

American Center for Philanthropy Board Policy Concerning Conflict of Interest and Divided Allegiance

Introduction

The Board of Directors of American Center for Philanthropy (hereinafter, ACP) is committed to governing the organization in a manner that is free of conflicts. For the purposes of this Policy, “conflicts” shall mean both “conflicts of interest” as they are defined under applicable state and federal law, and “divided allegiances”, as they are defined in this Policy.

The purpose of this Policy is to inform ACP directors, officers, and staff (staff member includes any contracted or loaned administrative personnel) of ACP’s broad definitions of conflicts and to establish procedures for directors, officers, and staff to follow to declare and monitor conflicts as they arise. The Board requires each director, officer, and staff member be advised of this Policy, and provided a copy, immediately upon assuming their ACP duties or relationship. All individuals subject to this Policy are responsible for knowing and observing the Policy.

Commentary Regarding this Policy

Background

This Policy addresses how the ACP Board approaches actual or perceived conflicts. The definitions that apply cover more than the specific conflict of interest scenarios addressed by State nonprofit or federal tax laws. This Policy recognizes that a conflict of interest may exist, from a practical perspective, whenever the personal or professional interests of a director, officer, or staff member are potentially at odds with ACP’s interest(s). Since the ACP Board is responsible for ensuring that the corporation’s management serves the Center’s *best* interests, over and above the interests of any insider, this Policy broadly defines a potential conflict of interest to include all instances when a person within the organization may be able to exert his or her authority, influence, or bias on any issue in which he or she may have divided allegiances.

The Board recognizes that conflicts may exist not only when an individual has a financial interest in a transaction, but also when his or her non-financial interests are involved. In all cases, the Board of ACP is committed to ensuring that whenever a dual interest between an individual’s personal, business, organizational or professional affiliations and the position and interests of ACP exists, disclosure of such conflict is given and the resulting decision-making *is fairly and appropriately managed*. Furthermore, this Policy’s procedures apply not only when an actual conflict is demonstrated, but also when the interests or concerns of another party to which one has allegiance *may reasonably be seen* as competing with ACP’s interests or concerns. The decision of the Board to effect a level of higher scrutiny and procedures when a director, officer, or staff member of ACP

appears to have a conflict acknowledges the public's increasing sensitivity to self-dealing and/or lax management by directors/trustees, officers, and staff. The Board appreciates that this Policy will both satisfy the Board's legal responsibility and protect ACP from poor public relations, including the possibility of directors or officers being exposed to third-party actions.

Explanation of Fiduciary Duty/Responsibility of Board

ACP's Board is committed to take reasonable steps to demonstrate that its directors and staff are managing ACP in accord with their collective and individual duty to serve the corporation's best interests. This duty is derived from the *duty of loyalty* that common law applies to directors and officers of nonprofit corporations as one aspect of their statutorily-mandated duties. This duty is significantly heightened when the corporation has a charitable or public benefit purpose (as is automatically the case for all corporations holding 501(c)(3) designation from the Internal Revenue Service). In order for the Board to address conflicts effectively, directors and staff must be vigilant in disclosing any and all potential or actual instances of conflicts. At a minimum, individuals covered by the Policy have a duty to inform the Board (as specified in the Policy) of the important facts and details concerning their actual or possible conflict. Such disclosure is the essential "first step" by which Board members demonstrate and affirm their respect for the duty of loyalty, and it is immaterial to an application of this Policy whether the possible conflict being disclosed arises from either real or perceived dual interests. In all circumstances when divided loyalties may reasonably be perceived by others as being present, disclosure is key. Then, with notice, the ACP Board can discuss the proposed ACP transaction or action with knowledge of the disclosed conflicts.

The three types (or "Tiers") of conflicts defined in the Policy are not mutually exclusive. Rather, they can be viewed as increasingly wider concentric circles. Conflicts near the center of the circles, such as grants made to or contracts undertaken with organizations affiliated with a director, are most susceptible to a charge that insider benefit exists or undue influence has been exerted, while conflicts farther out in the circles typically have less weight of impermissibility as a possible result. This Policy, however, allows the Board to weigh the significance of any existing conflicts as part of its decision making role to the end of ensuring at all times that ACP's best interests are served.

Conflict of Interest and Divided Allegiances, Definitions

Tier 1 -- Direct conflict: A direct conflict exists whenever there is any proposed transaction or action of ACP in which a director, officer, or staff member has any direct involvement or interest. These transactions are subject to the highest scrutiny.

Tier 2 -- Indirect conflict: A director, officer or staff member has an indirect involvement or interest in a proposed transaction or action of ACP whenever:

- a) any other party to the transaction or party affected by the action is a “family member” (i.e., a relative¹) of the director, officer, or staff member,
- b) any other party to the transaction or party affected by the action is an entity in which the director, officer or staff member has a material financial interest², or
- c) the director, officer or staff member is an officer, director, trustee, staff member or partner of any other party to the transaction or party affected by the action.

Conflicts involving more immediate “family members” should generally be subject to a higher level of scrutiny by the Board of Directors than those involving relatives who are removed, although each situation involves individual circumstances to be weighed by the Board.

