

CONFLICT OF INTEREST RESOLUTION

WHEREAS, the Internal Revenue Service has consistently expressed its preference that all tax-exempt organizations adopt a conflict of interest policy;

WHEREAS, the Foundation has previously been mindful of these issues and wishes to demonstrate and document the continued commitment of the Foundation and its directors, members, and principal officers to avoiding any transaction that might create a real or perceived conflict of interest;

NOW, therefore, it is resolved (i) that the Foundation reaffirm the attached Conflict of Interest Policy; (ii) that the directors confirm their past and continued compliance with the said policy through the completion of the Foundation Conflict of Interest Questionnaire, and (iii) that the directors confirm their continued commitment to act at all times consistent with the Foundation's purposes.

Be it further resolved that said policy and the Foundation's adherence to the same be reaffirmed and reviewed by the directors on an annual basis, or more frequently as necessary.

F.M. Kirby Foundation Conflict of Interest Policy

Purpose

The purpose of this policy is to provide rules and procedures to deal appropriately with circumstances that involve, or may appear to involve, conflict of interest. This policy is intended to supplement but not replace federal and state law prohibiting self-dealing and private inurement, or otherwise dealing with conflicts of interest within nonprofit organizations. It is the Foundation's policy that:

- Foundation members, directors and employees ("Foundation insiders") must promptly and fully disclose any potential conflicts of interest;
- A Foundation insider may not participate in any decision in which he or she has a potential conflict of interest (unless the conflict is resolved pursuant to this policy); and
- The Foundation follow a disciplined, documented process in making decisions about such matters.

Definitions

1. Conflict of Interest. A potential conflict of interest exists if a Foundation insider:

- a. is in a position to make or influence the Foundation's decision about a proposed grant, contract or other transaction; and
- b. he or she has a significant relationship (as described below) with the potential beneficiary of or commercial counterparty on the transaction.

A potential conflict of interest may also exist in any other transaction in which there may be an actual or perceived conflict of interest, including any transaction in which the personal interests of a Foundation insider may be seen as competing with the interests of the Foundation, or that could result in the receipt of an impermissible benefit by a Foundation insider, or that calls into question the fairness or propriety of the Foundation's decision-making processes and/or its operations.

2. Significant Relationship. A Foundation insider is considered to have a significant relationship with the potential beneficiary of a Foundation grant, contract or other transaction if:

- a. the other party is a family member;
- b. the other party is an entity in which the Foundation insider (or his or her family member) is an officer, director, trustee or employee; or
- c. the other party is an entity in which the Foundation insider (or his or her family member) has a material financial interest as an owner or investor in the entity.

3. Family Member. Family members include a spouse, parent, grandparent, sibling, in-law, child, grandchild or any other relative living in the same household as the Foundation insider or the family member.

4. Determining Officer. "Determining officer" shall mean the president of the Foundation, unless he or she is the individual involved in the possible conflict, in which case the determining officer

shall be the Foundation's general counsel, or in the case of the president's compensation and the retention of a director's professional firm, the Foundation's board of directors (see attached Appendix A).

Other Situations Covered by this Policy

In addition to decisions about grants, contracts and other transactions, other situations may present risks to impartial decision-making, legal compliance and the Foundation's reputation. The Foundation's policy on several recurring situations are set out below.

1. Acceptance of Gifts. Foundation insiders and their family members may accept gifts, meals, and other benefits of nominal value so long as acceptance would not obligate the Foundation insider to take any action or decision on behalf of the Foundation or call into question the fairness or propriety of the Foundation's decision-making processes. There is no precise definition of what constitutes nominal value but as a general guideline, a gift having a value of less than \$100 is nominal. In all cases, the determination of what constitutes a gift of nominal value depends on the particular circumstances. Where it would be awkward to decline a gift, a Foundation insider may accept such gift, but in the name of the Foundation as the donee.

2. Acceptance of Honoraria. Foundation insiders may not accept honoraria from actual or potential grantees or commercial counterparties.

