



## Trustee Applying for paid District Position

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### Question:

Question #1: If a trustee wishes to apply for a paid job within the district, must the trustee resign from his/her position first in order to submit an application?

### Answer:

No. Idaho Code 33-507 states that "It shall be unlawful for any trustee to have a pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district..." This does not say that no trustee can apply for employment by the District while the trustee is in office. That being said, there are a number of caveats. Clearly, the trustee must absolutely not be involved in the decision regarding hiring, as the trustee cannot make a decision which would affect the trustee's pecuniary interests. It would behoove the trustee to refrain from even discussing the issue with other trustees or District employees. If the trustee does attempt to use his/her position to obtain the job, then the trustee may have committed a criminal act in violation of I.C. 18-1359 (using public position for personal gain). Frankly, it just looks bad, and an award of the job to the trustee probably will be considered tainted if the trustee is involved in any way. A second caveat is that if the trustee is offered the position, the trustee must resign the position before the trustee can enter into the employment contract. I.C. 33-507 makes it absolutely clear that no trustee may have a pecuniary interest in a contract. This includes employment contracts.

### Question:

Question #2: May the trustee hold themselves exempt from all trustee/school business while submitting an application-with the intent of resigning from trustee only if he/she is awarded the position?

### Answer:

See the answer to Question #1. There is no specific prohibition of a trustee applying for a position with the District with regard to holding themselves exempt from all school business while the application is pending. I would caution that if any school business being addressed by the Board has anything at all to do with the position or matters associated with the position, including budgeting matters, it would be best practice for the Board member to recuse him/herself from such activities. However, the trustee may not be involved in the decision process for the hiring, and must resign if he or she decides to accept the position.

# Question:

Question #3: Is the same true of a trustee's spouse? (if a trustee's spouse wishes to apply for a job at the district?)

# Answer:

This question is significantly more difficult to answer. The general rule is that no trustee can have a pecuniary interest directly or indirectly in any contract or other transaction pertaining to the school. See I.C. §§ 33-507 and 1359(1)(d and e). See also Id. Atty. Gen. Opinion 93-10. This would mean that a Trustee who receives a direct or indirect pecuniary benefit pursuant to an employment contract with the District, such as a spouse's salary, is likely in violation of this general rule. The confusion arises in that there are exceptions that some attempt to apply and the fact that the law as it relates to school districts is more restrictive than the same general laws for other Idaho governmental entities. There are numerous general statutes dealing with conflicts of interest. For example, I.C. §§ 18-1359, 1361, and 1361A are criminal statutes which could address the situation. I.C. 59-701 et seq. applies to public officers in general, and could address the situation. Both sets of statutes are statutes of general applicability. However, specific statutes such as § 33-507 (addressing school districts specifically) govern over general statutes when addressing this issue in a school setting as opposed to a general Idaho governmental application. I.C. § 33-507 contains the following language:

When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

This seems to imply that a trustee may continue on a Board when a spouse or relative is CONSIDERED for employment by the District, as long as certain restrictions are followed. This is further supported by I.C. § 18-1359(5)(a), which states

It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires, or will require, the payment or delivery of any school district funds, money or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

Given the general principal that the specific provisions of I.C. § 33-507 with regard to contracts with spouses will govern over all of the more general statutes that apply to other Idaho governmental entities, employment contracts with a person who is a spouse of a trustee will likely be deemed illegal, and void. See Independent Sch. Dist. v. Collins, 15 Idaho 535 (1908). As a result, the trustee can be on the board while the spouse is being considered for employment, but may not participate in the discussion or decision. However, if the spouse is offered employment and wishes to take this position, the trustee should resign the trustee position.

contact us with your question:



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