

General Municipal Law Frequently Asked Questions

This FAQ has been prepared to give New York charter schools an overview of General Municipal Law §§800-806, which became applicable to charter schools when the Charter Schools Act was amended in May 2010.

This document is intended as general guidance only; the General Municipal Law is a complex set of rules and requirements and you should consult your legal counsel if you have any question about applying the law to the particular circumstances you are confronting.

Overview

Q1: What is the New York General Municipal Law (GML) and why are charter schools subject to it?

A: On May 28, 2010, the New York State Legislature amended the Charter Schools Act as part of an effort to increase accountability and transparency and address a growing concern that some charter school boards were engaged in inappropriate self-dealing. One provision of those amendments subjects charter schools to General Municipal Law sections 800-806 to the same extent as school districts across New York State. This law, which has long been applied to school districts and other local governmental entities, covers a number of areas, including how schools must handle conflicts of interest, codes of ethics and gifts.

Q2: As a board member or employee, what do I need to know about the GML?

A: While there is no substitute for in-depth understanding of the GML and what it allows, requires and prohibits, the following precepts can be helpful. First, when sitting on a charter school board, or as a leader or staff member of a charter school, you enjoy a position of public trust. You should always carry out your duties with honesty and transparency and try to avoid conflicts of interest where possible. You should understand that appearance is often as important as reality. Second, you should know that these laws have been strictly applied and that violations (particularly those made in bad faith) can result in fines and jail time. Third, a good rule of thumb is to use the “New York Times Rule” when deciding what to do, which is to ask yourself: “if this situation were on the front page of the New York Times, would I be concerned?” And finally, always consult counsel when confronted with questions that you cannot answer.

Conflicts of Interest

Q3: Are some conflicts of interest now prohibited?

A: Yes, and this is a very important change from the old rules that simply required you to disclose those conflicts and/or recuse yourself from being involved in the transaction or vote at issue.

In general, under the GML, school board members or employees are prohibited from having an interest in any contract with the school board or school from which they may benefit financially and over which they have authority as a result of their position.

Board members or employees are deemed to have an “interest” in a contract if it results in a direct or indirect financial benefit to them, and they are considered to have “authority” if either they or someone they appoint can negotiate, authorize, approve, prepare, make payment or audit bills/claims under the contract.

For example, two possible prohibited conflicts of interest are contracting with a board member or board member-owned business to do work for the school, and contracting with a spouse of a board member to do work for the school (other than through an employment contract).

Q4: How were schools allowed to deal with conflicts of interests before the law was amended?

A: School board members were required to disclose the conflict, exercise fairness and recuse themselves from votes or the decision-making process. However, as explained in Question 15 below, these obligations have not been replaced by the GML; rather the GML generally adds further restrictions.

Q5: Are there any exceptions to the conflict of interest provisions?

A: Yes, there are many, but they are highly specific and not very relevant to the charter school setting. The key exceptions that are most likely to matter to you are: an employment contract between the school and a board member or employee’s spouse, minor children or dependents; a contract between the school and a corporation of which the board member or employee is neither a director nor owns more than 5% of outstanding stock; a contract between the school and a board member or employee entered into preceding the election of the board member but NOT the renewal/renegotiation of that contract; a contract between the school and a board member or employee in which the total amount paid does not exceed \$750 during the fiscal year when added to the aggregate amount of consideration payable under all contracts pertaining to that individual; and a contract between the school and a company that employs a board member or employee where the individual’s compensation is not directly affected as a result of the contract and the duties of the individual’s employment do not directly involve the

procurement, preparation or performance of such contract. For a complete list of exceptions, please click [here](#).

Q6: What does the law say about nepotism?

A: Nepotism per se is not a violation of the GML, but contracts with relatives of school board members or employees must be scrutinized under the same criteria as contracts with non-relatives to determine if they are prohibited. As noted above, there is a specific exception for employment contracts with a board or staff member's spouse, minor children or dependents.

Q7: Can a school leader, teacher or other staff member be on a school's board of trustees?

A: The general answer is no. The impact of the GML is to prohibit participation of teachers and school leaders on charter school boards. While a school leader or teacher can be appointed to the board without creating an immediately prohibited conflict of interest, the prohibited conflict occurs when his or her employment contract comes up for renewal. At that time, the school leader or teacher would be required to either step down from the board or resign his or her employment with the school.

Q8: Is it permissible for the teacher or leader to sit on the board if the board position is ex officio or non-voting?

A: The answer is still no—and the prohibition would still apply. After all, if it were permissible as long as the board member is non-voting, then recusal from conflicted transactions would be sufficient. But, as above, recusal is not sufficient if an interest in a contract is prohibited by the terms of the GML. In those cases, the GML imposes a blanket prohibition and does not distinguish between board members who are voting and non-voting.

Q9: Can a leader or teacher be on the school's board if he or she is part of a union at the school?

