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**MEMORANDUM**

To: The special committee on ethics, elections and local government  
From: Daniel Yoza, Assistant Revisor  
Date: November 20, 2015  
Subject: Conflict of interest laws applicable to school boards

I was asked to brief the committee regarding the law on school boards' conflicts of interest. There are three main legal restrictions on school board members in regards to conflicts of interest. First, a board member may not be a teacher, superintendent, assistant superintendent, deputy superintendent, associate superintendent, supervisor or principal in the district they serve. Second, a board member must disclose all of their financial and business "substantial interests." Third, board members may not make a contract with a business in which they have a substantial interest and must abstain from any action regarding that contract. The second and third restrictions apply to all local government officials.

**1) Board members may not be teachers, superintendents, or principals in the district they serve**

Kansas statute prohibits school board members from being school administrators or receiving any compensation from the school district for work performed by the board member.

"(a) The board of education of each school district shall appoint a superintendent of schools for a term of not more than three (3) years. The board may appoint one or more assistant superintendents of schools, supervisors and principals for terms of not more than three (3) years. The board may give any assistant superintendent of schools the title of "assistant superintendent of schools," "deputy superintendent of schools" or "associate superintendent of schools." **No person employed under the authority of this section shall be a member of the board.** The superintendent, any assistant superintendents, supervisors and principals shall receive compensation fixed by the board." K.S.A. 72-8202b(a)

"In addition to the officers provided for in this act, the board of education of any school district may appoint other officers and employees to serve at the pleasure of the board. Such officers and employees shall receive compensation fixed by the board. **No member of the 2015 Special Committee on Ethics, Elections and Local Government**

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shall receive compensation from the school district for any work or duties performed by him.” K.S.A. 72-8202e.

It may seem obvious from the above section that teachers are de facto prohibited from serving on the board (because of the restriction on compensation for services); however teachers are not specifically mentioned in the list of certain persons prohibited from serving on the board. This lack of clarity resulted in litigation in which the Kansas Supreme Court, relying on the common law concept of “incompatibility of office,” ruled that a teacher may not serve on the board. *USD 501 v. Baker*, 269 Kan. 239, 6 P.3d 848 (2000).

## 2) Disclosure requirements

Kansas statutes require that local government officials (including school board members), disclose all financial and business “substantial interests” they have while they are candidates for office, at least once yearly and whenever their substantial interests change. K.S.A. 75-4302a. The penalty for a conviction of failing to disclose a substantial interest is a class B misdemeanor.

Kansas statute defines “substantial interest” as any of the following five things:

“(1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a **legal or equitable interest exceeding \$5,000 or 5% of any business**, whichever is less, the individual has a substantial interest in that business.

(2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year **compensation** which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an **aggregate amount of \$2,000** from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, **goods or services having an aggregate value of \$500** or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(4) If an individual or an individual's spouse **holds the position of officer, director, associate, partner or proprietor of any business**, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

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(5) If an individual or an individual's spouse receives **compensation** which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, **received an aggregate of \$2,000 or more in the preceding calendar year.**" K.S.A. 75-4301a.

It is importation to note that the above definition of substantial interest often includes the word "business." Kansas statute defines "business" as "...any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income." K.S.A. 75-4301a. The Kansas governmental ethics commission has consistently held that a local a governmental entity if not a "business" for purposes of the substantial interest laws. See Kansas governmental ethics opinions 1991-17, 1993-13 and 1996-22.

If a situation arises where business comes before a board which involves business with an entity in which a board member has a substantial interest, the board member must file a statement of substantial interest before acting on the matter. The board member may abstain from an action in order to avoid violating this section. K.S.A. 75-4305.

### **3) Prohibitions on certain contracts**

Kansas statute prohibits a board member from making a contract with a person or business if the board member or their spouse has a substantial interest in the person or business. The statute specifically states that if the board member abstains from any action in regard to the contract then they are not in violation of the law. The exceptions to this prohibition are when the contract in question is subject to competitive bidding by published notice or when the contract price is fixed by law. The penalty for a conviction of violating this particular section is removal from office and a class B misdemeanor. K.S.A. 75-4304.