

205 Conflict of Interest

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The Board of Trustees recognize that in the course of business, a Conflict of Interest may arise. It is important that the Board of Trustees and employees disclose Conflicts of Interest to Board members so they can take the appropriate action if any is necessary. This policy will describe the disclosure process and the appropriate action taken for a conflict of interest.

Definitions

1. **Conflict of Interest** refers to a situation where an Official's personal relationship(s) or financial interest(s) could reasonably be seen as influencing the Official's duty to act in the best interests of Clay Electric Cooperative, Inc. Such Conflicts of Interest include but are not limited to:
 - (a) Gifts, Fees, Loans or Favors: Officials are prohibited from receiving gifts, fees, loans, or favors from suppliers, contractors, consultants, or financial institutions, which obligates or tends to induce them to compromise their responsibilities to negotiate, obligate, inspect, audit, purchase or award contracts without the best interest of Clay Electric utmost in mind. This does not prohibit receiving gifts or favors of nominal value or casual entertainment, which meets all standards of ethical business conduct and involves no element of concealment.
 - (b) Employment and Income: A Trustee may not be employed by the Cooperative or a Subsidiary. Unless an Official discloses income and/or employment to the Board and a majority of Disinterested Trustees authorizes or ratifies the income and/or employment, the Official:
 - Other than benefit/insurance income from the Cooperative, and other than Trustee or employment compensation from the Cooperative, may not directly or indirectly receive more than ten percent of the Official's annual gross income from the Cooperative, a Subsidiary, or a Cooperative or Subsidiary employee;
 - May not directly or indirectly receive more than twenty-five percent of the Official's annual gross income from another Official; and
 - May not have a Related Person employed by the Cooperative or a Subsidiary.
 - (c) Competition: An Official may not advance the Official's financial interests, or have a Related Person that advances the Related Person's financial interests, by competing with the Cooperative or a Subsidiary, unless:
 - There is no reasonably foreseeable harm to the Cooperative or the Subsidiary from the competition;
 - Any benefit that the Cooperative or the Subsidiary may reasonably expect to derive from the competition outweighs any reasonably foreseeable harm to the Cooperative or the Subsidiary from the competition; and
 - The Official discloses the competition to the Board and a majority of Disinterested Trustees authorizes or ratifies the competition.

- (d) Conflicting Interest Transaction: A conflicting interest transaction is one in which the transaction or proposed transaction by the Cooperative or a Subsidiary, other than the payment of Official compensation or provision of Official benefits, and other than a transaction offered to all similarly situated Cooperative members:
- To which an Official is a party; or
 - For which, at the time the Board considers the transaction, or at the time the Cooperative or the Subsidiary becomes legally obligated regarding the transaction, an Official had knowledge and a Material Financial Interest known to the Official; or an Official knew that a Related Person was a party or had a Material Financial Interest.

An Official may not engage in a Conflicting Interest Transaction unless:

- According to the circumstances at the time the Board considers the transaction, or at the time the Cooperative or the Subsidiary becomes legally obligated regarding the transaction, the transaction, as a whole, benefits the Cooperative or the Subsidiary, considering, as appropriate, whether the transaction was fair in terms of the Official's dealings with the Cooperative or the Subsidiary and whether the transaction was comparable to what might have been obtained in an arm's length transaction, given the consideration paid or received by the Cooperative or Subsidiary.
- (e) Business Opportunity: A business opportunity is an opportunity to engage in a business activity, other than an opportunity offered to all similarly situated Cooperative members, of which:
- An Official becomes aware in connection with performing Official functions; under circumstances reasonably indicating that the opportunity was expected to be offered to the Cooperative or a Subsidiary; or through using the Cooperative or Subsidiary information or property if the Official should reasonably expect the opportunity to be of interest to the Cooperative or the Subsidiary; or
 - An Official becomes aware and knows is closely related to a business in which the Cooperative or a Subsidiary is engaged or expects to engage.

