



MEMORANDUM

TO: Board of Trustees Committee on Audit, Risk Management and Legal Affairs
Ward Russell, Chair, CARL Committee
Mona Edwards, Member, CARL Committee
Brad Hayes, Member, CARL Committee
Dean Priddy, Member, CARL Committee
Susan Safran, Member, CARL Committee

FROM: Office of General Counsel

CC: Charles Maimone, Vice Chancellor for Business Affairs
Julie Jackson-Newsom, Associate Vice Chancellor for Strategy and Policy
Don Skeen, Director of Internal Audit
Waiyi Tse, Chief of Staff
Kelly Harris, Associate Chief of Staff

RE: Proposed Procedures for Reviewing Potential Conflicts of Interest

Date: May 1, 2018

I. INTRODUCTION

At the February 20, 2018, meeting of the CARL Committee, the Office of General Counsel provided the Committee with a memorandum outlining the conflicts of interest rules that apply to Board of Trustees Members and recommended that the Board establish procedures for addressing potential Board Member conflicts of interest. The CARL Committee had previously approved and the full Board adopted a delegation of authority to the Board's Executive Committee to manage potential conflicts of interest of Board Members.

Board of Governors Policy § 200.1 ("BOG Policy") governs potential conflicts of interest of Board Members, the Chancellor and the Vice Chancellor for Business Affairs, and establishes procedures for reviewing potential conflicts of interest. Best practices dictate that the Board of Trustees adopt its own procedures to facilitate Board review of potential conflicts of interest. To that end, OGC proposes the attached Procedures for Reviewing Potential Conflicts of Interest, which isolate those portions of the BOG Policy that constitute procedures for review of potential conflicts and augment the BOG Policy procedures to assist the Board of Trustees in reviewing potential conflicts of interest of Board of Trustees Members, the Chancellor, and the Vice Chancellor for Business Affairs.

II. RECOMMENDED ACTION

OGC recommends that the CARL Committee approve and recommend to the Board of Trustees that the Board adopt the attached proposed Procedures for Reviewing Potential Conflicts of Interest. These proposed procedures reflect in part and are consistent with and augment the procedures in the BOG Policy and corporate best practices. The proposed procedures include: Definitions, BOG Policy Requirements, Procedures, and Protocols for Reviewing Potential Conflicts of Interest.

**UNC Greensboro
Board of Trustees
Procedures for Reviewing Potential Conflicts of Interest
Adopted: May 3, 2018**

I. PURPOSE

Members of the Board of Trustees of UNC Greensboro (the “Board”) are expected to conduct both their personal and professional affairs in such a manner as to maintain and enhance the credibility and reputation of the University. Board Members, as well as the Chancellor and Vice Chancellor for Business Affairs, are required by the UNC Board of Governors¹ (the “BOG Policy”) to discharge their duties in good faith, with the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances. They are to take all reasonable steps to avoid the appearance of impropriety in the conduct of all affairs of UNC Greensboro (“University”).

The purpose of the BOG Policy is to assure public confidence in the integrity of the University by preventing members of the Board of Trustees (and senior Administrators) from using their positions, or appearing to use their positions, to influence the decisions of the University for their personal financial gain, while at the same time allowing the University to take advantage of contracts that are advantageous to the citizens of North Carolina and to the University. The purpose of these Procedures is to establish guidelines that augment the BOG Policy, which sets forth rules governing potential conflicts of interest of Board Members, and to ensure the Board adheres to governance best practices. It is of critical importance that decisions made by Board Members be in the best interest of the University and not subject to undue influences (financial or otherwise).

II. DEFINITIONS

As used in these Guidelines, the following terms have the following meanings, with the exception that in event of a conflict, any definition in the BOG Policy shall control:

- A. “Board Member” means each member of the Board of Trustees of the University.
- B. “Business Entity” means any not for profit corporation, or any of the following entities organized for a profit: association; business trust; corporation; enterprise; joint venture; organization; partnership; proprietorship; vested trust; or any other business interest, including ownership or use of land for income.
- C. “Conflict of Interest” means any situation where a Board Member, the Chancellor or Vice Chancellor for Business Affairs has a material personal or professional interest in a proposed contract, decision or transaction to which the University is a party, as set forth in BOG Policy. This interest can occur either directly or indirectly; the Person may be personally involved with the transaction or may have an employment or investment

¹ UNC Policy Manual § 200.1

relationship with an entity with which the University is dealing; or it may arise from a relationship of an immediate family member. In this regard, there is an obligation to disclose any interest that might reasonably be interpreted as conflicting with the mission of the University and the responsibility of the Person. A conflict of interest may also exist when there is a material divergence or inconsistency between the interest of the University and an outside commitment(s) of the Person.

