

California State University, Los Angeles

THE CSULA FOUNDATION

**THE CSULA FOUNDATION BOARD MEMBER
CONFLICT OF INTEREST POLICY**

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I. INTRODUCTION

The CSULA Foundation (Foundation) is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for public and charitable purposes to:

- (a) Foster, encourage and promote the scientific, educational and charitable purposes of CSULA by constructing, establishing, maintaining, operating, conducting, and giving to CSULA scientific, literary, educational, and charitable buildings, equipment and facilities or doing or causing to be done one or more of such things and all other things incidental thereto;
- (b) Promote a greater and better understanding in the community of CSULA's proper role, and its policies and as it relates its development needs;
- (c) Provide financial assistance by allocations, gifts, loans and other means, to CSULA, its support groups, undergraduate and graduate students, faculty and staff;
- (d) Do any other act or thing and engage in and carry on any other activity in any manner connected with or incidental to, or calculated to promote, assist, aid, or accomplish any of the aforesaid purposes;
- (e) Provide management of all investment funds (short and long term),
- (f) Take an active role in the fundraising process in support of CSULA.

The responsibilities of the Foundation Board members bring with them the possibility for conflicts of interest and conflicts of commitment (referred to jointly herein as "conflicts"). Conflicts may arise from the different but related positions that individual Board members may hold on the University campus and in other organizations or entities.

The Foundation director may find himself or herself in a position where the director may be called on to vote on matters that affect an organization or entity that he or she represents in another capacity. This concern reaches not only voting on such matters, but also taking part in discussions, or being present during deliberations or other actions that may benefit the other organization or entity, or that may harm the Foundation.

In addition, the Foundation director may find that he or she has access to information held by the Foundation that could be used to negatively affect the future operations, goals or status of the Foundation, or to benefit another organization or entity. Conversely, the Foundation director may find that he or she has access to information held by another organization that could be used to negatively affect the future operations, goals or status of the Foundation.

To address the concerns surrounding possible conflicts and to prevent conflicts from hindering the participation of Board members in the governance process, the Foundation has looked to the California Education Code and Corporations Code for guidance. The result is a policy that seeks to define conflicts, so that Board Members are better able to structure their relationships with other organizations and entities in view of their fiduciary responsibilities to the Foundation, as well as provide a mechanism by which Board members can assess their activities within the Foundation and with other organizations and entities.

It is not the intent of this policy to regulate or eliminate all conflicts, but rather to enable Board members to recognize situations that may be subject to question and ensure that such situations are properly disclosed and if necessary, reviewed and resolved. Thus, an integral part of the policy is a disclosure mechanism whereby Board members regularly review their role on other boards and their activities with their responsibilities to the Foundation clearly in mind.

II. TYPES OF CONFLICT

A. Conflicts of Commitment

With the acceptance of an appointment to the Board of Directors of the Foundation, an individual makes a commitment to the Foundation that is understood to be a commitment in the most inclusive sense. Board members are expected to act with professional loyalty within their roles as directors of the Foundation. Accordingly, they should arrange outside activities, loyalties and financial interests so as not to interfere with this responsibility.

General Duty of Care

Directors of Public Benefit Corporations and similar organizations are held to a general duty of care. This standard requires that a director follow the "prudent person" rule. The director must act in good faith, in the best interests of the corporation, after reasonable inquiry, with the care of an ordinary prudent person under similar circumstances. See Cal. Corp. Code § 5231 (a).

Directors should use this standard to gauge their involvement in other organizations or entities. Most important is the legal requirement to act in the best interests of the Foundation.

Outside Directorships and Activities

The Foundation recognizes that its members may participate as officers and board members of other campus and outside organizations and entities. To the extent that these activities serve the Foundation's interests, as well as those of the participant, the Foundation encourages such involvement.

Participation in Decisions Affecting Other Interests

Each Board member must be aware that situations may arise where he or she may be asked by the Foundation to participate in a decision that may affect an organization or entity which that Board member represents in another capacity. Likewise, the Board member may be asked by another organization to participate in a similar decision affecting the Foundation. This includes participation in discussion, voting, or the mere presence during deliberations, discussions, or voting on such matters. In such cases, the Board member must act in a manner consistent with his or her professional loyalty and fiduciary obligation to the Foundation. If uncertain whether a conflict exists, the Board member should recuse himself or herself from discussion, deliberations and voting on the matter or follows the disclosure procedures outlined in Section III.

Additionally, a Board member has a duty to present to the Board, information the Board member may obtain that potentially hurts the Foundation including, but not limited to, its current and future operations, goals, or status, even if it involves another member of the Board. All Board members shall maintain the confidentiality if any and all sensitive or confidential matters discussed by the Board or its Committees, as well as issues that are discussed in closed session of the Board.

B. Conflicts of Interest

Financial Interest

A Board member is considered to have a conflict of interest when he or she, or any immediate family member, or any associated entity, possesses a financial interest in an activity that involves his or her responsibilities as a Board member of the Foundation

No member of the Board shall be financially interested in any contract or other transaction entered into by the Board of which he or she is a member, and any contract or transaction entered into in which the Board member is financially interested shall be void. See Cal. Educ. Code § 89906.

