

## COMPLIANCE WITH MONTANA OPEN MEETING LAWS

### Can board members communicate between the board meetings?

Trustees should discuss district business in open session of a properly noticed and duly convened board meeting. Trustees may communicate with one another in social settings. Trustees are also able to communicate in a manner that permits the exchange of information about school business so long as that communication does not predetermine the outcome of district business. The public has a right to observe the proceedings of the board. Such observation can only occur during a properly noticed and duly convened public board meeting. If the exchange of information occurs, it should not be done in a manner that deprives the public of their right to observe the board's deliberation in a public meeting. All information exchanged should become part of the board packet for public review.

### Is the public entitled to notice of a board meeting?

Montana law does not enumerate any specific requirements for where notice of school board meetings must be posted or when such meetings must be posted; however, the notice requirements specific to trustees provide guidance with regard to providing notice to the public. These notice requirements should, however, be viewed as minimum requirements. Schools can always give more notice than that required but not less.

**Where to Post/Publish Notice.** The law requires that school boards provide reasonable notice of meetings. Although publication in a newspaper is not required, such publication does create a presumption of sufficient notice.

**When to Post/Publish Notice.** The law does not provide for specific time requirements of when posting or publishing of notice of school board meetings must be accomplished. However, with regard to regular board meetings, District policy should specify how far in advance of school board meetings notice will be provided to the public. As for special meetings, because the law requires forty-eight (48) hours written notice to the trustees, this is the general rule of thumb that notice be provided to the public. This is a minimum standard.

**Agendas.** The law requires that the contents of an agenda contain enough information to enable the reader to understand the subject matter to be discussed at the meeting. The agenda for each meeting should be as specific as possible and should give the public sufficient information about what is intended to be discussed.

### How does the public participate during board meetings?

The issue of the public's right of participation is addressed in the Montana Constitution, as follows:

Article II, Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Montana law specifically requires agencies to “develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public.” Most of the Montana Supreme Court cases on this issue focus on the requirement that a board provide reasonable notice of meetings. Section 2-3-104, MCA, provides that a public agency is considered to have complied with the requirement of providing reasonable opportunity for public input, if “a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution.” School boards are required to adopt procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public. The right of participation is not unlimited. As such, there are two opportunities for the public to comment during board meetings: 1) the general comment period and 2) prior to action by the board of trustees.

**General Comment Period.** The law specifically states that the time reserved for public comment is governed by the following:

- (1) Matters within the jurisdiction of the board but not before the board or on the agenda;
- (2) No action may be taken on a matter raised during public comment as proper notice has not been provided;
- (3) Matters raised by the public must be included in the meeting minutes.

The public comment agenda item is not designed to be a forum for the public to discuss any issue they may be concerned about. Their comments should be confined to concerns related to district issues or school business. The public comment period is not a time for the public to discuss matters on the board's agenda. Comments on matters presently before the board should be taken during discussion that specific agenda item. The law is designed to prevent multiple comments from the same citizen on the same topic.

**Agenda Item Comment Period.** The public comment period is not a time for the public to discuss matters on the board's agenda. Comments on matters presently before the board should be taken during discussion that specific agenda item. The law is designed to prevent multiple comments from the same citizen on the same topic. Under Montana law, a member of the public is permitted to provide their perspective on a matter on which a public agency is going to take action. This agenda-item specific period may have the same rules governing public comment. The right to comment on an agenda item is triggered when a motion and second is made. Prior to the vote on that motion, the public may express their opinions on that specific matter only. The Board may hear comment on agenda items that are strictly informational but are not required to under law.

**Comment Period Guidelines.** Some guidelines have emerged from the case law addressing this issue. Boards are permitted to limit comments in certain ways. The Montana Supreme Court has stated that a time limit can be placed on individual citizens during the public comment period. Many jurisdictions have permitted a 3 or 5 minute limit per person. The board is also permitted to confine all non-agenda discussion to one section of the agenda. The board may also ask a commenter to limit their discussion to issues that are related to district issues. Boards should adopt a policy governing the public comment period and include the policy with all board meeting materials. A summary of the policy can be read prior to the comment period at each meeting.