D. “Person” means a member of the Board of Trustees, the Chancellor or the Vice Chancellor for Business Affairs.

E. “Substantial Interest” means either:

1. A “business with which associated” means a business in which the Person or any member of the Person’s immediate family (a) is an employee; (b) holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned; (c) owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust, or (d) is a lobbyist registered under Chapter 120C of the North Carolina General Statutes. Notwithstanding the foregoing, ownership of more than \$10,000 in a publicly traded corporation by itself is not a substantial interest, and the term “business” shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if (i) the covered person, filing person, or a member of the covered person's or filing person’s immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund, and (ii) the fund is publicly traded, or the fund's assets are widely diversified; or

2. A “nonprofit corporation or organization with which associated” means any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in North Carolina primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the Person or Person's immediate family is a director, officer, governing board member, employee, lobbyist registered under Chapter 120C of the North Carolina General Statutes or independent contractor. Notwithstanding the foregoing, uncompensated service as a director, officer, or trustee of a not for profit corporation is not a Substantial Interest, and a nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State.

F. “The University” means the University of North Carolina at Greensboro, the constituent institution of the University of North Carolina on whose Board of Trustees the Board Member serves.

III. UNC BOARD OF GOVERNORS POLICY REQUIREMENTS

A. As required by the BOG Policy, whenever a Board Member knows that a Business Entity in which he or she has a Substantial Interest is attempting or planning to enter, is entering, or has entered into a contract with the University, the Board Member must report the nature of that Substantial Interest and the nature of the contract to the University’s Vice Chancellor for Business Affairs and the University General Counsel.

The reports required by this paragraph need to be in writing and will be public records retained by the Vice Chancellor for Business Affairs and the Office of General Counsel.

B. Pursuant to the BOG Policy, the University will not enter into a contract with a value of \$10,000 or more, or with expected payments of \$10,000 or more per year, with a business entity in which a Board Member has a Substantial Interest, unless one of the exceptions in III.D. below applies. A Board Member will not in any way participate in making a contract; attempt to cause or influence the University to make a contract or attempt to influence the contract specifications or contracting process if the contract is between the University and a Business Entity in which the Board Member has a Substantial Interest.

C. The Vice Chancellor for Business Affairs is responsible for determining whether the University is entering into a contract with a value of \$10,000 or more with a Business Entity in which a Board Member has a Substantial Interest. In the event the Vice Chancellor for Business Affairs has a substantial interest in a contract with a value of \$10,000 or more with a Business Entity which seeks to do business with the University as determined by the Chancellor, or where the Chancellor determines that it is in the best interest of the Executive Committee to make such a determination and the Executive Committee makes said determination, the Vice Chancellor shall be prohibited from making a determination that the contract is in the best interest of the university and from participating in the management of the contract.

D. The restrictions on entering into a contract identified in Section III. B. above do not apply if the Board Member with the Substantial Interest does not participate in making or administering the contract **and**:

1. The contract results from a competitive sealed bid or a competitive request for proposals with specifications and criteria;
2. The contract is for goods or services sold or provided to the general public at a uniform price or is for goods on state contract sold to state agencies at a uniform price, unless the contract is prohibited by state law;
3. The contract is an employment contract with the dependent child of a Board Member and the employment is allowed under UNC Policy Manual § 300.4.2;
4. The contract is with a bank or a public utility; **or**
5. The Executive Committee of the Board of Trustees finds that the contract is in the best interest of the University. Examples of when a contract might be in the best interest of the University include, but are not limited to, when it has financially advantageous terms, when the goods or services to be provided are demonstrated to be unique, or when the contract is a continuation of a contract that was in effect before the Board Member with the Substantial Interest became affiliated with the University.

E. If a Person is an employee or agent of a Business Entity, the Person shall not attempt to influence the University to enter into a contract with the Business Entity that employs or retains that Person.

F. A Person shall not attempt to influence the administration of or payments under a contract between the University and a Business Entity in which the Person has a Substantial Interest or between the University and the Person's employer.

G. No Person shall disclose or use confidential information or information concerning economic development or technology research or development that the Person received in his or her capacity as a Board Member or employee of the University for financial gain.

H. No Person shall accept a gift or favor from a Business Entity, or the principal in a Business Entity, that has entered into a contract with the University within the past year, who currently has a contract with the University, or who intends to attempt to enter into a contract with the University if the Person:

1. has or will prepare plans, specifications, criteria or estimates for the contract;
2. awards, approves, negotiates, or administers the contract; or
3. inspects or supervises the contract.

