

**VILLANOVA UNIVERSITY'S
AMENDED AND RESTATED POLICY
CONCERNING POTENTIAL CONFLICTS OF INTEREST**

Preliminary Considerations

Institutions of postsecondary education, both public and private, continue to be involved in programs affecting the public interest. Their trustees have adopted and published guidelines for themselves and administrators at all levels to insure that the highest possible degree of probity is observed. Among these concerns is the problem of potential conflict of interest.

It should be recognized that members of governing boards are likely to be, and indeed should be, persons of responsible involvement in affairs other than trusteeship of postsecondary education. A competent board can scarcely be recruited from persons entirely free from potential conflict of interest. To a degree, the same can be said for administrators.

The term "trustee" itself indicates that members of a board are acting for others, not for themselves, and are legally appointed for that purpose. Hence the term "fiduciary." Disclosure of potential conflicts of interest are therefore but reasonable steps to be taken by reasonable persons, without implying dubious practice. As emphasized later, concern for the letter of the law is but the first stage. Equally important is demonstrated awareness of broad ethical considerations.

The policy adopted by a board should assure that both trustees and staff members place the welfare of the institution above personal interests or the interests of family members or others who may be personally involved in substantial affairs affecting the institution, including not only fiscal transactions but any other matters affecting program, personnel, or auxiliary enterprises. It should provide for systematic, continuous disclosure of potential conflicts and the means for resolving them. The individual trustee and the board as a whole should maintain current records of potential conflicts for review and evaluation by persons appointed by the board.

To insure that the statement of policy has the full force of the institution behind it, the bylaws of the institution should include reference to the statement. The policy statement itself need not be included in the bylaws, since the policy may require occasional modification based on experience. Change is usually accomplished most easily when it does not involve the bylaws.

Pennsylvania Statutory Law

The statutory law of Pennsylvania on this subject is the Act of 1972, Nov. 15, No. 271, Sec. 7728, 15 Pa.C.S.A. Sec. 5728, a copy of which is hereto attached as Exhibit A.

Because trustees are responsible for the total well-being of an institution, their responsibility extends beyond financial aspects into all matters bearing on the progress, stability and effectiveness of the institution. Thus the board should be alert to all relationships which could be seen as affecting its integrity. These may not always be issues of legality but of self-important standards.

An attempt to compile an inventory of potential conflicts of interest, however, would be futile. There can be no substitute for sensitivity on the part of individual trustees and of the board as a whole. Over-zealous pursuit of the issue can ultimately hamper the sensible performance of duty. Legal determinations may prove fairly easy. The more delicate issues may simply require the intelligence and judgment to raise necessary questions in a timely fashion and to dispose of them one way or another as the board itself may see fit.

Villanova's Conflict of Interest Policy for Trustees, Officers and Other Key Employees

1. **SCOPE:** The following statement of policy applies to each member of the Board and to all officers of the University. Further, it is intended to serve for the guidance of all persons employed by the institution regardless of position.
2. **FIDUCIARY RESPONSIBILITY:** Members of the Board, Officers and staff serve a public-interest role and thus have a clear obligation to conduct all affairs of the University in a manner consistent with this concept. All decisions of the Board and Officers of the Administration of the University are to be made solely on the basis of a desire to promote the best interests of the University and the public good.
3. **DISCLOSURE:** The policy of the Board of the University requires that in the event the Board or Officers must consider any transaction for the University which also involves 1) a member of the Board or any Officer of the University or a member of his or her family or 2) an organization with which a member of the Board or any Officer of the University is affiliated, such Trustee or Officer, at the first knowledge of the transaction, shall disclose fully the precise nature of the interest or involvement.

Disclosure is further required of Board members and Officers of the University concerning all relationships and business affiliations that reasonably could give rise to a conflict of interest involving the University. This disclosure shall be continuously reported and kept current on the form approved by the Trustee Committee from time to time, an updated copy of which shall be filed by each Board member and Officer of the University at least annually on or before the 15th day of January. For the purpose of this policy, affiliation is understood to exist if the Trustee or Officer, or a member of the family:

- a. Is an officer, director, trustee, partner, employee or agent of such organization; or
- b. Is either the actual or beneficial owner of more than five percent of the voting stock or controlling interest of such an organization; or
- c. Has any other direct or indirect dealings with such organization from which he or she knowingly is materially benefited.

All disclosures required under this policy must be directed in writing to the Chairman of the Board and to the President of the University who, together with the University counsel, shall be responsible for the administration of this policy.

4. **RESTRAINT ON PARTICIPATION:** Trustees or Officers who have declared or been found to have conflict of interest in any matter before the administration or the Board shall refrain from participating in consideration of the proposed transaction, unless for special reasons the Board or Administration requests information or interpretation from the person or persons involved. The person or persons involved should not vote on such matters and should not be present at the time of vote.
5. **DISCIPLINARY ACTION:** Violation of these standards by a member of the Board or by the President shall be addressed by the Board. Sanctions available to the Board in its discretion range from an oral or written admonishment to removal of a trustee from the Board for cause. In accordance with the Bylaws of the Board, any removal of a member of the Board for cause shall be by a vote of two-thirds (2/3) of all the trustees taken at a regular or special meeting.

Violations of these standards by a University officer other than the President shall be addressed by the President. Sanctions available to the President range from an oral or written admonishment to termination of employment. With respect to Vice Presidents, who serve at the pleasure of the Board, a sanction of termination of employment shall be presented to the Board for its decision.

Any Board member or Officer of the University who is uncertain about possible conflict of interest in any matter, may request the Board to determine whether a possible conflict prevails; the Board shall resolve the question by majority vote. When possible, the question of potential conflict should be referred to counsel for an opinion prior to the Board's vote.

Adopted by the Board of Trustee this 21st day of October 1980.

Very Rev. Francis X. N. McGuire, O.S.A.
Chairman of the Board

As amended by the Board of Trustees this 10th day of February 1998.

Robert M. Birmingham
Chairman of the Board

As amended by the Board of Trustees this 13th day of October 2009.

Herbert F. Aspbury
Chairman of the Board

EXHIBIT "A"

Sec. 5728 Interested members, directors or officers; quorum

(a) General rule. – No contract or transaction between a nonprofit corporation and one or more of its members, directors or officers or between a nonprofit corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for such reason, or solely because the member, director or officer is present at or participates in the meeting of the board of directors which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(2) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of such members; or

(3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the members.

(b) Quorum. – Common or interested directors maybe counted in determining the presence of a quorum at a meeting of the board which authorized a contract or transaction specified in subsection (a) of this section.

(c) Applicability. – The provisions of this section shall be applicable except as otherwise restricted in the bylaws.

15 Pa.C.S.A. Sec. 5728