It is the responsibility of the board chair to enforce the rules governing public comment. If a commenter moves to topics that are not related to education a board chair may ask the person to stay on topic. If a time limit has been adopted, the board chair can notify the person that they have exceeded their allotted time. A board chair also has the power to enforce the rules of basic decorum. Outrageous or disruptive behavior is inexcusable during any portion of a board meeting and the public comment period is no exception. A person that is acting inappropriately or using offensive, obscene, or hostile language can be asked to sit down. If a member of the public persists in disrupting a board meeting it is a violation of state law punishable by a \$100 fine or 10 days in jail or both.

### **What if a member of the public complains at a board meeting?**

If an individual raises a general complaint during a board-established public comment period, it's best to listen to the individual and then say that the board will take the issue under advisement. You can expect the board chair to take control of this situation. Your board should not engage the individual in public debate during the meeting. Your board chair will also have to be mindful to protect individual privacy rights that may be implicated by such a presentation.

If a member of the public wished to be heard on a topic not appearing on the agenda, they should be advised of the District's complaint procedure. If the procedure is followed properly, they may be given a chance to be heard at a future board meeting.

### **When is it appropriate for the Board to convene in closed session?**

All school board meetings must be held in open session, with the exception of two circumstances: (1) where individual rights of privacy clearly exceed the public's right to know, and (2) to discuss litigation strategy.

**Individual Privacy Rights.** School board meetings can and should be closed to protect individual rights of privacy. Section 2-3-203(3), MCA, provides as follows:

. . . [T]he presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that

the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(1) **Special Notice Requirements.** In addition to the responsibilities of notice applicable to open meetings, school boards have an additional responsibility to notice any individual who is anticipated to be discussed at a school board meeting.

(2) **Board Chair's Decision.** In Montana, the board chair, and only the board chair, has both the right and the duty to close a school board meeting. Montana courts require a two-part test to determine whether a person has a constitutionally protected privacy interest:

1. Whether the person involved had a subjective or actual expectation of privacy; and
2. Whether society is willing to recognize that expectation as reasonable.

(3) **Deliberations.** If a meeting or discussion is held in closed session to protect an individual's right of privacy, any deliberations by the board regarding the matter should be held in executive (closed) session, and the individual about whom the discussion pertains must be allowed to remain in the room during the discussion. There is no legal basis to exclude the individual about whom the discussion pertains.

(4) **Decisions.** School boards cannot make decisions in closed session. All decisions of the board must be held in open session. However, the board can discuss the wording of a possible motion in executive (closed) session.

**Litigation Strategy.** The law specifically allows a school board to convene in a closed session to discuss litigation strategy with the district's attorney, when a discussion in open meeting would have a detrimental effect on the litigating position of the school district, subject to the limitations discussed in this section. The attorney must be present. The law requires reasonable notice of any matters to be discussed at any meeting, the specific agenda item for litigation strategy might read as follows: "Executive Session pursuant to Section 2-3-203(4)(b), MCA, for litigation strategy – School Closure Matter."

**Negotiation Sessions.** Negotiation sessions between the District and collective bargaining units must occur in open session. The public is free to observe the proceedings and is able comment on the discussions prior to the Board's vote on topics related to negotiations. The negotiation session must be posted in accordance with the open meeting law regardless of whether the session is part of a regular, special or

committee meeting. District caucus meetings are also open to the public while collective bargaining units may meet in closed session.

### **What are penalties for an open meeting law violation?**

**Timelines.** If it is determined by a court of law that the board violated the open meeting laws, any and all decisions may be declared void. The complaining party must file the action in district court within thirty days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the decision.

**Attorneys' Fees.** If the board is sued for violation of the open meeting laws and the complaining party prevails, i.e., the court determines that the board did, in fact, violate the open meeting laws, the court has the discretion to award costs and attorneys' fees.

**Standing.** In order for a member of the general public to pursue an open meeting act violation against a public agency, the individual must establish more than taxpayer and resident status. Thus, the individual will be required to make a showing of some unique injury or personal stake in the issue being challenged distinguishable, from the community in general.

**Personal Immunity.** It is extremely important for individual trustees to recognize the scope of their authority and to act within the confines of that authority. When individual trustees are acting in their official capacity they are immune from personal liability. This means that when trustees are participating in regular or special board meetings, they are shielded from personal liability. If a board member is named individually in any lawsuit as a result of acting within the course and scope of the board member's authority, the school district will defend and indemnify the trustee. On the other hand, if an individual trustee is acting outside the course and scope of the trustee's authority, the trustee is not immune from personal liability and is not entitled to the defense and indemnification provisions of the law.

