teacher graduate with zero experience is child of board member
- Board member's spouse is long time and highly valued substitute teacher

Promotion of family member: Administrators

- Zero restrictions (except to bookkeeper, financial manager, as discussed)

Promotion/Contract change of board member's family member

- Also includes increase of pay by adding contract days
- Normal movement on salary schedule ok, such as BA to MA
- If position change would result in net salary change of less than \$2500, local resolution is necessary

Promotion/Contract change of board member's family member

- Resolution sent to commissioner and wait for permission to be granted or denied if position change would result in net salary change of greater than \$2500
- Usually, if district has advertised, done a good search, and can make a good case for promoting the best applicant, permission is granted

Doing Business with a Board Member

- Resolution is required for any business transaction once elected. Dollar amount in fiscal year or transaction determines whether it gets filed or goes to Commissioner at ADE.
- If new board member is current vendor or service provider, stop using/no new transactions until a resolution is approved or permission from commissioner is granted, as applicable.
- Usually, when bids have been taken or permission is being sought to use board member when he/she is low bidder, permission is granted.

What are some examples of situations?

- Board member has a skilled trade.
- Board member is a local banker.
- District has done business for years with a person who successfully runs for school board.

Doing Business with an “Administrator”

- Quotes are used to remind you of unique definition of “Administrator.” A principal with non-district wide purchasing authority is an “employee” for the purposes of this law.
- Permission would have to be granted for any transaction (sale or purchase or service rendered).
- This would be very rare.
- Opinion: Commissioner would probably say no to a purchase or contract for personal services outside of employment contract.

Hiring Family Members

Hiring Family Members

Family member of:	Promote or New Position for Existing District Employee?	New Hire?
School employee	No restrictions	No restrictions
“Administrator”	Unless to business manager/bookkeeper	Unless to business manager/bookkeeper
Board Member	Local resolution if pay change less than \$2500; if over \$2500 then must have Commissioner approval (probably yes)	Local approval if pay under \$5,000; if pay will be in excess of \$5000, must have Commissioner approval (probably no)

About that resolution . . .

- Board can choose whether or not to seek permission for the hire or transaction. The board cannot get in trouble for declining to pass a resolution.
- Law specifies that interested board member must leave board room for entire discussion and cannot vote on this matter.
- Before the board member leaves, check to ensure there will still be a quorum sufficient to continue the meeting. (ACA 6-13-619)

Resolution Process

- In the absence of the board member with a conflict of interest, the remaining board discusses and creates a resolution (see rules, form C).
- The drafting of the resolution must take place in open session
- Typically, the superintendent will have prepared a draft.

Can you give me an example of a resolution?

Hypothetical Resolution

- WHEREAS the Do Right School District Board of Directors met in a regular, open and properly called board meeting on July 1, 2015 in Pretty Town, Arkansas.
- WHEREAS, five board members were present, a quorum was called by the chair.
- WHEREAS, the Board of Directors received a recommendation to adopt a resolution to enter into a contract with Dewayne Owens to perform dirt work at the site of the new baseball field.

Resolution

Full disclosure of all relationships and interest as required by ACA 6-24-101 et seq. that are relevant to proposed contract:

- Dewayne is the father of Melissa Jones, who is a school board member.

Resolution

Specific facts and reasons for justifying the contract were:

After a three week bid solicitation period, and after reviewing 8 bids, Dewayne Owens was the low bidder by over \$5000, with a bid for \$12,000. The other bids ranged from \$18,500 to \$25,000 for the earth work.

Resolution

The unusual and limited circumstances necessitating the contract are:

- 1) A substantial cost savings will be realized by the school district
- 2) Dewayne Owens can commence work immediately; other bidders could not commence work for two to three months, which would have serious implications for project completion.

Resolution

List of relevant data enclosed supporting the unusual and limited circumstances:

- a) Copy of bid solicitation material;
- b) List of solicited bidders, including names, addresses and phone numbers;
- c) Copies of submitted bids, which include project commencement and completion commitments

Resolution

WHEREAS, Melissa Jones, having declared an interest in the proposed contract, left the meeting prior to the discussion of the contract and did not return to the meeting room until the voting on the contract had been concluded.

WHEREAS, the Board, after serious consideration, moved to approve the contract with Dewayne Owen.

THEREFORE, due to the specific reasons cited above, it is hereby declared to be the intent of the Do Right School District Board of Directors to award this contract to Dewayne Owens.

Resolution

As is required by ACA 6-24-101 et seq., the contract is contingent upon approval by the Commissioner of the Arkansas Department of Education. If approval is denied, this contract approved by the Board would be null and void.

Ed Ministrator

Superintendent

July 1, 2015

Belinda Blevins

Board President

July 1, 2015

More on the Resolution Process

- Resolutions are either filed locally and reviewed carefully at the next audit, or (depending on the dollar amount) sent to Commissioner of Education Johnny Key for consideration.
- The resolution, and all relevant supporting information (such as copies of advertisements, bid notices, etc.) are sent to ADE for all transactions with “administrators” and qualifying transactions or hires as required by law.
- Rules state this must be sent certified mail, return receipt requested.

Resolution Process, continued

- The Commissioner has 20 days from the date of the resolution to approve or disapprove in writing the request.
- The Commissioner, inside the 20 days for consideration, may ask for additional information, and will have an additional 20 days to consider the resolution.

Resolution Process, continued

- If there is no response from the Commissioner, approval is automatic. (Unusual)
- If approval is granted, the approval letter will detail restrictions and limitations.
 - Example, the board may do business with the board member's tee-shirt shop when the tee-shirt shop is the low bidder, and there are at least three other bids.
- The maximum possible time to grant an approval is for 2 years (except for employment contracts).

What doesn't this apply to?

- Donations, volunteer work (except board members/spouses of board members may not be volunteer athletic coaches, new law in '15 (Act 788, amending ACA 6-22-105.)
- Reimbursement of expenses
- Educational awards, recognitions, gifts for “exceptional skill or exemplary contributions” to education

Is there anything else that is prohibited?

YES! ACA 6-24-104(a)

No board member, administrator or employee shall knowingly use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or others.

- Unless you are given an athletic pass, you pay to go to games
- You pay when you go through the lunch line at school
- Sometimes, people may try to “comp” you because you are a board member—it is your responsibility to not allow this to happen

In other words

- Board members don't get extra privileges
- Board members are simply held to higher standards.
- Board members are not “special” when they come on campus.
- All the usual visitor rules apply to board members.

YES! ACA 6-24-104(b)

While serving as a board member, administrator or employee, an individual shall not accept employment, contract or engage in any public or professional activity that a reasonable person would expect might require or induce him or her to disclose any information acquired by the member by reason of his or her official position that is declared by law or regulation to be confidential.

YES! ACA 6-24-104(c)

No board member, administrator, or employee shall knowingly disclose any confidential information gained by reason of his or her position, nor shall the member knowingly otherwise use such information for his or her personal gain or benefit.

Example: Executive Session

Kickbacks and gratuities prohibited

- **ACA 6-24-112**

Enforcement

What you need to know

- Knowing violation is a felony.
 - “knowing” is a very high standard for a prosecutor to meet
- ADE and Audit have review authority. ADE can refer to State Board.
- ADE, Boards and Audit have the power to request a transaction review by the local prosecutor (but not citizens).
- Administrators who violate may also be vulnerable under their professional ethics standards for lack of required professional knowledge

Worst case: Violation, Prosecution and Found Guilty

- Felony conviction
- Restitution can be ordered
- Fine not to exceed \$10,000
- Sentence not to exceed 5 years
- Board position is vacant upon conviction