No contract or other transaction entered into shall be void, nor shall any member of the Board be disqualified or deemed guilty of misconduct if:

- a) The fact of such financial interest is disclosed or known to the governing Board and noted in the minutes, and the governing Board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the votes of such financially interested member or members; and
- b) The contract or transaction is just and reasonable as to the Foundation at the time it is authorized or approved by the Board.

See Cal. Educ. Code § 89907 (a) (b).

This exception, however, will not apply if one of the following circumstances exist:

- a) The contract or transaction is between the Foundation and a member of the governing Board of the Foundation;
- b) The contract or transaction is between the Foundation and a partnership or unincorporated association of which any member of the Board of the Foundation is a partner or in which he or she is the owner, holder, directly or indirectly, of a proprietary interest;
- c) The contract or transaction is between the Foundation and a corporation in which any member of the Board of the Foundation is the owner, holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock; or
- d) A member of the Board of the Foundation is interested in a contract or transaction, and without first disclosing such interest to the Board at a public meeting of the Board influences or attempts another member or members of the Board to enter into the contract or transaction.

See Cal. Educ. Code § 89909 (a) (b) (c) (d).

Utilization of Public Information

It is unlawful for any person to utilize any information, not a matter of public record, which is received by him or her by reason of his or her membership on the Board of the Foundation, for personal pecuniary gain, regardless of whether he or she is or is not a member of the Board at the time such gain is realized. See Cal. Educ. Code § 89909.

Self-Dealing Transactions

Directors are prohibited by law from engaging in self-dealing transactions to which the Foundation is a party and in which one or more directors have a material financial interest. A mere common directorship is not in itself a material financial interest. See Cal. Corp. Code §§ 5233 (a), 5234.

There are exceptions from the definition of self-dealing transactions and they are:

- 1) Actions fixing the "just and reasonable" compensation of directors or officers;
- 2) Transaction that are part of public or charitable programs that benefit a class of which directors or their families are members, and that are approved or authorized in good faith and without unjustified favoritism;
- 3) Transactions of which interested directors had no actual knowledge and which do not exceed one percent (1%) of the Foundation's gross annual receipts, or \$100,000, whichever is smaller.

See Cal. Corp. code §§ 5233 (b) (1) (2) (3), 5235.

Directors are thus liable to the Foundation for self-dealing transactions unless the transaction was approved by one of the following means:

- 1) Approval by the State Attorney General, or by a court in an action in which the Attorney General was an indispensable party, either before or after consummation of the transaction;
- 2) Approval before consummation of the transaction by a disinterested Board, under the following circumstances:
 - a) The Foundation entered into the transaction for its own benefit;
 - b) Transaction was fair and reasonable to the Foundation at the time the transaction was effected; and
 - c) More advantageous arrangements could not have been made with reasonable effort.
- 3) Interim approval by a committee having authority for the Board, where immediate action was needed and action by the full Board was not feasible, and subsequent ratification by the full Board at its next meeting, under the circumstances listed in 2), above.

See Cal. Corp. Code §§ 5233 (d) (1) (2) (3)

III. DISCLOSURE AND REVIEW PROCEDURE

If a Board member finds that he or she is faced with a possible conflict, the Board member shall inform, in writing, the President of the Board, who shall have the affirmative duty to advise the Executive Committee of the conflict as soon as possible.

The Executive Committee, with advice as needed from the Foundation's attorneys, shall review the circumstances surrounding the possible conflict and shall make a determination as to whether an actual conflict exists. If a conflict is found to exist, the Committee shall present the information to the Board member, with a recommendation that the Board member recuse himself or herself from any further discussions, deliberations, voting or presence on the matter to alleviate or avoid the conflict or potential conflict, or take appropriate action as required.

If a Board member has knowledge of a possible or actual conflict involving another member of the Board, the Board member who has acquired the information has an affirmative duty to disclose, in writing, such information to the President of the Board. Procedures as outlined above shall subsequently be followed. In cases where such a possible or actual conflict involves the President of the Board, disclosure shall be made in writing to at least one member of the Executive Committee, who shall then follow the procedure above and inform the President of the Board if a conflict is determined to exist.

In cases where the Executive Committee determines that a Board member has knowingly violated this conflict of Interest Policy by failing to disclose a possible conflict by ignoring the Board's directive to cease or modify activities or conduct posing a conflict or potential conflict, or in any other manner knowingly and purposefully acted in any way that violated the spirit of purpose of this Conflict of Interest Policy, the Committee shall recommend disciplinary action to the Board. Such action shall include, but not limited to, a notice to the Board member's appointing constituency or body of the specific activities or conduct which constitute the violation, the specific provisions of this Conflict of Interest Policy which have been violated, and a recommendation for an appropriate sanction or sanctions by that constituency or body. Such notice shall also be sent to the University President, pursuant to his or her overall responsibility for all campus organizations and activities. (Title 5, Cal. Code of Regs. § 42402).

¹The Ethics committee shall be a standing committee of the Board and shall consist of the three members of the Board, excluding the chairperson.