An Official may not directly or indirectly take advantage of a Business opportunity unless, before the Official becomes legally obligated regarding the Opportunity:

- The Official informs the Cooperative or Subsidiary of the Opportunity; and
 - To the extent unknown by Disinterested Trustees, the Official discloses the existence and nature of the Opportunity and all facts known to the Official regarding the Opportunity that a Disinterested Trustee would reasonably believe to be material in acting regarding the Opportunity; Disinterested Trustees deliberate and vote regarding the Opportunity outside the presence of, and without participation by, the Official; and a majority of Disinterested Trustees, but not less than two, disclaims interest in the Opportunity.
- (f) Insider Financial Benefit: An Official may not use the Cooperative or Subsidiary property, material private information, or position to secure a financial benefit unless:

- Value is given for the use and assuming the use is a Conflicting Interest Transaction, the Official could engage in the Transaction under this Policy;
 - The use is payment of compensation or provision of benefits;
 - The use is of information only and the use is not connected with trading securities, is not a use of proprietary information, and does not harm the Cooperative or Subsidiary;
 - Assuming the use is a Conflicting Interest Transaction, a majority of Disinterested Trustees authorizes the Transaction under this Policy; or
 - The benefit is received as a Cooperative member; made available to all other similarly situated Cooperative members; and lawful.
- (g) Consulting: An official may not be retained by another company or organization, whether on a consultancy or part-time basis, to advise on business similar to that which is being transacted by Cooperative or Subsidiary.
- (h) Criminal Activity: An official may not be investigated, charged, indicted or convicted for a criminal activity which may have an impact on the perception of the individual's business conduct and which, if publicly known, might affect the reputation of Clay Electric Cooperative, Inc. as a company which maintains high ethical standards.
2. **Board** means the Clay Electric Cooperative, Inc. Board of Trustees.
3. **Control** or **Controlled** means:
- Having the direct or indirect power, through ownership of shares or interests, by contract, or otherwise, to elect or remove a majority of an entity's governing body;
 - Being subject to a majority of the risk of loss from an entity's activities; or
 - Being entitled to receive a majority of an entity's residual returns.
4. **Trustee** means a member of the Board.
5. **Disinterested Trustee** means a Trustee who, at the time the Board acts regarding income, employment, competition, a Conflicting Interest Transaction, or a Business Opportunity:
- Is not associated with the income, employment, or compensation; is not engaged in the transaction; and is not taking advantage of the opportunity; and
 - Does not have a relationship with an Official associated with the income, employment, or compensation; engaged in the transaction; or taking advantage of the opportunity, which relationship would reasonably be expected to impair the objectivity of the Trustee's judgment regarding the income, employment, competition, transaction, or opportunity.
6. **Material Financial Interest** means a financial interest in a transaction reasonably expected to impair the objectivity of an Official's judgment regarding the transaction.
7. **Official** means a Trustee or Employee.

8. **Related Entity** means an entity, other than the Cooperative, a Subsidiary, or an entity of which the Cooperative is a member:
- Controlled by an Official or an Official's Related Individual;
 - In which an Official owns more than ten percent of the entity's shares or interests;
 - For which an Official is a general partner or member of the governing body;
 - For which an Official is a trustee, guardian, personal representative, or similar fiduciary;
 - Employing an Official; or
 - Controlled by an entity employing an Official.
9. **Related Individual** means an individual:
- Who is the mother, father, grandmother, grandfather, grandchild, husband, wife, son, daughter, sister, brother, aunt, uncle, niece, nephew, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, half sibling and step relations of an Official;
 - Residing with an Official;
 - For whom an Official is a trustee, guardian, personal representative, or similar fiduciary; or
 - Employing an Official.
10. **Related Person** means a Related Entity or a Related Individual.
11. **Subsidiary** means an entity Controlled by Clay Electric Cooperative, Inc.

Policy

A trustee or employee (Official) shall refrain from all Conflicts of Interest. If an Official becomes aware of, or becomes involved in, a Conflict of Interest, they shall immediately disclose such Conflict of Interest. An Official must also disclose what could be "perceived" by an outsider as a Conflict of Interest. An Official cannot avoid the disclosure requirements because the official feels that they may not be influenced by the Conflict of Interest. No "presumption of guilt" is created by the mere existence of a relationship with outside vendors or service providers. However, if an Official has any influence on transactions such as purchases, contracts, or leases, it is imperative that the Official disclose to the General Manager/CEO as soon as possible the existence of any actual or potential Conflict of Interest so that safeguards can be established to protect all parties. If an Official discovers any information or fact that could impact another Official's compliance with this Policy, then the Official must disclose the information or fact to the Board President or General Manager/CEO immediately.

An Official who is unsure whether something constitutes a Conflict of Interest shall immediately discuss the specific concern with the General Manager/CEO in order to determine Clay Electric Cooperative, Inc.'s position on the issue.

An Official who becomes aware of a Conflict of Interest or a potential Conflict of Interest and fails to immediately report that conflict is subject to appropriate discipline. Depending on the severity of the conflict or potential conflict, an Official who fails to report a Conflict of Interest may also be terminated for "cause" without notice or compensation in lieu thereof.

