

C-12

***Archdiocesan Conflicts of Interest/
Private Inurements Policy
(10/99)***

ARCHDIOCESAN CONFLICTS OF INTEREST/PRIVATE INUREMENTS POLICY**PURPOSE**

The purpose of this conflicts of interest and private inurements policy is to protect the Archdiocese's interest when it is contemplating entering into a transaction or arrangement that might benefit the interests of private individuals, including but not limited to employees and individuals performing work on behalf of the Archdiocese and other persons in a position to influence the affairs of the Archdiocese. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to non-profit and charitable corporations. This policy should be distributed to existing and future executives, officers, trustees, directors and members of advisory boards and committees.

INTRODUCTION

Non-profit charitable, religious and educational organizations obtain their tax-exempt status under the theory that they perform valuable services for society and lessen the burdens of government. If a tax-exempt organization allows its money or other property to be used for private rather than public gain (i.e. for "private inurement" or "private benefit"), then it risks losing its exemption. In addition, under recently adopted "intermediate sanctions" provisions of the Internal Revenue Code, "disqualified persons" such as CEOs, CFOs, board members, major donors doing work for the Archdiocese, etc. who receive "excess benefits" are subject to an excise tax ranging from 25 % - 200 %, depending on the circumstances. Furthermore, any organizational manager who knowingly facilitates such an excess benefit is subject to a 10% tax. In light of these IRS restrictions and, more importantly, in order to assist the Archdiocese in

fulfilling its responsibilities to act as a competent and trustworthy steward of Church goods, the Archdiocese has developed this policy.

IDENTIFYING A PRIVATE INUREMENT OR PRIVATE BENEFIT PROBLEM

In brief, “private inurement” is the payment or diversion of an exempt organization’s assets to its officers, directors, employees, relatives, friends, major donors or others in a special relationship to the organization who can influence or control the policy or the day-to-day activities of the organization, for less than full and adequate consideration. It is a broad concept that can exist in a variety of transactions under a variety of circumstances. Private inurement also extends to the use of organizational assets for “private benefits” such as sales, leasing, construction contracts, service transactions, etc. at other than fair market value or the exploitation of the exempt organization for the benefit of a private business (e.g., “sweetheart deals,” promotional schemes and/or give aways to private individuals or businesses). Thus, under IRS regulations a private benefit is similar to, but broader than, private inurement.

In order to avoid the conferment of material private inurements or benefits in the types of transactions described above it is important that the particular diocesan parish, school or agency enter into transactions for its benefit, rather than for a private party’s benefit, and to exercise due diligence to assure that the proposed transaction is fair and reasonable such that under the circumstances the organization could not have obtained a more advantageous arrangement with reasonable effort. In addition to screening proposed transactions through the applicable corporate boards, parish/school advisory boards and committees, etc. care should be taken to follow Archdiocesan policies and procedures pertaining to the signing of contracts. For

example, parish and school administrators may not execute contracts in excess of \$10,000 in amount and/or one year in duration. These must be submitted to the Chancery. They must be reviewed by Archdiocesan legal counsel and signed by the applicable corporate officers at the Chancery. Additional procedures apply in connection with contract bids for building construction, renovation and repair projects.

CONFLICTS OF INTEREST

A conflict of interest can exist when persons employed by the “Archdiocese” (i.e. the Chancery, parishes, schools, Archdiocesan agencies and/or affiliated corporate entities) or those volunteers of the Archdiocese holding trusteeships or other governance authority or those serving on advisory or consultative boards or committees, have a direct or indirect financial interest as defined below.

Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment or family (including: spouses; brothers or sisters; spouses of brothers or sisters; ancestors; children, grandchildren, and great grandchildren; and spouses of children, grand children and great grandchildren):

- a) An ownership or investment interest in any entity with which the Archdiocese has a transaction or arrangement, or
- b) A compensation arrangement with the Archdiocese or with any entity or individual with which the Archdiocese has a transaction or arrangement, or

- c) A potential ownership or investment interest, or compensation arrangement with, any entity or individual with which the Archdiocese is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest and all material facts to the applicable board, committee or corporate officer (i.e., Vicar/Attorney-in-Fact).

Determining whether a Conflict of Interest Exists

After disclosure of the financial interest and all the material facts, and after any discussions with the interested person, he or she shall leave the applicable meeting while the determination of a conflict of interest is discussed and voted upon.

Procedures for Addressing the Conflict of Interest

- a) An interested person may make a presentation at the applicable meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b) The chairperson of the board, committee and/or corporate officer shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

- c) After exercising due diligence, the board, committee, or corporate officer shall determine whether the organization can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that will not give rise to a conflict of interest.
- d) If a more advantageous transaction or arrangement is not reasonably obtainable under circumstances that would not give rise to a conflict of interest, the board, committee or corporate officer shall determine by a majority vote of the disinterested board or committee members whether the transaction or arrangement is in the organization's best interest and for its own benefit and whether the transaction is fair and reasonable to the organization and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

Violation of the Conflict of Interest Policy

- a) If the board, committee or corporate officer has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, it shall inform the individual of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.
- b) If, after hearing the response of the person and making such further investigation as may be warranted under the circumstances, the board, committee or corporate officer determines that the individual has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Subsequent Conflicts and Disclosures

Notwithstanding previous disclosure of actual or potential conflicts of interest, an individual shall make a new disclosure of conflicts when any matter involving the conflict of interest arises for discussion or action. In the event an individual is uncertain whether an actual or potential conflict of interest exists, the individual should make disclosure of the circumstances that may give rise to an actual or potential conflict.

CONFIDENTIAL OR PRIVILEGED INFORMATION

Information known to be confidential, acquired by individuals in the course of employment or association with the Archdiocese and its affiliated entities, shall be used only for the benefit and purposes of the Archdiocese. Individuals shall neither disclose confidential information outside the scope of their authorized duties nor utilize their position or association with the Archdiocese for personal identification or advantage; although there may be instances, based on the use of careful discretion and judgment, where incidental use of the association with the Archdiocese may be appropriate.