

MVLS Policy Manual



Section 1 Governance Policies

Conflict-of-Interest Policy

ARTICLE I: Purpose

The purpose of this Conflict of Interest Policy is to protect the Mohawk Valley Library System (MVLS) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, trustee, or employee of MVLS. It provides guidelines for handling perceived, potential, or actual Conflicts of Interest and addresses procedures and disclosures of Related Party Transactions. This policy is intended to supplement but not replace any applicable state and federal laws governing Conflict of Interest applicable to nonprofit organizations, as well as the Bylaws of the Mohawk Valley Library System Board of Trustees.

ARTICLE II Definitions

Section 2.1. Interested Person. An Interested Person is any trustee, officer, employee or member of a committee with powers delegated by the Board, who (1) has a direct or indirect Financial Interest, as defined below, and/or (2) is a Related Party, as defined below.

Section 2.2. Independent Trustee. An "Independent trustee" means a trustee who:

- (A) is not, and has not been within the last three years, an employee or a key person of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last three years, a key person of the corporation or an affiliate of the corporation;
- (B) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation;
- (C) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the corporation or an affiliate of the corporation if the amount paid by the corporation to the entity or received by the corporation from the entity for such property or services, in any of the last three fiscal years, exceeded the lesser of ten thousand dollars or two percent of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand

dollars; twenty-five thousand dollars if the entity's consolidated gross revenue was five hundred thousand dollars or more but less than ten million dollars; one hundred thousand dollars if the entity's consolidated gross revenue was ten million dollars or more; or

(D) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the corporation's outside auditor or who has worked on the corporation's audit at any time during the past three years. For purposes of this policy, the terms: "compensation" does not include reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director, and "payment" does not include charitable contributions, dues or fees paid to the corporation for services which the corporation performs as part of its nonprofit purposes, or payments made by the corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the corporation are available to individual members of the public on the same terms, and such services received by the corporation are not available from another source.

Section 2.3. Relative. A Relative of an individual means his or her spouse or domestic partner, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren and great-grandchildren.

Section 2.4. Financial Interest. A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or a Relative:

- (A) An ownership or investment interest in any entity with which MVLS has a transaction or arrangement;
- (B) A compensation arrangement with MVLS or with any entity or individual with which MVLS has a transaction or arrangement; or
- (C) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which MVLS is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

Section 2.5. Substantial Financial Interest. A Financial Interest in a Related Party Transaction is a "Substantial Financial Interest" if, in the discretion of the Board after giving due consideration to the material facts and circumstances of the Financial Interest as presented, the Board determines that such Financial Interest is substantial.

Section 2.6. Related Party. A Related Party includes:

- (A) any trustee, officer or employee of MVLS;
- (B) any relative of any trustee, officer or employee of MVLS; or

(C) any entity in which any individual described in clauses (A) and (B) of this section has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

Section 2.7. Employee. An employee is any person who is employed by MVLS.

Section 2.8 Key Person. "Key person" means any person, other than a director or officer, whether or not an employee of the corporation, who

(A) has responsibilities, or exercises powers or influence over the corporation as a whole similar to the responsibilities, powers, or influence of directors and officers;

(B) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or

(C) alone or with others controls or determines a substantial portion of the corporation's capital expenditures or operating budget.

Section 2.9. Related Party Transaction. A Related Party Transaction means any transaction, agreement or any other arrangement in which a Related Party has a Financial Interest and in which MVLS is a participant.

Section 2.10. Conflict of Interest. A Conflict of Interest exists if an outside interest or activity influences or appears to influence the ability of an individual to exercise objectivity or impair the individual's ability to perform his or her responsibility in the best interests of MVLS.

Examples of conduct that might pose a Conflict of Interest for MVLS include:

- A trustee, leader, or Key Person arranging for a Relative to get an internship, employment, or other unique benefits from the System;
- Actions by the System that will create a disproportionate and unjustified benefit on a library or area affiliated with the trustee or leader;
- Use of System resources for personal gain, or the gain of a relative or person who impacts the life of the trustee or leader;
- A "Related Party Transaction" as defined above.

