

System-wide Policy: BT0001 - Conflict of Interest Policy for Trustees	
Version: 1	Effective Date: 02/05/1992

BOARD OF TRUSTEES
CONFLICT OF INTEREST POLICY FOR TRUSTEES

A. PREAMBLE

The Board recognizes that honesty, integrity, accountability, responsibility, openness and disclosure of financial relationships and interests are absolutely essential to the educational process and administration of the University. The Board deems it necessary and appropriate that the University provide an atmosphere in which the highest standards of behavior, accountability and responsibility are inculcated among students, faculty, administrators and trustees. To achieve this end, the Board has adopted a conflict of interest and disclosure policy for all employees of the University. Recognizing that the Board should provide leadership by example, it is the purpose of this policy to ensure objectivity and integrity on the part of the trustees by identifying and avoiding conflicts of interest, both real and perceived. Even though members of the Board receive no compensation for their service and are not required by law to make any disclosure whatsoever, the Board unanimously agrees that, in order to prevent any potential conflict of interest between trustee responsibilities and outside activities from arising, there should be proper disclosure of those matters concerning which potential, conflicts could theoretically arise. Full disclosure of any situation in doubt should be made so as to provide for an impartial and objective determination.

B. APPLICABILITY

This policy applies to the members of the Board of Trustees.

C. CONFLICTS

1. General Policy Statement. In addition to the specific circumstances prohibited by state law, the Board considers that a conflict of interest exists in the following situations: (1) when a trustee or immediate family member has a direct or indirect financial interest in a transaction involving the University; (2) when the actions of a trustee involve the obtaining of personal gain or advantage; (3) when an adverse effect or impact on the University's interest occurs for the personal gain of a trustee or immediate family member; and (4) when a trustee obtains or assists in obtaining for a third party improper gain

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from, or unfair advantage, of the University. The term "immediate family" means parent, spouse, sibling or child. Disclosure of any situation in doubt should be made in order to protect the trustee and the University.

2. State Law. Tennessee Code Annotated § 49-9-207, which applies exclusively to members of the Board of Trustees, provides that "It is unlawful for any member of the board of trustees to be financially interested in any contract or transaction affecting the interest of the university, or to procure, or be a party in any way to procuring, the appointment of any relative to any position of trust or profit connected with the university." T.C.A. § 45-2-405 provides, however, that notwithstanding the above provision, or any other law to the contrary, "any officer, director, or employee of any bank may serve in any capacity in state or local government, except in any capacity with the department of financial institutions, or on any board, commission, or other agency of such governmental unit, provided that such officer, director or employee" has disclosed such fact as provided therein.

T.C.A. § 12-4-101 and -103 are general conflict of interest statutes applicable to all state officials and employees, including trustees. Because the trustee statute, T.C.A. § 49-9-207, is more restrictive, however, its terms are controlling on questions of trustee conflicts of interest. Thus, the General Counsel has advised that the University cannot do business with a trustee or with a closely held company in which a trustee owns any interest – whether a direct or indirect interest, and however minimal the interest may be. The General Counsel has also advised that this strict standard does not apply to a trustee's mere ownership of less than a controlling interest in stock of large, publicly-traded companies (IBM, General Motors, Exxon, for example).

Although it is not possible to list every circumstance which is, or is not, a conflict of interest, the General Counsel has ruled on several questions arising under T.C.A. § 49-9-207:

- (a) If a trustee commingles assets with a spouse or other family member who is financially interested in a contract or transaction affecting the University, the trustee is also financially interested in the contract or transaction.
- (b) A trustee's service as a salaried officer (without stock ownership) of a company doing business with the University does not violate T.C.A. §

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49-9-207 unless the facts in a given case show that the trustee's compensation is linked to the company's performance and could be enhanced by the company's business with the University.

- (c) Similarly, a trustee's service as a member of the board of directors (without stock ownership) of a company doing business with the University does not violate T.C.A. § 49-9-207 unless the facts in a given case show that the trustee receives a director's fee which is linked to the company's performance and could be enhanced by the company's business with the University.

In view of the broad nature of the prohibition found in T.C.A. § 49-9-207, any activity which might constitute, or be perceived to constitute, a prohibited conflict should be fully reported. Full disclosure of any situation in doubt should be made.

D. DISCLOSURE STATEMENT – CONTENTS

Disclosure should be made of the following:

1. Sources of income: The primary source of a trustee's private income and that of the trustee's spouse and minor children. Primary source is defined as income totaling at least seventy-five percent (75%) of gross income. No dollar amount need be stated.
2. Investments: Any investments by the trustee, the trustee's spouse or minor children in any corporation or other business organization in excess of five percent (5%) of the total capital or ownership. No dollar amount need be stated.
3. Offices, Directorships, Employment: The offices, directorships, and salaried employment held by the trustee, the trustee's spouse or minor children in any profit or non-profit organization.
4. Professional Services:
 - (a) In general terms (by areas of the client's interest) the entities to which professional services, such as those of an attorney, accountant or architect, are furnished by the trustee or the trustee's immediate family.

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- (b) If any of these entities, to the knowledge of the trustee, does business or competes with UT, disclosure of that fact should also be made.

- 5. Bankruptcy: Any adjudication of bankruptcy or discharge received in any United States District Court within five (5) years of the date of this statement.

- 6. Loans: Any loan or combination of loans of more than one thousand dollars (\$1,000) from the same source made in the previous calendar year to you, your spouse or minor children unless:
 - (a) The loan is from an immediate family member;
 - (b) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
 - (c) The loan is secured by a recorded security interest in collateral, bear the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
 - (d) The loan is from a partnership in which the trustee has at least a ten percent (10%) partnership interest; or
 - (e) The loan is from a corporation in which more than fifty percent (50%) of the outstanding voting shares are owned by the person making disclosure or by a member of such person's immediate family.

As used in this paragraph, "immediate family member" means a spouse, parent, sibling or child.

- 7. Additional Information: Any additional information the trustee wishes to disclose.

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- 8. Certification: The trustee must certify that to the best of his/her knowledge and at the present time neither the trustee, the trustee's spouse, nor minor children have a prohibited financial interest in any contract or transaction affecting the interest of the University.

E. FILING OF STATEMENT

Disclosure of the interests specified herein and the required certification shall be made on a statement of interest form in the manner approved and made a part hereof. Such statement shall be filed with the Secretary of the Board of Trustees within thirty (30) days from the date this policy is approved by the Board and thereafter annually by January 15 or within thirty (30) days from the date the appointment as a trustee becomes effective. Amended disclosure statements must be filed whenever reported conditions change because of the termination or acquisition of interests for which disclosure is required. The Secretary of the Board shall monitor such statements and report any conflicts perceived by him to the trustee involved and to the Board.

History:

Adopted	02/05/1992
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