



Field Guide: Analysis of Board Members' Conflicts of Interest

By Thane Joyal

It's very common for conflicts of interest to be present on the board of a retail food co-op. Some even joke that conflict management is at the heart of cooperation. And in a way, it's true. The legitimacy of a board's decision depends in large measure on the board's ability to demonstrate that the decision was made to further the best interests of the cooperative and not to serve the interest of any particular board member.

In the case of conflicts of interest, an ounce of prevention is worth a pound of cure. It's best to be proactive about disclosing circumstances that could foreseeably present or appear to present a conflict of interest. Boards should have an annual and ongoing process that formalizes these disclosures, and in addition, board members should always be alert to circumstances that may present a conflict with a particular decision.


What kind of circumstances could present a possible conflict? Consider your other organizational and community relationships, including your employment, and the other boards that you serve on. What is your relationship to the co-op? There's the potential for conflict if you are a staff member, vendor or other stakeholder of the co-op or in close relationship with someone who is.

When a board decides how to manage a conflict, the board must not only decide whether an ACTUAL conflict exists in a particular situation, but also, and often more importantly, the board must analyze whether there's an *appearance of* conflict. How would a reasonable co-op member perceive the decision if they knew the circumstances around it? How would that member perceive the decision if they believed the board was unaware of certain of those circumstances?

If in doubt, your board may want to seek legal advice in determining whether an actual conflict exists. That said, boards can successfully manage and mitigate most conflicts by following four simple steps: disclosure, discussion, decision, and communication.

Disclosure

In general, there are three kinds of circumstance that lead to a potential conflict of interest. If a person, or that person's family member or close friend stands to benefit from a decision, there's a potential for conflict. If a person stands to benefit financially from a decision, or has some allegiance to another organization that stands to benefit,



there's a potential for conflict. And if a person may avoid legal culpability for something as a result of a decision, there's a potential for conflict.

The first step in managing an actual or potential conflict of interest is to disclose the relevant circumstances. Disclosure removes the perception of a secret around the conflict and sets the stage for the board to discuss and decide what if any steps should be taken to mitigate the conflict.

Each board member is responsible for notifying the board of circumstances that could foreseeably present a conflict, ideally well in advance of any board decision on a related matter. Once the issue is known to other directors, the board has the ability to manage the conflict by discussing and deciding how to address the potential or actual conflict related to a particular decision. And the board should document the discussion and its decision, even if it decides to take no further action.

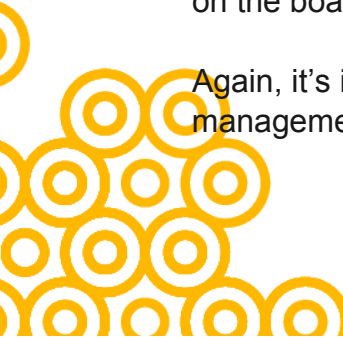
Discussion, Decision & Documentation

If there is the potential for a conflict to affect the legitimacy of a particular decision, the board should discuss the issue and decide how to proceed to mitigate the impact of the potential conflict on the decision. The goal is to protect the legitimacy and perception of the decision, as well as to protect the actual decision itself.

It's common for a group to ask to hear from the person affected by the conflict, and then to ask that person to leave the room while the group decides how to handle it. This is to ensure that board members can share ideas freely, and further protect the legitimacy of the decision. Unfortunately, it's widely recognized that as humans we tend to shy away from even mild conflict in certain social and business settings. And it's further recognized that nonverbal communication is a powerful influence. Providing some shield of privacy for group consideration of conflict of interest issues can provide an assurance for those who review the decision-making process in the future that there was not any undue influence being exercised in the decision about how to manage the conflict.

Where further measures are needed, the board can decide to ask a board member to recuse themselves from all or part of the discussion and decision process, depending on the nature of the issue and the degree of actual or potential/perceived conflict. The board can request, among other things, that a board member refrain from receiving information about an issue, excuse themselves from the discussion, and/or recuse themselves from the decision. In rare cases, a conflict may be deemed to be so overriding that it is not in the best interest of the cooperative to have the director remain on the board. If needed, check your Bylaws and seek legal advice.

Again, it's important that whatever decision the board makes around conflict management be clearly documented in the board's minutes.





Communication

Where a conflict of interest affects a decision of significant interest to the co-op, the board should consider a communication plan to protect the legitimacy of its decision. Very often the minutes of the board meeting will constitute adequate communication; but the board should be sensitive to the possibility that, in some cases, communicating an important decision should include information about the process used to reach the decision, including how any potential conflicts of interest were managed.

Questions for Discussion:

- How do we manage each part of the process: disclosure, discussion, decision, and communication?
- In particular, how do disclosure and discussion happen for our board, both on a regular basis and on an as-needed basis?
- Are our current practices serving our needs or do they need to be refreshed?