Tier 3 -- Potential conflict or the appearance of conflict: Directors, officers, and staff members should follow the disclosure procedures of this Policy when the interests or concerns of any director, officer or staff member, or of any of those individual’s relatives, or any other individual group or organization to which such person has allegiance, *may reasonably be seen as competing with the interests or concerns of the Center.*

Examples. To illustrate the preceding text’s enumeration of Tiers 2 and 3 scenarios (in which “indirect conflict” and “potential conflict”, respectively, are defined), the following examples where conflict would exist are provided (for illustrative purposes only and not intended to be all-inclusive):

- A situation arises in which a staff member or their spouse has a close friend (who is not otherwise included in the definition of “relative” used in this Policy) who has a “material financial interest” in a vendor of ACP’s. [covered by Tier 3]
- A situation arises where the past relationship a director, officer or staff member has with a candidate for a contract or grant applicant could reasonably be expected to compromise his or her objectivity. [covered by Tier 3]

¹ ACP intends to define “relative” to include all of the following individuals: spouses, domestic-partners-in-fact, parents, children, children’s spouses or children’s domestic-partners-in-fact, siblings, spouses or domestic-partners-in-fact of siblings, aunts, uncles, first cousins, step-parents and step-children. [“Domestic-partner-in-fact” is used with respect to those designated as the intended life partner of an individual or otherwise identified as being related to that individual through intended long term ties of love, affection, responsibility, and commitment common to those undertaken in marriages recognized by the State, regardless of whether such relationship is defined by or otherwise recognized by any governmental authority.]

² A “material financial interest” exists when an individual **or their relative** has rights (whether or not yet vested) to be paid compensation, employee or retiree benefits, dividends, or profit-sharing, or to have their expenses reimbursed or obligations or other liabilities repaid, etc. The term is intended to include any and all remunerative expectations.

- A situation arises in which a family member of an officer, director or staff member is employed by or governs an organization who is applying for a grant from or contract with ACP. [covered by Tier 2]

Procedure When Director or Officer has Conflict

1. Each director or officer of ACP has a duty to disclose to the Board (and to any applicable committee of the Board that one is addressing) the material facts of any proposed transaction or action of ACP in which such director has any conflicts.
2. The disclosure required under #1 (above) *must be made, to the extent possible, prior to any consideration of such proposed transaction or action* by the Board or by any applicable committee of the Board. If a director or officer does not recognize the existence of a conflict prior to the Board's decision regarding the transaction, the Board member has a duty to disclose the material facts of the conflict as soon as the conflict is recognized.
3. The director or officer having a conflict shall not participate in the deliberation or decision regarding the matter under consideration and shall retire from the room during deliberations except to the extent he or she has been invited by the Board or committee to participate, after consideration of the significance to ACP of the disclosed conflict. The Board or committee may also request that he or she provide ACP with any relevant information known to the director regarding the matter.
4. Any proposed transaction or action in which the Board has determined that a director or officer has a conflict of interest is to be approved by a majority of the directors entitled to vote other than the interested director(s) at a meeting at which a quorum is present (i.e., by a supermajority of the entire Board not including the conflicted director(s)), even though the non-conflicted directors may constitute less than a quorum.
5. When there is any doubt as to whether a conflict exists (and these procedures are thus to be employed) the matter shall be resolved by action of the Board, not including the participation of the individual whose potential conflict is at issue. All directors and officers are obligated to notify the Board if they believe an individual director or officer has failed to proffer disclosure of a conflict they believe to be at hand, and the aforementioned procedure (resolution by action of the Board, not including the participation of the individual whose potential conflict is at issue) shall be employed by the Board in all such instances.

Procedure When Staff has Conflict

1. Each staff member has a duty to disclose to the President of the Board of ACP the material facts of any proposed transaction of ACP in which such person has any conflict.
2. The disclosure required under #1 (above) is to be made immediately, and to the extent possible, before any consideration of such proposed transaction by ACP. If a staff member

does not recognize the existence of a conflict prior to ACP's decision regarding the transaction, the staff member has a duty to disclose the material facts of the conflict as soon as it is recognized.

3. A staff member having a conflict shall not participate in the deliberation or decision by ACP regarding the transaction under consideration, unless invited by the President of the Board of ACP to do so, after consideration of the significance to ACP of the disclosed conflict. The President of the Board of ACP may also request that he or she provide ACP with any relevant information regarding the matter.
4. The President of the Board of ACP shall take such additional action as may be required to ensure that the conflict is properly noticed to management and that appropriate steps are employed as the transaction and its terms are brought forth for decision-making and/or implementation. Furthermore, the President of the Board of ACP shall maintain a record of the existence, procedures employed in managing, and resolution of the conflict.
5. When there is any doubt as to whether a conflict exists, the matter shall be resolved by the Board of Directors.

Conflict of Interest and Divided Allegiance Policy Enforcement

A director, officer or staff person who fails to follow the protocols established herein shall be subjected to meaningful disciplinary action by the Board of Directors.

Gift Ban

ACP's directors, officers, and staff shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, donors, grantees or parties to sub-agreements (with the exception that unsolicited gifts of nominal value may be accepted).

A copy of this conflict of interest statement shall be furnished to each director, officer and staff member who is presently serving the Corporation, or who may hereafter become associated with it. New directors, officers and staff members shall be advised of the policy upon undertaking the duties of such office.

Full Name & Title

Signature

Date