ARTICLE III Disclosure

Section 3.1. Initial Disclosure. Prior to the initial election of any trustee, officer, or member of a committee with powers delegated by the Board or hiring of any employee, the prospective trustee, officer, committee member, or employee shall complete, sign and submit to the President of the Board a written Disclosure Statement, identifying, to the best of his or her knowledge, the following information:

(A) any entity of which such prospective trustee, officer, committee member, or employee is an officer, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which MVLS has a relationship; and

(B) any transaction in which MVLS is a participant and in which the prospective trustee, officer, committee member, or employee might have a Financial Interest that may give rise to a Conflict of Interest or Related Party Transaction.

Section 3.2 Annual Disclosure. Each trustee officer, member of a committee with powers delegated by the Board, and employee shall annually submit to the President of the Board the written Disclosure Statement, in which such person:

(A) identifies, to the best of his or her knowledge, the information specified in Paragraphs (A) and (B) of Section 3.1 of this Article;

(B) affirms that he or she has received a copy of the Conflict of Interest Policy, read and understands the policy, agrees to comply with the policy, and understands MVLS is nonprofit and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 3.3 Continuing Duty to Disclose. In connection with any actual or possible Conflict of Interest or Related Party Transaction which may arise in the ordinary course of the year and within Board or committee meetings, an Interested Person must disclose the existence of the Financial Interest and be given the opportunity to disclose all material facts to the Board. Such disclosure may be made in a written statement or orally at a meeting of the Board, provided that such oral disclosure must be documented in the minutes of the meeting at which such disclosure is made and given to the President of the Board for review by the MVLS Board Executive Committee in accordance with Article IV, Section 4.2.

ARTICLE IV General Procedures

Section 4.1. General Prohibitions.

(A) An Interested Person is precluded from being present at or participating in any Board or committee deliberation or vote related to the transaction or arrangement giving rise to a Conflict of Interest or Related Party Transaction. Notwithstanding the foregoing, the MVLS Board or Board Executive Committee may request that an Interested Person present information to the Board or Board Executive Committee prior to the commencement of deliberations or voting relating thereto.

(B) An Interested Person shall not directly or indirectly attempt to influence improperly the deliberation or voting on the transaction or arrangement giving rise to the conflict.

Section 4.2. Determining Whether a Conflict of Interest or Related Party Transaction Exists.

(A) After the Interested Person's disclosure of the existence of and all material facts relating to his or her Financial Interest as required under Article III, and after any discussion among the remaining members of the Board or the Board Executive Committee and the Interested Person regarding the facts and circumstances of the Financial Interest, the Board Executive Committee shall discuss and make a

recommendation to the Board as to each of the determinations required by Paragraphs (C) and (D) of this Section 4.2. Alternatively, if the existence of the Financial Interest initially arises at a meeting of the Board, then the Board can directly make the determinations required without seeking recommendations from the Executive Committee, provided the Interested Person leaves the meeting while the remaining members of the Board discusses the information disclosed.

(B) Upon due discussion and consideration of the Board Executive Committee recommendations, the Board shall make each of the determinations required by Paragraphs (C) and (D) of this Section 4.2.

(C) Upon discussion, the remaining Board members shall decide and document in the meeting minutes if the transaction or arrangement constitutes a Related Party Transaction as defined in Article II, Section 2.9. If so, then the Board must also determine and document in the meeting minutes whether the Related Party has a Substantial Financial Interest, as defined in Article II, Section 2.5, in the proposed Related Party Transaction. Regardless of whether or not the Financial Interest is a Substantial Financial Interest, a Related Party Transaction is subject to the procedures set forth in Article V.

(D) If the transaction or arrangement does not constitute a Related Party Transaction as defined in Article II, Section 2.9, then the remaining Board members in their discretion shall decide if a Conflict of Interest, as defined in Article II, Section 2.10, exists nonetheless, after giving due consideration to the material facts and circumstances presented. If the Board determines that the transaction or arrangement involves a Conflict of Interest, then such transaction or arrangement is subject to the procedures set forth in Article V.

ARTICLE V Procedures for Addressing Conflicts of Interest & Related Party Transactions.

