Authorities Budget Office
Recommended Practice

This Recommended Governance Practice is intended for use by policymakers, and directors, officers and officials of state and local authorities. These bulletins are intended to promote best practices and encourage their consideration and incorporation into the management policies and oversight of public authorities.

Issue: Conflict of Interest Policy for Public Authorities

Provisions: A conflict of interest is a situation in which the financial, familial, or personal interests of a board member or employee come into actual or perceived conflict with their responsibilities with the authority. Various sections of New York State law require state and local public authority board members and employees to examine conflicts of interest issues that may arise at their respective authority. For example, Section 2824(7) of Public Authorities Law stipulates that the Governance Committee of a state and local public authority is to examine ethical and conflict of interest issues. Article 18 of General Municipal Law requires officers and employees of industrial development agencies, urban renewal agencies and community development agencies to disclose conflicts of interest and specifies conflicts of interest that are prohibited. Section 74 of Public Officers Law restricts officers and employees of state public authorities from having a direct or indirect interest or engage in business or activities that may conflict with their proper discharge of duties. Section 55 of Executive Law requires board members and directors of state authorities to report to the state inspector general any information concerning undisclosed conflicts of interest by another board member or employee of the authority relating to their work for the authority. And section 715(a) of Not-for-Profit Corporation Law requires not for profit entities, some of which also are considered public authorities, to adopt a conflict of interest policy.

Objectives: The enactment of the Public Authorities Accountability Act (PAAA) and the Public Authorities Reform Act (PARA) included provisions in Public Authorities Law (PAL) for state and local public authorities, as defined by Section 2 of PAL, to be more transparent and accountable to the public. Board members and employees of state and local public authorities owe a duty of loyalty and care to the authority and have a fiduciary responsibility to always serve the interests of the public authority above their own personal interests when conducting public business. As such, board members and employees have the responsibility to disclose any conflict of interest, including any situation that may be perceived as a conflict of interest, to the authority board and the public. Board members and employees of public authorities are often unaware that their activities or personal interests are in conflict with the best of interests of the authority. A goal of the

authority should be to raise awareness and encourage disclosure and discussion of any circumstances that may constitute a conflict of interest.

The purpose of a conflict of interest policy is to protect a public authority's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a board member or employee of the authority or might result in a possible excess benefit transaction. Therefore, it is important for public authorities to develop a written conflict of interest policy to formally establish the procedures for dealing with conflict of interest situations and assure that the public authority's interest prevails over personal interests of authority's board members and employees.

Recommended Practice: Conflicts of interest of board members and employees of public authorities are not uncommon due to the multitude of relationships that occur between authorities, other governmental entities, and the private sector. Public authorities are at risk of being improperly influenced by board members and employees that have personal interests that can be in conflict with the best interest of the authority. To reduce this risk, the ABO recommends that state and local authorities adopt a written conflict of interest policy to ensure that its board members and employees act in the authority's best interest. The conflict of interest policy should clearly define what is expected of board members and employees when a conflict of interest or the appearance of a conflict of interest arises as well as the penalties for failing to comply with the policy. At a minimum, a conflict of interest policy should always require those with a conflict (or who think they may have a conflict) to disclose the real or perceived conflict. The policy should also prohibit employees with a conflict from being involved with the approval of any transactions related to the conflict and prohibit interested board members from being a part of discussions and voting on any matter in which there is a conflict.

State and local authorities are advised to adopt a conflict of interest policy that includes:

- An explanation of the circumstances (examples) that constitute a conflict of interest or the appearance of a conflict of interest.
- Procedures for disclosing conflicts or the appearance of conflicts to the board.
- A requirement that the person with the conflict of interest or appearance cannot participate in board or committee deliberation or vote on the matter giving rise to such conflict or appearance
- A prohibition against any attempt by the person with the conflict or appearance to influence improperly the deliberation or vote on the matter giving rise to such conflict.
- A requirement that the existence and resolution of the conflict or appearance of a conflict be documented in the public record, including in

the minutes of any meeting at which the conflict was discussed or voted upon.
- Description of the penalties for failing to comply with the conflict of interest policy

Board members or employees that are unsure whether a particular relationship, association or situation constitutes a conflict of interest or the appearance of a conflict of interest should refer to the authority's Governance Committee, which is the body responsible for examining conflicts of interest issues at the authority. Conflicts of interest identification can be difficult and the Governance Committee should at all times err on the side of caution and treat instances where there is the appearance of conflict of interest as a perceived conflict of interest to avoid compromising the public trust in the authority. Governance Committees are encouraged to seek guidance from counsel or NYS agencies, such as the Authorities Budget Office, State Inspector General or the NYS Commission on Ethics and Lobbying in Government when dealing with cases where they are unsure of what to do.