The prohibition on gifts or favors does not prohibit receiving gifts of advertising items of nominal value, awards such as plaques or trophies, food served at professional meetings or banquets, or gifts from family members or personal friends when it is clear that the friendship extends beyond the business relationship.

I. A Person shall not represent, as attorney, agent, or trustee, a third party who has an adverse relationship with the University. A Person shall attempt to dissuade a firm or Business Entity in which the Person has a Substantial Interest from engaging in representation adverse to the University. (For purposes of this restriction, it is the opinion of the Office of General Counsel that University-Associated Entities are not “adverse to the University”), and further that “trustee” as used herein does not refer to service as a member of board of directors or board of trustees.

IV. Procedures

A. The Board of Trustees has designated the Executive Committee as the standing committee to determine whether a Potential Conflict of Interest is a permissible or impermissible activity and to make recommended findings as to whether the BOG Policy has been violated. The Executive Committee may rely upon the Protocols provided in Section V below to inform the Committee while conducting its assessment.

B. Potential conflicts:

1. Any Person who receives a report of a potential Conflict of Interest shall forward that report to the Vice Chancellor for Business Affairs and the General Counsel.
2. If the Person with the Substantial Interest claims, or the Vice Chancellor for Business Affairs believes, that the contract is permissible pursuant to paragraph

III.D. (1), (2), (3), or (4) above, the Vice Chancellor for Business Affairs shall make a recommendation to the Chancellor for the Chancellor's determination of whether the contract is permissible or impermissible. In the alternative, the Chancellor may request that the Executive Committee make the determination. Any determination by the Chancellor shall be in writing and shall be a public record.

3. If the Board Member claims that the contract is permissible pursuant to paragraph III.D. (5) above, because the contract is in the best interest of the University, or if a matter is referred to the Executive Committee, then the Executive Committee shall determine whether the proposed contract is a permissible or impermissible activity under the BOG Policy and shall enter its determination in the minutes of its proceedings.

4. If the Board Member who has the potential Conflict of Interest is a member of the Executive Committee, the Board Member shall not participate in the deliberations of the Executive Committee, other than to present the relevant facts to the Executive Committee, and shall abstain from voting.

C. Allegations of a Conflict of Interest:

1. If a Board Member becomes aware of or alleges that a Person has violated the BOG Policy, the Board Member shall report the alleged violation to the Chancellor.

2. The Board Member who receives the allegation shall forward the allegation:

a. to the Executive Committee;

b. to the President of the University of North Carolina if the Person alleged to have violated this policy is the Chancellor; or

c. to the Chancellor if the Person with the alleged conflict is the Vice Chancellor for Business Affairs.

Nothing herein is intended to prohibit Board Members from discussing any allegation received with the General Counsel for advice with regard to any potential conflict and their reporting obligations.

3. If the Person alleged to have violated the policy is a member of the Board of Trustees, then the Executive Committee will determine whether or not the BOG Policy has been violated. The Chair of the Executive Committee will designate an individual to investigate the allegations and to make a report to the committee. After considering the report of the investigation and any response by the person alleged to have violated the policy, the Executive Committee shall make a determination as to whether the policy has been violated and, if so, a recommendation as to the appropriate sanction to the respective Board Member. The Board of Trustees shall vote to affirm, reject, or modify the Executive Committee recommendation, and the Board of Trustees decision shall be final and not subject to appeal.

4. If the Board Member who has the potential conflict is a member of the Executive Committee, he or she shall not participate in the deliberations of the Executive Committee, other than to present the relevant facts and arguments to the committee on his or her own behalf and shall abstain from voting.

5. A Person who is alleged to have violated this policy is entitled to receive notice of the allegation, to be present to hear the report presented to the Executive Committee, and to inform the Executive Committee of any facts or arguments that demonstrate that he or she did not violate the BOG Policy.

6. If the Chancellor or Vice Chancellor for Business Affairs is alleged to have violated the BOG Policy, that allegation will be investigated and acted upon in accordance with the procedures for disciplining, demoting, dismissing, or terminating the contract of either the Chancellor or the Vice Chancellor for Business Affairs.².

