

OTTER STUDENT UNION SECTION NO. 02

POLICY MANUAL DOCUMENT NO. 151817

SECTION: **POLICY STATEMENT - GOVERNANCE**

SUBJECT: **STANDARDS OF CONDUCT POLICY**

PURPOSE: To restate statutory standards of conduct applicable to the Board members, and to establish a policy framework of parallel standards for volunteers, employees and other representatives of the organization.

REFERENCE: Education Code Sections 89906-09; and Corporations Code Sections 5233.

NEW/REVISED: New

EFFECTIVE DATE: May 18, 2017

I.

Background

The Otter Student Union at CSU Monterey Bay is a nonprofit public benefit corporation and its Directors of the Board, officers, employees and others representing the organization have a fiduciary duty to exercise care, skill and sound judgment in all organization affairs.

There are “self-dealing transaction” standards that generally apply to the “interested” Directors of the Board of such corporations. See *Cal Corps Code* § 5233.

However, as an auxiliary organization operating within the California State University system, the Otter Student Union is subject to standards generally considered more stringent covering governing board transactions involving financially interested directors, as expressed in *California Education Code* §§89906-09. This policy statement restates these standards for Directors of the Board, and establishes parallel standards for organization employees, volunteers and others having a business relationship with the organization.

Some Directors of the Board, officers and employees may also be state employees or officers subject to statutory and Board of Trustees requirements distinct from the requirements set forth in this statement. This policy applies to all Directors of the board.

Every Director of the Board has an affirmative duty to know and understand the conflict of interest standards, and to disclose to the Board any known real or perceived transaction

conflict, and to step aside from Board deliberations and actions on such matters.

II.

Policy

A. Financially Interested Director Transactions under Education Code Standards

Except in certain circumstances, a Director of the Board must avoid *transactions of the board* in which the Directors of the Board has a financial interest. The term, *transactions of the board*,¹ includes contracts approved by the Board of Directors. To do so is “misconduct in office” and the transaction breaching this prohibition is void, unless it meets a two- element circumstance exclusion test:²

- Is the transaction just and reasonable as to the organization *when approved*; and
- Was the financial interest disclosed or known to the Board and noted in the meeting minutes, followed by a favorable, good faith board vote sufficient for the action without including the interested director(s)?

But there are several *circumstance exceptions* to the application of the above two- element exclusion test, any one of which revives the prohibition:

- The transaction is directly between the interested Directors of the Board and the organization.³
- The transaction is between the organization and a partnership or unincorporated association in which a Director of the Board holds an ownership, partnership or other proprietary interest.⁴
- The transaction is between the organization and a corporation in which the interested Directors of the Board owns or directly or indirectly holds more than a five percent (5%) of the outstanding common stock.⁵
- The Director of the Board fails to disclose to the Board the financial interest in the transaction at a public meeting, then influences or attempts to influence one or more Directors of the Board in entering into the transaction.⁶

Thus, in summary, the following transactions are specifically deemed *impermissible*:

- Any transaction, other than an employment contract, directly between the organization and a Director of the Board.
- Any transactions between the organization and a partnership or unincorporated association in which a Director of the Board is a partner, or owner, or holder, directly or indirectly, of a proprietorship interest.
- Any transaction between the organization and a for-profit corporation, in which the organization's Director of the Board is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

On the other hand, the following transactions are *permissible* if the Board follows the procedure described in Section III(A) below:

- Transactions between the organization and a for-profit corporation in which a Director of the Board is the owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a for-profit corporation on whose governing body a Director of the Board serves as a director and owner or holder, directly or indirectly, of less than 5 percent of the outstanding common stock.
- Transactions between the organization and a nonprofit corporation on whose governing body a Director of the Board serves as a director.

B. Self-Dealing Director Transactions under Corporations Code

Transactions of the organization that involve a Director of the Board with a material financial interest may be subject to Corporations Code self-dealing standards not covered by the Education Code (described in Section A above). The following are typical examples of permissible transactions under Corporations Code standards (either not covered by, or represent a potentially higher standard than the Education Code):

- Setting compensation for Director of the Board or Directors of the Board as officers;
- Employment contract between organization and Director of the Board;

- Actions that are part of the organization’s public or charitable purposes, when approved in good faith and without unjustified favoritism (even if one or more Directors of the Board or their families benefit as part of the class of persons intended to benefit from the program);
- Other organization transactions involving an “interested” Directors of the Board who have no actual knowledge of the transaction, and the financial interest in the other party to the transaction does not exceed the lesser of 1% of gross receipts for the preceding fiscal year, or \$100,000; or
- The approval prior to or after the transaction is obtained from the Attorney General, or through the validation process prescribed by statute by the governing board, or by a committee or officer authorized by the board.

C. Other Actions or Transactions

Organization directors, officers, employees, volunteers or designated agents or other representatives shall not engage in self-dealing actions or transactions in which they have a personal pecuniary interest. Examples include, acceptance of compensation, advances, discounts, loans, gifts, entertainment or other favors in actual or perceived exchange for, or to influence organization actions, judgments or transactions.

The organization encourages the prompt disclosure of any such conflict, real or perceived, to the OSU Director for review and determination. In the case of the OSU Director, disclosure shall be made to the Board Chair for review and determination consistent with this policy statement.

C. Use of Information for Pecuniary Gain

It is unlawful⁷ and against organization policy for any person, including Directors of the Board, employees, volunteers, or organization agents or other representatives to utilize any information, not a matter of public record, which is received by the person by reason of his or her membership on the Board of Directors, organization employment, or relationship with the organization, for personal pecuniary gain, regardless of whether he or she is or is not a Director of the Board, employee, or otherwise engaged with the organization at the time such gain is realized.

III.

Procedures

A. Board Deliberations and Actions under Financial Interest Circumstances

Any Director of the Board with an actual or apparent financial interest in a pending or completed transaction shall promptly disclose to the nature and scope of that interest to the designated officer(s), and thereupon be recused from participating in any deliberations or actions by the Board on that matter. The Board meeting minutes shall note the disclosure and recusal. The Board shall then make a determination whether or not the transaction permissible and just and reasonable for the organization at that time and under the circumstances. If so, the Board may then authorize, approve, or validate the transaction in good faith by a vote sufficient for the purpose of the action without counting the vote(s) of such financially interested Directors of the Board.

B. Directors of the Board Initial and Annual Certification

Each Director of the Board shall initially and annually thereafter receive, review, complete, sign and return a *Related Party Questionnaire and Conflict of Interest Certification* in accordance with written procedures established by the Interim Director charged with implementing this policy statement.

C. Purchasing/Expenditure Authorization Certification

Organization employees or others with purchasing and expenditure authority shall receive, review, sign and return the *Signature Authorization Certification*, in a form prescribed by written procedures, acknowledging the following prohibitions and certifying that they will avoid them:

- Engaging in or having any personal pecuniary interest in any business, transaction, or incurring any obligation which conflicts with or gives the appearance of conflicting with or impairing independent judgment in the discharge of duties owed the organization;
- Accepting money, tips, or other considerations for work required or expected in the regular course of organization duties;
- Self-referring organization clients, donors, or customers, or recommending others with which there is a personal pecuniary interest;
- Accepting gifts, gratuities or other favors from those having a business relationship, or prospect of a relationship, with the organization; or

- Disclosing organization information, not a matter of public record, without authority, or using such information for pecuniary gain.

Reference

1 Cal Ed Code Section 89906.

2 Ibid Section 89907.

3 Ibid Section 89908(a)

4 Ibid Section 89908(b).

5 Ibid Section 89908(c).

6 Ibid Section 89908(d).