

Current BGH Conflict of Interest (employee handbook)

We respect your right to pursue future career opportunities, and we expect that you also acknowledge our right to protect the interests of the Agency, its clients and employees. Accordingly, in accepting employment with us the law imposes upon you an obligation not to engage in direct competition with the Agency during your term of employment. "Direct competition" is defined as designing, selling or rendering other services similar to those offered by the Agency for your personal economic benefit or the economic benefit of a competitor employer who provides services in any geographic area in which the Agency is engaged in such business. This includes services rendered as an independent contractor or as the owner or shareholder in another company.

As a condition of employment, you may not engage in any outside business or financial activity which conflicts with the business interests of the Agency or which interferes with your ability to fully perform any duty or carry out any responsibility of your job.

No employee may benefit directly or indirectly from a third party who furnishes products, materials or services to the Agency as this raises potential for conflict of interest. Any employee who participates in practices that constitute a conflict of interest will be subject to disciplinary action up to and including termination of employment.

Background Information

IRS has a Conflict of interest questionnaire attached to the 990 and if the answer is 'yes' the IRS asks whether board members, officers and key employees are asked *annually* to disclose potential conflicts, as well as whether the organization "regularly and consistently monitors and enforces" compliance with the policy? See Part VI, Section B of the 990. The IRS provides a sample conflict of interest policy in Appendix A to the Instructions to IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3), www.irs.gov/pub/irs-pdf/i1023.pdf. However, this sample was developed for a large health care institution and may not be appropriate in other settings.

Conflict of interest is difficult to define, yet many people think they know it when they see it. The legal definition of conflict of interest, usually set out in state laws governing nonprofit corporations, is very specific and covers relatively few situations. Most conflicts fall into a gray area where ethics and public perception are more relevant than statutes or precedents. Conflict of interest arises whenever the personal or professional interests of a board member are potentially at odds with the best interests of the nonprofit. Such conflicts are common: A board member performs professional services for an organization, or proposes that a relative or friend be considered for a staff position. Such transactions are perfectly acceptable if they benefit the organization and if the board made the decisions in an objective and informed manner. Even if they do not meet these standards, such transactions are usually not illegal. They are, however, vulnerable to legal challenges and public misunderstanding. Loss of public confidence and a damaged reputation are the most likely results of a poorly managed conflict of interest. Because public confidence is important to most nonprofits, boards should take steps to avoid even the appearance of impropriety. These steps may include:

- Adopting a conflict-of-interest policy that prohibits or limits business transactions with board members and requires board members to disclose potential conflicts.
- Disclosing conflicts when they occur so that board members who are voting on a decision are aware that another member's interests are being affected.
- Requiring board members to withdraw from decisions that present a potential conflict.
- Establishing procedures, such as competitive bids, that ensure that the organization is receiving fair value in the transaction.

What should be included in a conflict-of-interest policy?

A policy on conflict of interest has three essential elements:

1. FULL DISCLOSURE.

Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization. This information should be provided annually.

2. BOARD MEMBER ABSTENTION FROM DISCUSSION AND VOTING.

Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.

3. STAFF MEMBER ABSTENTION FROM DECISION-MAKING.

Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.

What are some examples of actual and potential conflict of interest?

- Organization policy requires competitive bidding on purchases of more than \$1,000, but a printing firm owned by a board member's spouse receives the \$25,000 contract for the annual report and no other bids are solicited.
- A board member serves on two boards in the community and finds himself in the position of approaching the same donors on behalf of both organizations.
- A staff member receives an honorarium for conducting a workshop for another group in the organization's field of interest.

Should an organization contract with a board member for professional services, such as legal counsel or accounting?

Attorneys, accountants, and other professionals can contribute valuable expertise to a board. Due to the potential for conflict of interest, their contributions should be voluntary. At the very least, a board member who is associated with a firm competing for a contract should abstain from discussion and voting in the selection process. If a competitive bidding process results in the selection of that board member's firm, he or she should disclose the affiliation and abstain from voting on future board actions connected with that firm's contract with the organization.

SAMPLE

Conflict of interest arises whenever the personal or professional interest of a Board Member is potentially at odds with the best interests of BGHFS. Although the legal standards for avoiding conflict of interest for nonprofit organizations are fairly limited, BGHFS will avoid where possible even the appearance of impropriety. Individuals and businesses qualified to provide goods and services in the BGHFS area are limited, and therefore situations may arise where Board Members and/staff are commercially engaged by BGHFS, or hired by BGHFS for rural service delivery, etc. Because these situations all involve potential conflict of interest, the following procedures apply.

If an issue is to be decided by the Board that involves potential conflict of interest for a Board Member, it is the responsibility of the Board Member to:

1. Identify the potential conflict of interest.
2. Not participate in discussion of the program or motion being considered.
3. Not vote on the issue.

It is the responsibility of the Board to:

1. Only decide to hire or contract with the Board member if they are the best qualified individuals available, and willing to provide the goods or services needed at the best price.

2. Record in the minutes of the Board Meeting the potential conflict of interest, and the use of the procedures and criteria of this policy. Although it is not a conflict of interest to reimburse Board Members for expenses incurred (such as the purchase of supplies), Board Members are prohibited by law from being paid for serving on the Board. Generally, Board Members will not receive pass-through dollars for individual projects.

ANOTHER SAMPLE for Officers, Directors, Committee Members, Staff Members, and certain Consultants

No member of the Board of Directors, or any of its Committees, shall derive any personal profit or gain, directly or indirectly, by reason of his or her participation with the BGHFS Nonprofit.

Each individual shall disclose to the organization any personal interest which he or she may have in any matter pending before the organization and shall refrain from participation in any decision on such matter. Any member of the Board, any Committee, or Staff who is an officer, board member, a committee member, or staff member of a client organization or vendor of the BGHFS Nonprofit shall identify his or her affiliation with such agency or agencies; further, in connection with any committee board action specifically directed to that agency, s/he shall not participate in the decision affecting that agency and the decision must be made and/or ratified by the full board. Any member of the Board, any Committee, Staff, and certain Consultants shall refrain from obtaining any list of clients for personal or private solicitation purposes at any time during the term of their affiliation.

At this time, I am a board member, committee member, or an employee of the following organizations:

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:

1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party doing business with the XYZ Nonprofit which has resulted or could result in personal benefit to me.

2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with the BGHFS Nonprofit.

Any exceptions to 1 or 2 above are stated below with a full description of the transactions and of the interest, whether direct or indirect, which I have (or have had during the past year) in the persons or organizations having transactions with the XYZ Nonprofit.

Date: _____ Signature: _____

Printed: _____

For more information, contact Roger Bentz at BGHFS, 712-293-4700, or bentzr@bghome.net.