3. Employment of Relatives. While the Foundation has no general prohibition against the employment of Foundation insiders' family members by grantees or potential grantees or commercial counterparties, such employment shall be viewed as giving rise to a potential conflict of interest and shall be subject to this policy. In all events, such employment shall be for no more than reasonable compensation, and in no event shall Foundation grants be directed to the payment of such compensation.

4. Affiliations with Grantees. The affiliation by way of board memberships or otherwise of Foundation insiders or their family members with grantees or potential grantees will not be deemed to give rise to a conflict of interest, unless the Foundation insider or family member is receiving some sort of impermissible benefit from the grantee or potential grantee as a result of such relationship.

5. Specific Situations. No policy can encompass every situation that presents risks to impartial decisionmaking. In the end, the Foundation's effective management of conflicts depends on the good judgment and integrity of the Foundation insiders and their family members. The Foundation encourages individuals to talk to the determining officer if they have questions or concerns about specific situations.

6. Annual Questionnaire. Each Foundation insider will annually complete, sign, and submit the Foundation's Conflict of Interest Questionnaire (see attached Appendix B) to help to identify those situations that could give rise to a potential conflict of interest.

Procedures

1. Disclosure of Conflicts of Interest. Foundation insiders must promptly and fully disclose any potential conflict of interest to the determining officer before participating in any decision. Any doubt about whether a relationship warrants disclosure should be resolved in favor of disclosure.

2. Abstention from Participation. Foundation insiders must abstain from participating in any decision in which he or she has a potential conflict of interest (other than by providing information requested by the determining officer) unless and until the conflict is resolved pursuant to this policy.

3. Factual Investigation. The determining officer will investigate the nature of the potential conflict of interest as deemed appropriate.

4. Determination. If the determining officer concludes that the proposed grant, contract or other transaction (a) would not provide a benefit to the Foundation insider (or his or her family members as defined herein) that would not otherwise be available to a member of the public on substantially the same terms, or (b) would not inappropriately influence the decisions of the Foundation, then the Foundation insider will not be considered to have a conflict of interest and he or she may participate fully in the development, approval and/or administration of the proposed matter.

If the determining officer concludes that the proposed matter will provide such a benefit and/or have such an influence, then the Foundation insider may not participate in the matter, but the Foundation may still proceed if the determining officer concludes that the proposed transaction (i) is consistent with the Foundation's charitable purposes, (ii) is in the Foundation's best interest and for its benefit, and (iii) is fair and reasonable to the Foundation.

5. Documentation and Record Keeping. The determining officer will document the decision, and the Foundation will maintain a record of the decision.

Violations of this Policy

If any Foundation insider has cause to believe that another Foundation insider failed to disclose a potential conflict of interest, he or she should inform the determining officer.

Appendix A

Present Conflicts of Interest

The president of the Foundation is also a member and a director. His compensation has been determined formally and annually by the board of directors during times when the president has been excused from the meetings. Nevertheless, each of these determinations is considered to be a possible conflict of interest. And so, the board of directors has also made formally and annually a separate determination that this arrangement is fair and reasonable and in the best interests of the Foundation after careful and thorough consideration of the compensation of other similarly situated individuals (such determination having been made by the board members other than the president and while the president was not present). This determination process will continue in the same manner in the future.

The law firm in which a Foundation director is a partner is also, from time to time, receiving compensation for its legal services rendered to the Foundation. This is considered to be a possible conflict of interest. And so, the board of directors will formally and annually make a separate determination that this arrangement is fair and reasonable and in the best interests of the Foundation after careful and thorough consideration of the extent and fairness of such fees as compared to the fees of other similarly situated law firms (such determination will be made by the board members other than such director and while such director is not present).

In the event any other Foundation member or director (or an entity in which he or she has a significant relationship, as defined in the Conflict of Interest Policy) shall be considered to receive compensation or other fees ("remuneration") for services, or the remuneration or rate of remuneration of such person or entity shall be adjusted, the board of directors will follow similar procedures to determine if such remuneration (or additional remuneration) should be paid, and the appropriate amount of such remuneration (or additional remuneration).