## PROMOTING TRANSPARENCY THROUGH COMPLIANCE

### NEPOTISM

Whenever a school board considers hiring the relative of a current trustee, the school district needs to examine the nepotism provisions contained in Montana law to determine whether, nepotism and the corresponding legal requirements are applicable. The term “nepotism” is defined as “the bestowal of political patronage by reason of relationship rather than of merit.”<sup>1</sup> It is important to note that: (1) the law does not prohibit a school board from hiring the relative of a trustee; and (2) not all relationships between a school board of trustees and a relative of a trustee trigger additional legal requirements. Rather, the law requires school boards to comply with certain additional procedures when a current member of the board of trustees is related to a person by blood or marriage within certain parameters with whom the board of trustees is considering appointing or hiring. An explanation of when those additional procedures are triggered is explained below.

**(a) Relationships by Blood.** If a prospective appointee or employee is related to a current trustee by blood (or consanguinity), it is necessary to examine the nature of the relationship to determine whether the procedures discussed below at (c) apply. Additional procedures must be applied whenever the board of trustees is considering appointing or hiring the relative of a trustee who is related to a trustee within the fourth (4<sup>th</sup>) degree of blood (consanguinity).<sup>2</sup> The easiest way to understand degrees in terms of relationships is to examine a relationship chart. For example, if the relative of a trustee is the trustee’s child or parent, this relationship is of the 1<sup>st</sup> degree. A grandchild or grandparent would, for example, be related within the 2<sup>nd</sup> degree and so on. Examples of relatives who fall within the 4<sup>th</sup> degree are as follows: 1<sup>st</sup> degree – parent and child; 2<sup>nd</sup> degree – grandparent, grandchild, brother and sister; 3<sup>rd</sup> degree – great grandparent, uncle, aunt, niece, nephew, great grandchild; 4<sup>th</sup> degree – great great grandparent, great uncle, great aunt, 1<sup>st</sup> cousin, grand niece, grand nephew, and great great grandchild. For those relatives that fall outside the parameters of the 4<sup>th</sup> degree, the additional procedures are NOT required.

**(b) Relationships by Marriage.** If a prospective appointee or employee is related to a current trustee by marriage (or affinity), an analysis of the relationship is necessary as those relatives that are related to a trustee by marriage (affinity) within the 2<sup>nd</sup> (second) degree trigger additional requirements prior to the final decision of the board of trustees. Those relatives by

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<sup>1</sup> Section 2-2-301, MCA.

<sup>2</sup> Section 2-2-302, MCA. Also, Section 72-11-101, MCA, provides that “Degrees of kinship -- how computed. The degree of kinship is established by the number of generations, and each generation is called a degree.” “There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, one of whom is a descendant of the other. Collateral kinship is the relationship between people who descend from a common ancestor but are not in a direct line.”

marriage that fall within the 2<sup>nd</sup> degree are father-in-law, mother-in-law, step child, grandfather-in-law, grandmother-in-law, brother-in-law, sister-in-law and step grandchild.<sup>3</sup> For those relatives that fall outside the parameters of the 2<sup>nd</sup> degree, the additional procedures are not required.

(c) **Initial Hiring.** Whenever the trustees are considering appointing or hiring an individual for the first time that is the relative of a current trustee that falls within the relations, the following notification requirements AND voting requirements must be followed prior to the board of trustees taking action to appoint or hire:

Notification Requirements:

The trustees are required to provide written notice of their intended action;  
Such written notice must contain the date, time and place of the meeting of the trustees when the trustees will be taking action on such appointment or hiring;

The written notice must be published in a newspaper of general circulation at least fifteen (15) days prior to the anticipated action by the trustees.<sup>4</sup>

Voting Requirements:

**ALL** of the trustees, with the exception of the trustee(s) who is related to the person being appointed must vote in favor of the appointment. The trustee who is related to the prospective appointee/hiree must abstain from voting. NOTE: This requires that ALL trustees, other than the trustee(s) who is related, both attend the meeting and vote in favor. If one or more trustees are absent from the meeting when the discussion and vote are taken, the relative of a trustee cannot be hired.

