

## MEMORANDUM

To: University Employees  
From: Office of General Counsel  
Date: September 22, 2011  
Re: Use or Misuse of Public Property/Conflicts of Interest

From time-to-time issues arise concerning the use or misuse of public property and/or funds, conflicts of interest and the application of State law, Board or University policy. The following is a reminder of some of the key provisions pertaining to this subject. Please note the potentially serious consequences for violation of these statutes and policies.

1. Idaho Code § 18-1359. Using public property for personal gain. Prohibits public employees from using public funds or property to obtain a pecuniary (monetary) gain for themselves; accepting or receiving a pecuniary benefit as payment for services customarily exercised by the employee in the course of official duties (excepting trivial benefits of not more than \$50 and *not* involving a substantial risk of undermining official impartiality); use or disclosure of confidential information gained in the course of the employee's official position—with the intent of personally benefitting the employee or an entity with whom the employee is interested—or with the intent to harm the governmental employer; having a personal interest in a contract made in the employee's official capacity; and, appointing or voting for the appointment of any person related by blood or marriage within the second degree to a position to be paid out of public funds.
2. Idaho Code § 18-5701. Misuse of public moneys by public officers and public employees.

“No public officer or public employee shall: (1) Without authority of law, appropriate public moneys or any portion thereof to his own use, or to the use of another; or (2) Loan public moneys or any portion thereof; or, having possession or control of any public moneys, make a profit, directly or indirectly out of public moneys, or use public moneys for any purpose not authorized by law; or (3) Fail to keep public moneys in his possession until disbursed or paid out by authority of law when legally required to do so; or (4) Deposit public moneys or any portion thereof in any bank, or as with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law; or (5) Change or convert public moneys or any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or (6) Knowingly keep any false account, or make any false entry or erasure in any account of or relating to public moneys; or fraudulently alter, falsify, conceal, destroy or obliterate any such account; or (7) Willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such public moneys by competent authority; or (8) Willfully omit to transfer public moneys when such transfer is required by law; or (9) Willfully omit or refuse to pay over to any public officer, employee or person authorized by law to receive the same, any public moneys received by him under any duty

imposed by law so to pay over the same; or (10) Knowingly use any public moneys, or financial transactions card, financial transaction card account number or credit card account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys *for any personal purpose* or for any purpose other than for the benefit of the governmental entity.”

Note that the penalties section for Idaho Code § 18-5701 makes it a misdemeanor for a public employee “*who is not charged with the receipt, safekeeping or disbursement of public moneys*” to violate any of the sub-parts of the law *if* the amount in question is less than \$300. However, if the amount is \$300 or more **or** the employee is charged with the receipt, safekeeping or disbursement of public moneys, the crime becomes a felony. *E.g.*, an employee who handles cash or a p-card on behalf of the University is likely subject to the stricter portion of the statute regardless of the amount in question. Additionally, if the employee is found guilty or pleads guilty to a violation of the law, the University is required to terminate the employee’s employment for cause, the employee is disqualified from holding any other public position involving the receipt, safekeeping, or disbursement of public moneys, and shall be ordered by the court to make restitution, which restitution may be distributed from the employee’s retirement funds by order of the court. The statute applies irrespective of the form of judgment or withheld judgment. (*I.e.*, receiving a “withheld judgment” does not alter the other consequences listed in the statute). (*See*, Idaho Code § 18-5702).

3. State Board of Education *Governing Policies and Procedures (Board Policy)* § II.Q.—Conflict of Interest and Ethical Conduct—All Employees.

“1. General Principles of Ethical Conduct

All employees of the institutions, and agencies:

- a. shall not hold financial interests that are in conflict with the conscientious performance of their official duties and responsibilities;
- b. shall not engage in any financial transaction in order to further any private interest using nonpublic information of the Board, institution, or agency;
- c. shall put forth honest effort in the performance of their duties;
- d. shall make no unauthorized commitments or promises of any kind purporting to bind the Board or any Board-governed entity;
- e. shall not use their public offices for private gain;
- f. shall act impartially and not give preferential treatment to any private or public organization or individual;
- g. shall protect and conserve public property and shall not use it for other than authorized activities;
- h. shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with official duties and responsibilities;
- i. shall promptly disclose to their chief executive officer waste, fraud, abuse, or corruption in accordance with applicable law and policy;

- j. shall endeavor to avoid any actions that would create the appearance that they are violating the law or the ethical standards of the Board or the relevant Board-governed entity;
- k. shall disclose potential conflicts of interest to the Chief Executive Officer, or designee, of the institution or agency, and avoid conflicts of interest, potential conflicts of interest, and circumstances giving rise to the appearance of a conflict of interest.

2. Conflict of Interest

A conflict of interest occurs when a person’s private interests compete with his or her professional obligations to the Board-governed entity to a degree that an independent observer might reasonably question whether the person’s professional actions are materially affected by personal considerations, including but not limited to personal gain, financial or otherwise.” (*See also, Board Policy II.Q.3—Consideration of Transactions*)

4. Ethics in Government Act of 1990, Idaho Code § 59-701 et seq. The objective and purpose of the statute, among other things, is to “[a]ssure independence, impartiality and honesty of public officials in governmental functions. . . , [i]nform citizens of the existence of personal interests which may present a conflict of interest between an official’s public trust and private concerns . . . , prevent public office from being used for personal gain contrary to the public interest . . . .” (§ 59-702).

“Public official” is defined to include “an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultative basis.” (§ 59-703(10)(d)).

“Conflict of interest” is defined, with certain exceptions, as “any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the *private pecuniary benefit of the person or a member of the person’s household, or a business with which the person or a member of the person’s household is associated* . . . .” (§ 59-703(4)).

“Members of a household” include “the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.”

The statute directs that, “[a] public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest *and* has failed to disclose such conflict as provided in this section. . . . In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the advice is that no conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. *If* the legal advice is that a real or potential conflict may exist, the public official:

If he is an appointed or employed state public official, he shall prepare a written statement describing the matter to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney general or from the attorney representing that agency. The public official may then act on the advice of the attorney general, the agency's attorney or independent counsel." (§ 59-704).

In summary, while the above is not an exhaustive list of statutes or policies which might apply to a University employee's obligations, it is a reminder of some of the serious obligations we all have with respect to public property and conflicts of interest.