



## Can Elected Officials Serve on Nonprofit Boards?

Q:

Is there anything (in IRS regulations or ethics policies) that prohibits elected officials from serving on the boards of nonprofit organizations?

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A:

There are no federal laws that directly prohibit elected officials from serving on nonprofit boards. The tax code does prohibit “private benefit” and “private inurement,” but it does not specifically address board membership by elected officials. However, the situation you pose may be affected by “conflict of interest” provisions in both federal and state laws. These conflict of interest issues are addressed below.

### Federal Conflict of Interest Laws

There are federal laws and regulations which may prohibit certain federal employees from serving on a nonprofit board if there is a conflict of interest. Specifically, executive branch officers and employees may be subject to criminal penalties if

**Federal employees serving on nonprofit boards must sometimes disqualify themselves from participation in government matters.**

they participate in an official government matter in which they have a financial interest. (See 18 U.S.C., Section 208a; 5 C.F.R. Sections 2635.402a and 2635.502).

According to federal regulations, the term “financial interest” includes service, with or without compensation, as an officer or director of a nonprofit entity, since the financial interests of the nonprofit entity are imputed to the employee. Thus, federal employees serving on nonprofit boards must sometimes disqualify themselves from participation in government matters or seek a waiver of disqualification (as described in Regulation 5 C.F.R., Section 2635.403a).

The conflict of interest may be eliminated if employees divest themselves of the disqualifying financial interest (for example, by resigning from the board of the nonprofit organization). In addition, a nonprofit may require employees to divest themselves of disqualifying financial interests (by forcing the employees to resign from the board). A nonprofit may do so if it determines that conflict exists between serving on the board and performing the employees’ government duties.

The following examples may be helpful in understanding the effect of the federal regulations outlined above:

**EXAMPLE 1:** An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation. Kinder World submits a grant application to the Department of Education. Even though the director’s personal financial interests will not be affected, she must disqualify herself from reviewing the grant application. Award or denial of the grant will affect the financial interests of Kinder World, and its financial interests are imputed to her as a member of its board of directors.

**EXAMPLE 2:** The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because the Foundation is affected by federal policies regarding grazing permits, it routinely comments on all proposed rules issued by the Bureau of Land Management



# A nonprofit may require employees to divest themselves of disqualifying financial interests.

(BLM) affecting the use of federal grasslands. BLM may require an employee to resign his position as a member of the Foundation's board of directors as a condition of his promotion to a policy-level position within the Bureau, rather than allowing him to rely on disqualification in particular cases.

## State Conflict of Interest Laws

State nonprofit laws often have conflict of interest provisions which apply to directors of nonprofit organizations. Although these provisions do not specifically refer to elected officials, they would apply to any elected official serving as a director on a nonprofit board. In North Carolina, for example, it is a conflict of interest if a nonprofit does business with another

corporation in which a director of the nonprofit has an interest. (See N.C. Statute 55A-8-31a). Although not explicitly stated, this provision also applies to transactions with the state or federal government if a board member is a state or federal employee or elected official.

Laws differ from state to state, but most have conflict of interest provisions which may limit an elected official's ability to serve on a nonprofit board. Be sure to consult the laws of your state to determine exactly what those limits are.

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