A: If a collective bargaining agreement (CBA) is in place between the school and a group of employees and the person serving on the board is a member of that group of employees and covered under the CBA, then, yes, that person can continue to sit on the board. This is because the statute explicitly excepts contracts with not-for-profit corporations or associations and unions are considered to be such an organization. However, note that if the school is in the middle of organizing and is "unionized," but no CBA is in place, then the general rule prohibiting an employee from sitting on the board applies.

Q10: Since you can have a teacher or leader on the board until their contract comes up for renewal, why can't you keep a teacher or leader on the board if they are employees at will and their term of employment is indefinite?

A: Theoretically you could, but any time you changed any term of employment (such as giving them a pay raise, more responsibility, a different title), a court would likely find that you have renewed the contract with them and would find you in violation of the GML.

Q11: Could a teacher or school leader be on the board, resign every year, get a new employment contract, and then be reappointed to the board?

A: Such an arrangement might indeed be technically legal but a court would likely say that you are attempting to circumvent the law. Any such scheme is highly undesirable and very unwise. If teacher voice at the governing level is important to your school, you may want to consider appointing a teacher as an unpaid advisor whose job duties include board attendance, etc.

Q12: Can a charter school hire the wife or husband of a board member to be on staff?

A: Yes, it can. The GML specifically exempts employment contracts from prohibited conflicts of interest in situations where the contract is with the board member's spouse, minor children or dependent(s). However, this exception is limited to employment contracts. The board could not hire the wife of the board chair to provide consulting services to the school, nor could it hire the wife's company to do work for the school if the wife owned more than 5% of the company that was being hired or if she were self-employed or a partner in a partnership, or if her compensation at the company was directly affected by the contract, or if her duties directly involved the procurement, preparation, or performance of the contract.

Q13: Can a school still contract with its management company where members of the management company sit on the board of the school?

A: It depends on whether the company is for-profit or not-for-profit. If it is not-for-profit, then a charter school can contract with that company despite the fact that a board member of the school is also an employee of the management company. This is because the GML has an exception for contracts with not-for-profit organizations. If the management company is a for-profit corporation, the contract would violate the GML.

Q14: Can a charter school's board lease space from a "friends of" organization where the school's board has a member or members who are board members of the "friends of" organization?

A: Again, if the "friends of" organization is not-for-profit, which is likely to be the case, then the answer is yes. But if it is for-profit, then no.

Q15: What does the GML require in terms of disclosure?

A: With some limited exceptions, the GML requires public disclosure if a charter school board member or employee (or their spouse) has, expects to have, or later acquires an interest in an existing or proposed contract with the school. This is true even where the contract is not

prohibited by the GML. The board member or employee should make the disclosure in writing as soon as he or she becomes aware of it. Board members should disclose in writing to the other members of the board, and the board should note the disclosure as having been made in its meeting minutes. Staff members should make the disclosure in writing to their supervisors. It is good practice for the school's chief executive to report these disclosures to the board and include them in the minutes. It is critically important to remember, however, that disclosure is in addition to the GML's prohibition of certain interested transactions—it is not a substitute and will not cure an otherwise prohibited interest.

Q16: What happens if a board member and the school's board enter into a contract with each other and the contract creates an impermissible conflict of interest?

A: First, the contract itself is null and void and the school would be prohibited from paying the fees called for in the contract since legally speaking the contract never existed. Second, the board member who voted to enter into the contract knowing he had the prohibited interest could face criminal misdemeanor penalties, including fines or even jail time. The other board members could face penalties as well.

Code of Ethics

Q17: Do charter schools need to change their existing codes of ethics?

A: The answer is almost certainly yes. Under the GML, charter schools need to make sure their codes of ethics meet certain specific requirements. A sample code of ethics that meets those requirements can be found [here](#). In addition, you should be aware that the code must be filed with the Office of the State Comptroller and the school leader must distribute it to all employees. Failure to receive the school's code of ethics does not excuse an employee or board member from compliance with the Code. For instructions on filing the Code of Ethics, please go [here](#).

Q18: How strict does the code of ethics have to be?

A: The GML sets the baseline. A school can choose to make its code stricter, but not less restrictive, than the GML provisions. Any restrictions must meet standards under the GML—for example, a charter school's code cannot allow anything that the GML prohibits and cannot prohibit anything that the GML explicitly allows.

Gifts

Q19: What does the GML say about receiving gifts?

A: The GML is concerned not only with removing conflicts of interest when it comes to employees and board members of charter schools (and the other entities and persons it applies to) but also with removing even the appearance of conflicts of interest. Accordingly it is no

surprise that the GML prohibits charter school board members and employees not only from receiving but also from soliciting any gift of \$75 or more, where it could be reasonably inferred that the gift was intended to influence the employee or board member in his or her official duties or to reward him or her for actions already taken. The classic case of such an instance is when a vendor to the school provides a free vacation for the school leader who is responsible for picking the vendor.