(d) **Substitute Teachers.** With regard to substitute teachers, the amount of “consecutive” time spent substituting in a particular school district triggers what procedures need to be followed. The appropriate and widely followed practice of most school districts is to approve of a substitute list prior to the commencement of each school year. If any person on the substitute list is related to a trustee within the degrees explained above, the school district is required to publish the requisite notice. However, if a particular substitute is called upon to teach more than thirty (30) consecutive school

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<sup>3</sup> Section 2-2-302, MCA. See also, 1-1-219. **Relationship by affinity.** (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

<sup>4</sup> Section 2-2-302, MCA.

days, the trustees must take specific action to approve of such employment and ALL of the trustees, with the exception of the trustee(s) who is related to the substitute teacher anticipated to be employed for more than thirty (30) consecutive school days must vote in favor of the appointment.<sup>5</sup>

(e) **Renewal of Employment Contracts.** The renewal of employment contracts of persons who are already employed by a school and the issue of nepotism is an area where the law in Montana is anything but crystal clear.

**1. Tenured Certified Staff** – In Montana, tenured teachers are automatically elected from year to year.<sup>6</sup> Tenured employees can only be dismissed for good cause.<sup>7</sup> Tenured teachers have an expectation of continued employment unless notified otherwise. Therefore, it is the opinion of the Editors that the requirements of the nepotism statute are not required with respect to tenured certified staff.

**2. Non-Tenured Certified Staff** – Unlike tenured teachers, non-tenured teachers can be non-renewed without cause so long as the Board of Trustees acts on such non-renewal AND provides written notice of such non-renewal prior to June 1.<sup>8</sup> Unless provisions in a collective bargaining agreement provide otherwise, non-tenured teachers have no expectation of continued employment and are, therefore, subject to non-renewal at the end of each contract for the first three years of employment. Like tenured teachers, non-tenured teachers are automatically renewed from year to year unless the Board takes action to non-renew the employment of a non-tenured teacher.<sup>9</sup> Therefore, it is the opinion of the Editors that if it is the practice of a school district to take action renewing the contract of a non-tenured teacher (as opposed to taking no action and following the automatic statutory renewal provisions), the District should comply with the requirements of section 2-2-302, MCA.

**3. Classified Staff (Hired Not on Written Contract for a Specified Term)** – For those classified staff who are employed by a school that are not hired pursuant to the terms of a written contract for a specified term, technically there is no renewal process needed as such employees are regarded as “cause” employees under Montana’s Wrongful Discharge from Employment Act (WDEA).<sup>10</sup> Generally, speaking, these types of employees are not renewed by the Board each

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<sup>5</sup> Section 2-2-302, MCA.

<sup>6</sup> Section 20-4-205, MCA.

<sup>7</sup> Section 20-4-204, MCA.

<sup>8</sup> Section 20-4-206, MCA

<sup>9</sup> Section 20-4-206, MCA provides, in part, as follows: “20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination. (1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year. . . .”

<sup>10</sup> Title 39, ch. 2, part 9.

year and, therefore, the nepotism procedures would only apply on the initial hire of any such person.

**4. Classified Staff (Hired Pursuant to a written contract for a specified term)**

Many classified employees in Montana schools are hired pursuant to the terms of a written contract for a specific term. For those classified employees that are hired pursuant to the terms of a contract for a specific term, (e.g., year-to-year, for a particular coaching season or other specific task), the nepotism provisions in Montana law require that the Board of Trustees comply with the requirements set forth in section 2-2-302, MCA.

## CONFLICTS OF INTEREST

There are many sections of the code which address the potential conflict of interest for school trustees and employees. They are found in Title 2, which applies to all public officials and public employees and Title 20, which specifically applies to trustees.

### General Ethics Rules

**2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

- (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;
- (b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;
- (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;
- (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;
- (e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or
- (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

Each employee and trustee in a school district has a ethical and legal duty to manage and maintain finances and resources in a manner that honors taxpayer role in district operations while maximizing student achievement. These obligations include:

- Properly using public finances and resources
- Using funds and resources in accordance with educational purposes or other district policies
- Avoiding unauthorized personal use

## Campaign Work for Public Officials

### **2-2-121. Rules of conduct for public officers and public employees.**

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

- (i) authorized by law; or
- (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

- (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;
  - (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.
- (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

One of the key questions that come up is what public employees can and cannot do in working on levy elections. In light of the restrictions of 2-2-121, MCA, public school district employees' activities are limited, as reflected in the following list of do's and don'ts:

### **Don't use district resources**

Except as described under the new changes in the law above, school districts cannot use public resources to advocate a position on a levy proposal. Public resources mean district funds, district employees during working hours, district vehicles or travel allowances, or

district facilities and equipment. For example, employees cannot be used to do research or write speeches designed to advocate a particular position on a levy proposal. It also would be improper to pay travel expenses for employees to promote a campaign position. If you have a community group that meets on a regular basis to plan support for the levy, have them meet off site.