The ABO has developed a model conflict of interest policy for state and local authorities to use as a reference when drafting and/or revising their own policies. Note that there is no "one size-fits-all" policy and public authorities' officials need to decide the level of detail desired and tailor their conflicts of interest policy to meet the needs and circumstances of the authority. For example, an authority may want to set different conflicts of interest standards for board members and employees. Standards for employees can be more rigorous in prohibiting outside employment that may be in conflict with employment at the authority, while standards for board members would allow for outside employment and address conflicts as circumstances arise.

The board should have procedures in place to ensure that all employees and board members understand and comply with the standards set in the conflict of interest policy. The conflict of interest policy of an authority should be reviewed annually by the board members to ensure that it meets the organization's needs and addresses any revisions in the law.

MODEL CONFLICT OF INTEREST POLICY

All Board Members and employees should be provided with this Conflict of Interest Policy upon commencement of employment or appointment and required to acknowledge that they have read, understand and are in compliance with the terms of the policy. Board members and employees should review on an ongoing basis circumstances that constitute a conflict of interest or the appearance of a conflict of interest, abide by this policy and seek guidance when necessary and appropriate.

This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to public authorities.

Conflicts of Interest: A conflict of interest is a situation in which the financial, familial, or personal interests of a director or employee come into actual or perceived conflict with their duties and responsibilities with the Authority. Perceived conflicts of interest are situations where there is the appearance that a board member and/or employee can personally benefit from actions or decisions made in their official capacity, or where a board member or employee may be influenced to act in a manner that does not represent the best interests of the authority. The perception of a conflict may occur if circumstances would suggest to a reasonable person that a board member may have a conflict. The appearance of a conflict and an actual conflict should be treated in the same manner for the purposes of this Policy.

Board members and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust. While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a director or employee has or will have:

- A financial or personal interest in any person, firm, corporation or association which has or will have a transaction, agreement or any other arrangement in which the authority participates.
- The ability to use their position, confidential information or the assets of the authority, to their personal advantage.
- Solicited or accepted a gift of any amount under circumstances in which it could reasonably be inferred that the gift was intended to influence them, or could reasonably be expected to influence them, in the performance of their official duties or was intended as a reward for any action on their part.
- Any other circumstance that may or appear to make it difficult for the board member or employee to exercise independent judgment and properly exercise their official duties.

Outside Employment of Authority's Employees: No employee may engage in outside employment if such employment interferes with their ability to properly exercise their official duties with the authority.

PROCEDURES

Duty to Disclose: All material facts related to the conflicts of interest (including the nature of the interest and information about the conflicting transaction) shall be disclosed in good faith and in writing to the Governance Committee and/or the Ethics Officer. Such written disclosure shall be made part of the official record of the proceedings of the authority.

Determining Whether a Conflict of Interest Exists: The Governance Committee and/or Ethics Officer shall advise the individual who appears to have a conflict of interest how to proceed. The Governance Committee and/or Ethics Officer should seek guidance from counsel or New York State agencies, such as the Authorities Budget Office, State Inspector General or the NYS Commission on Ethics and Lobbying in Government when dealing with cases where they are unsure of what to do.

Recusal and Abstention: No board member or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting, when they know or have reason to know that the action could confer a direct or indirect financial or material benefit on themself, a relative, or any organization in which there is an interest. Board members and employees must recuse themselves from deliberations, votes, or internal discussion on matters relating to any organization, entity or individual where their impartiality in the deliberation or vote might be reasonably questioned, and are prohibited from attempting to influence other board members or employees in the deliberation and voting on the matter.

Records of Conflicts of Interest: The minutes of the authority's meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.

Reporting of Violations: Board members and employees should promptly report any violations of this policy to their supervisor, or to the public authority's ethics officer, general counsel or human resources representative in accordance with the authority's Whistleblower Policy and Procedures.

Penalties: Any director or employee that fails to comply with this policy may be penalized in the manner provided for in law, rules or regulations.