



*The New Conflict of Interest Law
(yet again)*

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Disclaimer:

The opinions expressed here as to the application of HB 1170 are solely those of ASBSD and should not be considered as legal advice. Schools need to consult their local school attorneys on how to comply with SDCL Ch. 3-23 as amended by HB 1170.



(older) Conflict of Interest

SD Constitution

Art. VIII § 17 (1889)

SDCL 13-20-2.1

[1939, 1955, 1960, 1974, 1982, 1987]

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(older) Conflict of Interest

SDCL 13-43-1

1939, 1955, 1959, 1960, 1975



(older) Conflict of Interest

SDCL 6-1-1

1955, 1957, 1959, 1960, 1963.



***(older)* Conflict of Interest**

SDCL 6-1-1

Such contract shall be null and void from the beginning.



***(older)* Conflict of Interest**

SDCL 6-1-2

1955, 1957, 1959, 1960, 1963, 1983, 1990, 2000,
2003, 2011, 2014



Conflict of Interest

Hanig v. City of Winner, 2005

- (1) “Direct pecuniary interests”
- (2) “Indirect pecuniary interests”
- (3) “Direct personal interest”
- (4) “Indirect Personal Interest”



(older) Conflict of Interest

SDCL 6-1-17

2005



SDCL 6-1-17

- (1) The official has a direct pecuniary interest in the matter before the governing body; or
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

*If an official with a direct pecuniary interest participates in **discussion** or **votes** on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.*



Newer Conflict of Interest

HB 1170

&

SDCL Ch. 3-23



HB 1170 (2017) SDCL 3-23

Who?

- school board member,
- business manager,
- chief financial officer,
- superintendent,
- chief executive officer,



HB 1170 (2017) SDCL 3-23

Who?

- or other person with the authority to enter into a contract or spend money \$5,000 or more . . . ;
- Person's spouse, or any other person with whom the person lives and commingles assets.



HB 1170 (2017) SDCL 3-23

What?

- Having an **interest** in a contract
- Receiving a **direct benefit** from a **contract**
- **greater than \$5,000**



SDCL 3-23-7

- **direct benefit from contract.** if the person, person's spouse, or any other person with whom the person lives and commingles assets:
 - (1) is a party to or intended beneficiary of any contract held by the school district, or ed co-op; ...



SDCL 3-23-7

direct benefit from contract:

- (2) has more than a 5% ownership interest in an entity that is a party to any contract held by the school district or ed co-op;
- (3) acquires property under the contract; or
- (4) receives compensation, commission, promotion, or other monetary benefit directly attributable to any contract with school district or ed co-op.



SDCL 3-23-7.1

- **interest in contract:** if the person, person's spouse, or any other person with whom the person lives and commingles assets:
 - (1) is employed by the party who has a contract with the school district or ed co-op; or
 - (2) receives more than nominal compensation or reimbursement for actual expenses for serving on a board of directors of an entity that derives income or acquires property directly from the contract.



Conflict of Interest Law as a Triangle

School District



Contract

School Official

3rd Party



SDCL 3-23-7.2

No direct benefit from or interest in a contract IF:

- (1) the contract/multiple contracts with the same party within a 12 month period is less than \$5,000;
- (2) the person only receives nominal income or compensation, a per diem authorized by law, or reimbursement for actual expenses incurred;



SDCL 3-23-7.2

No direct benefit from or interest in a contract IF:

(3) the person receives income as an employee of a party with whom the school district or ed co-op has a contract, or is independent contractor, unless the person receives compensation or a promotion *directly attributable* to the contract, or unless the person is employed by the party as a board member, executive officer, or other person *working for the party in an area related to the contract*;



SDCL 3-23-7.2

No direct benefit from or interest in a contract IF:

- (4) the contract is subject to bidding;
- (5) discussion/vote relates to general application;
- (6) the contract is for the sale/services/repairs/maintenance at price or below price offered to all customers;



SDCL 3-23-7.2

No direct benefit from or interest in a contract IF:

(7) the contract is with the official depository; or

(8) the contract value is associated with publicly-traded investments or holdings.



HB 1170 (2017) SDCL 3-23

Changes for 2017

- Establishment of a **\$5,000 financial threshold** for conflict of interest disclosures.
- Distinguishes between having an **interest in a contract** and deriving a **direct benefit** from a contract



HB 1170 (2017) SDCL 3-23

Changes for 2017

- If a ***Direct Benefit***, requires board authorization **before entering into a contract, or within 45 days after entering into a contract;**
- if contract extends into next fiscal year, **requires disclosure at annual meeting (but not additional/second approval).**



HB 1170 (2017) SDCL 3-23

Changes for 2017

- Permits the **official minutes** of a board in which disclosure is made and approved to be the official document submitted to the Attorney General and Auditor General.



- Auditor-General Dept. of Legislative Audit:
email to: Sheri.Doolittle@state.sd.us.
- South Dakota Attorney General:
email to: ATGMinutes@state.sd.us; OR
mail to: Office of the Attorney General,
1302 E.Hwy 14, Suite #1, Pierre SD 57501



Changes for 2017

- A written conflict of interest policy is required.



How? (Direct Benefit)

Provides full written disclosure:

- 1. All parties to the contract***
- 2. Person's role in the contract***
- 3. Purpose or objective in contract***
- 4. Benefit from the contract***
- 5. Duration of the contract***



How?

Provides full written disclosure:

Governing Board determines contract is “fair, reasonable, and not contrary to the public interest”



“derive a direct benefit”

The Auditor-General has indicated the minutes may be emailed to the Auditor-General.

The Attorney General has indicated the minutes are to be mailed or emailed to the Attorney General’s Office.



Interest in the Contract

ASBSD recommends that the same 5 things which are required in a disclosure of a direct benefit be included in the disclosure of an interest in a contract . . .



Interest in the Contract

The law says disclosure of an interest in a contract is to be given at the annual reorganization meeting if the contract extends into consecutive fiscal years.



Interest in the Contract

ASBSD recommends the time frame applicable to disclosure of a direct benefit be used for disclosing an interest in a contract . . .



Interest in the Contract

- **No governing board authorization is required after a person discloses an interest in the contract.**
- **The interest disclosure must be included in the official minutes. Schools are not required to send the official minutes to the auditor-general and attorney general.**



Consequences

*What are the consequences
for not complying with the
conflict of interest laws?*



Consequences

Penalties (knowingly violates)

- Class 1 Misdemeanor (\$2,000 fine and/or one year in jail)
- Removed as school board member
- Employment terminated
- Contract voidable
- Benefit forfeited



Consequences

However, the law also says that a person who submitted a good faith disclosure and, if applicable, an authorization request, may not be convicted of a crime.



QUESTIONS ??????