GOVERNANCE

CONFLICT OF INTEREST

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1. Introduction:

A non-profit charitable organization dealing with public funds is expected to demonstrate highest forms of accountability and commitment to operate with integrity. This also implies an inherent obligation to conduct all of its affairs transparently and above reproach. This would also help the organization to gain public trust and confidence as well as that of various controlling authorities.

The Board, office bearers and management have the responsibility of administering the affairs of the organization honestly and prudently and of exercising their best care, skill and judgement. They need to exercise utmost sincerity in the transactions and should not use their position or knowledge gained therefrom for their personal benefit. The interest of the organization must have the top priority and all the purchases of goods and services must be reflected on a basis that secures the organization full competitive advantages as to product, service and price.

2. What is Conflict of Interest?

Conflict of Interest is a situation in which a person has the responsibility for promoting an interest, but has another competing interest at the same time. When the competing interest is exercised over a fiduciary interest, then it leads to Conflict of Interest. This means a person making a decision should not have any other interest in mind. It is also important to work for the best interest of the organization and not to have any other conflicting interest. Another issue that needs to be kept in mind is that there should not be an appearance of conflict of interest as well. Therefore, the circumstances should not appear as if there is a possibility of conflict of interest.

3. Persons Concerned:

The persons concerned in terms of conflict of interest are Directors, Officers and all the employees who have the potential to influence the action of the organization. Therefore, all people who make decisions and have proprietary information concerning the organization are included in Conflict of Interest.

4. Areas in which conflicts may arise:

Conflicts of interest may arise in the relations of directors, officers, and management employees with any of the following third parties:

a) Persons or entities supplying goods and services to the organization.
b) Persons or entities from whom the

organization leases property and equipment.

c) Persons or entities with whom the organization is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities, or other property.
d) Persons or entities paying honorariums or royalties for products or services delivered by the organization or its agents or employees.
e) Other non-profit organizations.
f) Donors and others supporting the organization.
g) Agencies, Organization and associations which affect the operations of the organization.

5. Nature of Conflicting Interest:

A material conflicting interest may be defined as an interest, direct or indirect, between any person or entity mentioned in Section 4 and a the person making the decision(director, officer or management employee), which might affect, or might reasonably be thought by others to affect, the judgment or conduct of the person (director, officer or management employee) of the organization. Such an interest might arise through:

a) Ownership & other proprietary interests in any third party dealing with the organization.
b) Holding office, serving on the Board, participating in management or being otherwise employed (or formerly employed) in any third party dealing with the organization.
c) Receiving remuneration for services with respect to individual transaction involving the organization.
d) Using personnel, equipment, supplies or goodwill for other than organization approved activities, programs and purposes.
e) Receiving personal gifts or loans from third parties dealing with the organization. (Receipt of any gifts of nominal value which could not be refused without discourtesy may be allowed in specific cases. No personal gift of money should ever be accepted.)
f) Obtaining an interest in real estate, securities or other property which the organization might consider buying or leasing.
g) Using staff time during normal business hours for personal affairs or for other organizations, to the detriment of work performance for the organization.

6. Indirect Interests:

As noted above, conflicting interests may be indirect. A director, officer or management employee will be considered to have an indirect interest in another entity or transaction if any of the following have an interest:

a) A family member of a director, officer or management employee. (Family member is defined for these purposes as all persons related by blood or marriage.)
b) An estate or trust of which the director, officer or management employee or member of his family is a beneficiary, personal representative, or trustee.
c) A company of which a member of the family of the director, officer or management employee is an officer,

director or employee, or in which he has ownership or other proprietary interest.

7. Interpretation of the Policy:

The areas of conflicting interest listed in Section 4, and the nature of interest which may give rise to conflict, as listed in Section 5, are not exhaustive. Conceivably, conflicts might arise in other areas or through other relations. It is expected that the directors, officers and management employees will recognize such areas.

8. Managing Conflict of Interest:

Before undertaking a related-party transaction, an organization must meet all of the following criteria:

a) It is ideal for the organizations to avoid related-party transactions that are conflicts of interest.

b) Related-party transactions must be disclosed to decision makers and resource providers. The primary vehicle for disclosing related-party transactions to external constituents and resource providers is through the audited financial statements. In fact, disclosure of related-party transactions is also required by Generally Accepted Accounting Principles (GAAP). One of the benefits of requiring disclosure through the audited financial statements (at least to external readers of the financial statements) is that they have to be reviewed and verified by an independent auditor for completeness and veracity.

Obviously, related-party transactions should be disclosed to executive staff and the governing board. An essential part of this internal disclosure process is a written and distributed conflict of interest policy within the organization. Sometime this conflict of interest policy is part of the byelaws of the organization.

c) To help ensure that the decision to approve a related-party transaction is made in an objective and fair manner, the party that has a related interest should not participate in the discussion or approval of the transaction. The other members of the board or staff involved in making a decision should have the freedom to discuss and act on the transaction without any degree of pressure generated by the related party's involvement in the entire process. For instance, board decision involving a related party who is also a board member or executive staff member of the organization should be adequately and appropriately discussed without the attendance or participation of the related party.

d) A related party transaction can only be undertaken if there is evidence that the resource commitment (e.g., cost to the organization) is the best that can be obtained for the goods or services being procured. While competitive bids are the most common form of determining cost and benefit relationships, they may not always be practiced or appropriate.

The basic issue is to ensure that an organization performs the necessary evaluation, documenting its decision to support the reasonableness of the related-party transaction. Since independent auditors will review the transaction in order to make proper disclosures in the financial reports, a formal internal procedure and record is needed to show that a thorough cost and benefit analysis was conducted. Normally this would include the governing board's review of the information before making a decision

e) Although more subjective in nature, this final criteria is just as important as the previous four. After the governing board has disclosed all relations, discussed the transaction openly and without bias, and conducted cost/benefit evaluations, it needs to look at the transaction as a whole and determine the overall wisdom of entering into it. The board should ask such questions as: Will the transaction, when disclosed, raise more questions with external (and internal) constituents or regulatory groups than we can adequately answer? Will we set a precedent, making it difficult to respond negatively to future situations? Does this decision ultimately have the best long-term interest of the organization at heart, or will it give short-term gains only? Since the governing board will be held responsible for outcome of the transaction, it must exercise utmost prudence in its evaluation and decision.

In determining independence, the general approach is to recognize both the appearance and reality of independence. Even if independence is the reality, this may mean little if appearance says otherwise. An organization should always give substantial weight to the appearance of things before deciding to enter into a related-party transaction. Therefore the transaction should be independent and it also should appear independent.

8. Conclusion:

While guidelines and practices can help an organization to avoid conflict of interest or determine whether to undertake a related-party transaction, this is obviously a complex issue. Many times it is a subjective determination involving personal intent, individual integrity, and conscience. To the extent that the board and leadership of an organization continually exhibit and practice sensitivity to these issues in all areas of decision making, the organization itself can develop a general atmosphere of high accountability. The best way for an organization to cultivate a sense of integrity and accountability is for the governing board and officers to give continuous attention to openness about their intentions and decision.