

Arts Council Silicon Valley

Policy #

Policy Name Conflict of Interest Policy

Date of Adoption January 29, 2009

Purpose

The purpose of the conflict of interest policy is, first, to identify and manage situations where the interest of a board member, staff member, or volunteer is adverse to the interests of the Arts Council Silicon Valley (ACSV); and second, to protect the tax-exempt status of the ACSV when it is entering into a transaction or an arrangement that (i) may benefit the private interest of a board member, staff member or a volunteer of the organization, or(ii) may result in an “excess benefit transaction” as defined below. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Definitions

Interested Person - Any director, officer, member of a committee or staff with powers, who has a direct or indirect financial interest, is an “Interested Person”.

Financial Interest - A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the organization has a transaction or arrangement.
- b. A compensation arrangement with the organization or with any entity or individual with which the organization has a transaction or arrangement.
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organization is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest, it is a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Excess Benefit Transaction - An excess benefit transaction is a transaction in which an economic benefit is provided by the ACSV, directly or indirectly, to or for the use of an Interested Person, and the value of the economic benefit provided by the ACSV exceeds the value of the consideration received by the ACSV.

Procedures

Duty to Disclose - In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

Determining Whether a Conflict of Interest Exists - After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

Procedures for Addressing the Conflict of Interest

- a.** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b.** The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c.** After exercising due diligence, the governing board or committee shall determine whether the organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d.** If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

Violations of the Conflicts of Interest Policy

If the governing board or committee has reasonable cause to believe that a board member staff or other volunteer has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain: The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Compensation

A voting member of the governing board, committee or staff who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.

Periodic Reviews

The assessment of conflict of interest is part of the decision making process of the ACSV. To ensure the organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (1) Submission of an annual conflict of interest disclosure by each board and staff member

- (2) Review of compensation arrangements and benefits for staff so it is reasonable, based on benchmark data, historical information and/or other information, and the result of arm's length bargaining.
- (3) Review of whether partnerships, joint ventures, and arrangements with management organizations conform to the organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Use of Outside Experts

When conducting the periodic reviews the organization may, but need not, use outside advisors. If outside advisors are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Arts Council Silicon Valley

Conflict of Interest Policy

For Board Members

The standard of behavior at Arts Council Silicon Valley is that all staff, volunteers, and board members avoid, or when conflicts are unavoidable, properly disclose and deal with conflicts of interest between the interests of the organization on one hand, and personal, professional, and business interests on the other. This includes potential and actual conflicts of interest, as well as situations that give rise to the appearance of conflicts of interest.

I understand that this policy is designed to comply with state and federal law, and to protect the integrity of Arts Council Silicon Valley decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputations of volunteers, staff and board members. Upon or before election, hiring or appointment and during my tenure, I will make a full, written disclosure of interests, relationships, and holdings that could potentially result in a conflict of interest. This written disclosure will be kept on file and it will be my responsibility to update it as appropriate. In the course of meetings or activities, I will disclose any interests in a transaction or decision where I, any entity in which I hold an ownership interest or hold a position of authority (including my business or other nonprofit affiliations), my family and/or my significant other, employer, or any other related party will receive a benefit or gain. After disclosure, I understand that I may be asked to leave the room for the discussion and will not be permitted to vote on the question.

1. I understand that this policy is meant to supplement good judgment, and I will respect its spirit as well as its wording.
2. I understand that Arts Council Silicon Valley is a charitable organization and in order to maintain its federal tax exemption it must strictly avoid certain conflict of interest transactions and engage primarily in activities which accomplish one or more of its tax-exempt purposes. I understand that the consequences of the loss of its charitable tax exempt status by the ACSV would be very detrimental to the organization.
3. I have read and understand the conflict of interest policy.
4. I have no conflicts of interests to disclose except as disclosed in the attached schedule.
5. In the future if a conflict of interest arises, I will immediately disclose all such conflicts to the Chair of the Board of Trustees as soon as I am made aware of such conflicts but no later than the following board meeting.

Please print Name -----

Signature -----

Date -----

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