Section 5.1. Consideration of Alternatives.

(A) If the transaction or arrangement is a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then consideration of alternatives in accordance with this section is mandatory. For Conflicts of Interest, consideration of alternatives is within the discretion of the Board.

(B) After disclosure and discussions with the Interested Person, the Board of Trustees may appoint a Disinterested Trustee or committee of Disinterested Directors to investigate alternatives to the proposed transaction or arrangement. Alternatives must be presented to the Board and must be documented in the minutes of the meeting at which the determination is made.

(C) If alternatives are investigated and presented to the Board, then after exercising due diligence and giving due consideration for any such alternative transactions presented, the Board shall determine whether MVLS can obtain with reasonable efforts a more

advantageous transaction or arrangement from a person or entity that would not give rise to a Conflict of Interest or Related Party Transaction.

5.2. Board Decision.

(A) If alternatives are considered, whether mandatory or discretionary, and if the Board determines that a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a Conflict of Interest or Related Party Transaction, the Board shall determine by a majority vote of the Board whether the transaction or arrangement is in the best interest of MVLS, and whether it is fair and reasonable.

(B) In conformity with the above determination, and in accordance with Board Bylaws and policies, the Board shall make its decision as to whether to enter into the transaction or arrangement.

(C) If the transaction or arrangement involves a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then a majority of the Board members present at the meeting is required to approve such transaction.

Section 5.3. Documentation Required. In connection with all actual or possible Conflicts of Interest and Related Party Transactions, the Board shall document in the minutes of the meeting at which such determinations are made the following:

(A) The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible Conflict of Interest or Related Party Transaction, the nature of the Financial Interest, any action taken to determine whether a Conflict of Interest or Related Party Transaction was present, and the Board's decision as to whether a Conflict of Interest, Related Party Transaction or Substantial Financial Interest in a Related Party Transaction in fact existed.

(B) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussions at the meeting regarding the proposed transaction or arrangement, including the alternatives to the proposed transaction or arrangement considered, if any.

(C) The determination as to whether the transaction or arrangement is fair, reasonable and in the best interest of MVLS.

(D) The determination as to whether to enter into the transaction or arrangement which gives rise to the Conflict of Interest or Related Party Transaction. If the Board of Trustees approves a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then the minutes must also include the basis for such approval.

(E) A record of any votes taken in connection with the proceedings.

ARTICLE VI Oversight & Reviews

Section 6.1. Oversight Responsibility. The designated Board Executive Committee, as defined in the Board Bylaws, shall oversee the adoption of, implementation of, and compliance with this Conflict of Interest Policy in accordance with the procedures contained herein and within the process and authority granted under the Bylaws.

Section 6.2. Violation of the Conflict of Interest Policy.

(A) If the Board Executive Committee has reasonable cause to believe a trustee, officer or employee has failed to disclose an actual or possible Conflict of Interest or Related Party Transaction, it shall inform such person of the basis for such belief and afford such person an opportunity to explain the alleged failure to disclose.

(B) If, after hearing the response of the trustee, officer or employee and after making further investigation as warranted by the circumstances, the Board Executive Committee determines that the trustee, officer or employee has failed to disclose an actual or possible Conflict of Interest or Related Party Transaction, it shall recommend to the Board appropriate disciplinary and corrective action, up to and including dismissal or termination per Education Law 226.

6.3. Periodic Reviews. To ensure MVLS operates in a manner consistent with its nonprofit purposes and does not engage in activities that could jeopardize its tax-exempt status, the Board shall conduct periodic reviews. The periodic reviews shall, at a minimum, include the following subjects reviewed by Board committees:

(A) Whether compensation arrangements and benefits are reasonable, based on competent survey information, reviewed by the Personnel and Planning Committee.

(B) Whether partnerships, joint ventures, and arrangements with other organizations conform to MVLS written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further nonprofit purposes and do not result in impermissible or excessive benefit, reviewed by the Finance Committee.

Section 6.4. Use of Outside Experts. When conducting the periodic reviews as provided for in Article VI, Section 6.3, MVLS may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.