Q20: What constitutes a “gift”?

A: “Gifts” include money, tangible gifts, services, loans, travel, entertainment, hospitality, etc. They are measured by fair market value and counted either as a single gift or collection of gifts over a 12-month period. A single gift valued at \$75 or more, or multiple gifts received over 12 consecutive months from the same source where their total value is \$75 or more, are prohibited by the GML.

Q21: Are there exceptions?

A: There are not exceptions as much as there are gray areas, where it is not clear whether a court would infer an improper intent. For instance, regulators and courts have generally found that there is no inference of impermissible reward or influence where the gift-giver and taker had a prior, established relationship separate and independent from the current business relationship. While this general rule produces easy cases, such as a husband giving an expensive anniversary gift to his wife who sits on a charter school board, it hardly makes all things clear. Unfortunately, this means that extreme caution is appropriate. For instance, it is probably not advisable for a board member to accept a gift from a vendor to the school even when the vendor and board member are friends unless such gift giving was part of their friendship and preceded the board member’s membership on the board. And even then, it is advisable that the board member report the gifts to the board.

Q22: Is it permissible for a vendor to a school to give a gift valued at \$75 or more in a calendar year to an employee or board member of the school when the gift was given in good faith and not intended to influence the vendor’s getting business from the school?

A: The answer is that it depends. Remember that the intent of a vendor in making the gift or the employee receiving it is not the only thing that matters; it is also critical to determine whether a disinterested observer might reasonably think that the gift was meant to improperly influence the employee in order for the vendor to get more business from the school. In any situation where the observer might likely see the gift as meant to reward or influence, the gift is improper and accepting it is unlawful, even if the vendor did not give the gift with an intent to influence.

Q23: Can an employee or board member attend a professional development event held by a book publisher that does business with the school and for which the book publisher offers to pay travel, lodging and event costs of \$75 or more?

A: This is a gray area and should be handled on a case-by-case basis and with great care. Some general considerations that counsel would want to take into account in analyzing whether a particular event or situation would pass muster are: is the event open to all or only a select few; is the event clearly educational or is it primarily social; do the travel and lodging make up a large portion of the expenses or does the “gift” consist mainly of the expenses of putting together and holding the educational aspects of the event. Other considerations would apply as well and we urge you to seek advice of counsel if you have even the slightest doubt. We also urge you to carefully document these instances and get counsel’s written opinion and approval. Finally, and as always, we believe the best practice is to avoid these kinds of situations altogether.

Q24: Can an employee or board member solicit donations from those who do business or who might do business with the school if the donations are solicited and accepted on behalf of the school and not personally, e.g., asking local business people to take out ads in the program produced as part of a school fundraiser?

A: This is also a gray area. Certainly a reasonable reading of the law is that the prohibition on gift giving and gift solicitation is limited to gifts from which the employee or board member would personally benefit. Gifts given to the school itself would generally not be seen to benefit a board member or employee. Equally, soliciting gifts on the school’s behalf could be viewed as not falling within the conduct that is prohibited. After all, a vendor giving money to the school for a fundraiser does not create a dynamic in which he could hope to gain additional business by paying off the school’s purchasing agent, since the purchasing agent personally has no incentive to reward the gift-giver. However, the fact is that there is little legal precedent in this area and therefore the risk is hard to quantify. Certainly, a school is better off having a “friends of” association do this kind of fundraising for the school, as the “friends of” organization and its board members and employees are not covered by the GML.

Q25: Can a school employee solicit and accept a discount rate from a vendor? Is that considered a gift?

A: Discounts, price reductions, two-for-one bargains and other typical inducements that vendors use would generally not be considered gifts and a school can solicit and receive them from its vendors or proposed vendors. However, side deals in which the vendor offers a discount rate on a personal computer to the school official would be considered a gift and the general rule prohibiting such gift applies.

PROCESS AND OTHER INFORMATION

Q26: Who is in charge of enforcing the GML?

A: In the first instance, the Board of Trustees is self-policing and must insure that it adopts and implements a Code of Ethics consistent with the GML. Each school’s chartering entity also has authority to require compliance with the GML, as does the State Education Department, which

issues charters. The May 2010 amendments to the Charter School Act appear to give the State Comptroller some authority to monitor charter schools' compliance with the GML. The local District Attorney and the Attorney General have authority to enforce the criminal penalties associated with violations of the GML.

Q27: Where can I get more information?

A: Visit the website of the State Comptroller at www.osc.state.ny.us. The Comptroller publishes formal opinions interpreting the GML.

Q28: If I want a legal opinion from the government addressing a particular question, how do I get it?

A: Write to the Office of the State Comptroller and submit your question. Be sure to provide the Comptroller with detailed facts underlying the potential conflict so that he is able to provide you with a comprehensive opinion.