V. Protocol for Reviewing Potential Conflicts of Interest

A. The following reflects criteria for reviewing situations with potential Conflict of Interest.

1. Review the details of the situation in light of the BOG Policy, and any other applicable UNC or University policies, or state or federal regulations.
2. Take into account the nature and extent of the financial interest in question, including its impact on the Person, their Substantial Interest, and the interests of the Business Entity.
3. Seek additional information from the Person and/or relevant members of the administration as needed.
4. As appropriate, ask the following questions to help determine whether a Conflict of Interest exists, and if so, its nature.
 - a. Is there reason to believe that the Person or Person's financial relationship with the outside entity could jeopardize his or her responsibilities to the University?
 - b. How will the University's interests and compliance obligations be protected in light of the Person's Substantial Interest in the Business Entity?
 - c. How will the relationship contribute to the University's teaching, research, and service mission?

² See *The University of North Carolina Policy Manual*, § 300.1.1 at II.A.1.c. and d., which provides that any disciplinary action regarding the Chancellor is in the purview of the Board of Governors after consultation with the President and the Chair of the UNCG Board of Trustees. Any action regarding the Vice Chancellor for Business Affairs is within the purview of the Chancellor.

d. Are there potential benefits to the public that outweigh any potential concerns related to academic freedom, professional relationships, or the public trust?

B. Management or Elimination of Conflict of Interest. If the Executive Committee determines that a Conflict of Interest exists and must be managed or reduced, the Executive Committee, in consultation with the General Counsel, will determine the appropriate course of action.

1. There are many options available for management of Conflict of Interest, including:

a. Notice to those involved in the relationship of the Person's Conflict of Interest.

b. Appointment of additional, non-conflicted Board Member to monitor the relationship, providing additional accountability for financial matters, and/or protecting the University's interests.

c. Public disclosure of the Conflict of Interest

d. Modification of the proposed relationship.

e. Removal of specific responsibilities of the Person related to the relationship creating the Conflict of Interest.

2. In some circumstances, elimination of the Conflict of Interest may be deemed necessary including non-acceptance of a contract, withdrawal of a proposed project, or divestment of the Substantial Interest.

3. The course of action decided upon should be documented in the form of a management plan. The management plan should be shared with and acknowledged by the Board of Trustees and the Vice Chancellor for Business Affairs.

4. Management plans should be reviewed annually or any time that changes occur with the project that could impact the nature of the Conflict of Interest.

VI. UNIVERSITY OF NORTH CAROLINA POLICY MANUAL § 200.1 SANCTIONS

A. If the Board of Trustees finds that one of its members has violated the BOG Policy, the Board may take one or more of the following actions:

1. Reprimand or censure the Board Member;

2. Remove the person from any Board of Trustees office the person holds or from any committee chairmanship or assignment; and

3. Report the violation to the entity that appointed the member (Board of Governors or General Assembly).

B. If the Chancellor finds that the Vice Chancellor for Business Affairs has violated the BOG Policy, the Chancellor may discipline, demote or dismiss the Vice Chancellor for Business Affairs and shall report the violation and the action taken to the President of the University of North Carolina and to the Board of Trustees.

C. Pursuant to North Carolina law, any contract between the University and an entity in which a Person has a Substantial Interest which was entered into in violation of state laws governing conflicts of interest is void.

BOARD OF TRUSTEES

THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

Resolution on the Adoption of Procedures for Reviewing Potential Conflicts of Interest

WHEREAS, the Compliance, Audit, Risk Management and Legal (CARL) Committee of the Board of Trustees deemed it necessary and prudent for the proper and expeditious functioning of the Board of Trustees to adopt Procedures for Reviewing Potential Conflicts of Interest; and

WHEREAS, the goal of such procedures is to assure that the Board of Trustees has a process in place to address potential conflicts of interest and assure compliance with the UNC Board of Governors Policy related thereto; and

WHEREAS, said procedures were reviewed and discussed at the May 1, 2018 meeting of the CARL Committee, at which time the Committee determined that such procedures are necessary and appropriate, represent best governance practices, and provide clarity with respect to expectations of Board Members related to determining potential conflicts of interest; and

WHEREAS, the CARL Committee unanimously recommended at said meeting that the Board of Trustees adopt the proposed Procedures for Reviewing Potential Conflicts of Interest.

THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby adopts the Resolution and Procedures for Reviewing Potential Conflicts of Interest as proposed by the CARL Committee.

The undersigned hereby certifies that she is the duly elected and qualified Assistant Secretary of the Board of Trustees of the University of North Carolina at Greensboro, and that the foregoing is a true record of a resolution duly adopted at the May 3, 2018 meeting of the Board of Trustees, that said meeting was held in accordance with the law of the State of North Carolina and the Bylaws of the above-named Board of Trustees, and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Assistant Secretary this _____ day of May 2018.

Kelly Harris
Assistant Secretary to the UNCG Board of Trustees