Compliance and Enforcement: If the General Manager/CEO or the Board President receives a form disclosing any information or fact that could impact an Official's compliance with this Policy, then, respectively, the General Manager/CEO must deliver the form to the Board President and Board President must distribute the form to the Board. If the General Manager/CEO or the Board President receives or discovers any other information or fact that could impact any Official's compliance with this Policy, then, respectively, the General Manager/CEO must disclose this information or fact to Board President and the Board President must disclose this information or fact to the Board. The minutes of all Board meetings should record all disclosures, votes, authorizations, and other actions taken under this Policy. The Board interprets and enforces this Policy.

The General Manager/CEO or Board will determine whether:

- A. A Conflict of Interest exists;
- B. The seriousness of the potential or actual Conflict of Interest;
- C. What steps are necessary to protect Clay Electric Cooperative, Inc. against the Conflict of Interest.

In making this determination, the General Manager/CEO shall be guided by any other policies which may apply. Additionally, the General Manager/CEO may consult legal counsel if the Conflict of Interest involves an issue of legal sensitivity.

Upon receiving or discovering any information or fact that could impact a Trustee's compliance with this Policy, the Board must:

- D. Provide the Trustee an opportunity to comment orally and in writing regarding the information or fact, and an opportunity to be represented by legal counsel; and
- E. Determine whether the Trustee complies with this Policy.

If the Board determines that a Trustee does not comply with this Policy, then:

- A. The Board must provide the Trustee an opportunity to comply with this Policy within thirty days; and
- B. If the Trustee does not comply with this Policy within thirty days, then, as allowed by law, the Board must sanction, disqualify, and/or remove the Trustee.

Upon receiving or discovering any information or fact that could impact any other Official's compliance with this Policy, the Board must act as appropriate or authorize the General Manager/CEO to act as appropriate.

Conflict of Interest Certification: It is a requirement that incumbents of certain positions within the Cooperative and the Board of Trustees annually complete the Conflict of Interest Certification and Disclosure Form shown in Attachment A to this policy. The General Manager/CEO shall develop and maintain a list of those positions required to complete the Certification (Attachment B). This list should contain all Trustees, General Manager/CEO, Department Directors, District Managers and any other employee who has responsibilities, powers, or influence over the Cooperative similar to a Trustee or Officer; manages a segment or activity of the Cooperative representing ten percent or more of the Cooperative's activities, assets, income, or expenses; or has or shares authority to control or determine ten percent or more of the Cooperative's capital expenditures, operating budget, or employee compensation.

Each of these positions must annually complete and sign the Conflict of Interest Certification and Disclosure Form attached to this Policy and deliver the completed and signed form to the General Manager/CEO or Board President if applicable.

Attachments

- Attachment A — Conflict of Interest Certification and Disclosure Form
- Attachment B — Positions Requiring a Conflict of Interest Certification and Disclosure Form

Related Policies: Operating Policies & Guidelines - 10.5 Conflict of Interest

Attachment A

Conflict of Interest Certification and Disclosure Form

As defined in the Clay Electric Cooperative, Inc. Conflict of Interest Policy (Policy), the undersigned Official:

1. Affirms that Official has received or has access to, has read, and understands the most current version of the Policy;
2. Agrees to comply with the Policy;
3. Based upon Official's good faith belief, to the best of Official's knowledge, and except as disclosed below, certifies that Official currently complies with the Policy;
4. Discloses the following information or facts regarding any actual or potential income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or financial benefit, or other information or fact, that could impact Official's compliance with the Policy:

5. Upon discovering any information or fact regarding any actual or potential income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or financial benefit, or other information or fact, that could impact Official's compliance, or another Official's compliance, with the Policy, agrees to disclose this information or fact to the Cooperative's Board President or General Manager/CEO; and
6. Upon not complying with the Policy, agrees to any sanction, disqualification, removal, or other action taken under the Policy.

Printed Name of Official

Signature of Official

Position of Official

Date

Attachment B**Positions Requiring a Conflict of Interest Certification and Disclosure Form**

Position
Board President
Board of Trustees
Corporate Attorney
General Manager/CEO
Director of District Operations
Director of Operations
Director of Engineering
Director of Finance & Administration
Director of ICT
Director of Member Relations
Director of Internal Audit
Director of Human Resources
District Managers
Manager of Purchasing & Stores
Purchasing/Warehouse Supervisors
Accounting Manager
Accounting Supervisor
Internal Auditor