

BOARD EDUCATION

February 9, 2012

RECUSALS AND DISCLOSURES

Melanie A. Symons, Legal Counsel

I. Introduction

- A. Board trustees are fiduciaries of the retirement systems they administer.
- B. Fiduciaries have several duties that must be exercised with the best interest of retirement system participants kept in mind. They include:
 - 1. Duty to Exercise Care and Skill
 - 2. Duty to Act Prudently
 - 3. Duty to Act with Caution and Diligence
 - 4. Duty of Loyalty and Impartiality (Restatement of Trusts §§ 170 & 183)
- C. Duty of Loyalty and Impartiality underlies today's Education topic, "Recusals and Disclosures."
- D. Duty of Loyalty and Impartiality
 - 1. The duty to act solely in the interest of participants and beneficiaries, for the exclusive purpose of providing benefits.
 - 2. Prohibition of all transactions that pose possible conflicts of interest, or even the appearance of a conflict of interest.

II. Recusals

- A. Definition: "Disqualification from a matter by reason of prejudice or conflict of interest."
- B. Recusal required when a Trustee determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest
 - 1. Matter impacts direct or pecuniary interest of Trustee

2. Matter impacts close family member, close personal friend, professional associate.

3. Trustee has independent information that could impact Trustee's ability to render a fair decision.

C. Section III.C.6.e. of Board Proc 01 - Board Processes – "A Board member can neither participate in the discussion nor vote on an issue in which the Board member has a direct personal or pecuniary interest. Interests that are shared by a group are not "personal interests" for purposes of this policy. For example, Board members who are retirees may participate in decisions related to retirement benefit increases. The Board member must inform the Board of the reason or neither participating nor voting."

1. Provide information in a neutral manner.

2. Leave the Board meeting during the discussion.

III. Disclosures

A. The Duty of Loyalty and Impartiality prohibits Trustees from engaging in certain transactions. Trustees may not:

1. Deal with plan assets in their own interest;

2. Participate with any "party in interest" in a transaction that is adverse to plan participants as a whole; or

3. Receive any pecuniary consideration in his personal account from any party in connection with a retirement-system related transaction.

B. However, the statutory make-up of the Board necessarily results in Board trustees that must make decisions that impact the retirement system to which they belong.

B. San Diego Retirement Experience –

C.

1. The SD Retirement System board members have authority over the amount of contributions paid into the retirement system. However the San Diego City Council determines the retirement benefits paid out of the system.

2. The trustees will stand trial on charges that they violated California's governmental conflict-of-interest law prohibiting public officials from negotiating a contract in which they have a financial interest. Charges allege that the trustees approved decreasing retirement system contributions by the city in exchange for an agreement increasing retirement benefits.

D. The San Diego experience resulted in the National Association of Public Pension Attorneys recommending that Board trustees disclose any possible personal interest prior to voting on an issue that could increase their own retirement benefit.

E. Disclosures are required prior to voting on an issue that directly impacts a group of which the Trustee is a member. See Section II.C. above, specifically: "Interests that are shared by a group are not "personal interests" for purposes of this policy. For example, Board members who are retirees may participate in decisions related to retirement benefit increases."

1. Disclosures have been or will be given to all Board Trustees who are members of a retirement system administered by this Board.

2. Please remember to read the disclosure on the record prior to voting on an issue that either:

a. increases the retirement benefit for members of your retirement system; or

b. decreases a member's retirement contribution into the system to which you belong.