### **Don't campaign on district time**

School district employees can campaign outside of their hours of employment and without the expenditure of public funds. However, employees must not be required nor coerced to aid a campaign. While on school time employees can say, "Here are the facts; please vote. "They can say, "Vote yes," on their own time.

### **Examples of Allowable Activities for Public Employees**

- Lunch hours and breaks — when the employee is considered to be off duty — may be used for political activity, dependent on other employer lunch/break policies. However, any such activity must be of a voluntary nature on the part of the employee. In other words, employees who elect to use this time for political activity must not feel obligated or coerced to do so by co-workers or supervisors. Also, such activity should not take place on school district property.
- A public employee may be involved in voluntary campaign activity during the employee's personal time in the evenings and on days off. Again, they should not feel coerced or obligated by their supervisor.
- It is not an election law violation for public employees to use work time to perform their standard job duty of taking the minutes of a public meeting, including an elected official's discussion and reasoning for adopting a resolution or voting to support or oppose a measure.
- The follow-up maintenance of the public record and making copies available upon request from the public, in the same manner as staff would process any other similar citizen request, is permitted.
- A public employee may provide only impartial, factual information related to an initiative, referendum or recall petition, measure or candidate as a part of the employee's job on work time or in a school facility.
- If any public employee makes public presentations or speeches regarding an initiative or referendum petition, or levy proposal while on their work time, or in an employee's "official capacity," they must make sure the speech is only factual and neutral in its presentation, or, in the case of the superintendent, that the advocacy is specifically authorized by the board.

- A public employer can inform employees about the possible effects of a measure, such as possible layoffs; but the public employer must not threaten employees with financial loss if they vote one way or another.

### **School Board Trustee Ethics Rules**

#### **20-9-204. Conflicts of interests, letting contracts, and calling for bids -- exceptions.**

- (1) It is unlawful for a trustee to:
  - (a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or
  - (b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.
- (2) For the purposes of subsection (1):
  - (a) "contract" does not include:
    - (i) merchandise sold to the highest bidder at public auctions;
    - (ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or
    - (iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and
  - (b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

Section 20-9-204, MCA governs conflicts of interest for school board trustees in Montana. Three common questions emerge regarding this statute:

#### **Trustee Employment**

No, it is unlawful for a trustee to be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

### **Trustee Contracts**

A trustee may serve as an employee at an entity that executes a contract with the district while that trustee serves on the board so long as the employee does not own 10% or more of the contracting entity. A contract between the trustee's employer and the district that predates the employee-trustee's term of board service is also appropriate.

It is unlawful for a trustee to have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member. "Pecuniary interest" does not include holding an interest of 10% or less in a corporation.

### **Trustee Subcontracts**

Subcontracts are not specifically mentioned in the statute. However, the phrase "indirect pecuniary interest" has been interpreted to include a subcontract. Others argue the statute is ambiguous on the subject. If "indirect pecuniary interest" is interpreted to mean "subcontract," a trustee may not serve as a subcontractor to a general contractor if the trustee served on the board that approved the contract with the general contractor and they own more than 10% of the subcontracting entity. A trustee would have to decline the subcontract or step down from the board to execute a subcontract with a general contractor if the trustee was on the board when the contract was approved. The statute is silent to contracts or subcontracts that predate the trustee's term of service. If the trustee was not on the board when the general contract was approved or if they own less than 10% of the subcontracting entity, there would not be a specific violation but it could be interpreted as such by the community. In such cases, the meeting minutes and contract would have to be reviewed and disclosed to the public to ensure there was understanding of the law and the nature of compliance.

### **Routine Purchases and Lack of Availability**

Section 20-9-204, MCA states that it is unlawful for any trustee to have a pecuniary interest in any contract made by the board of trustees of which the trustee is a member. A routine purchase from a local business owned by a trustee would normally fall within this prohibition. However, the statute also states, "'contract' does not include contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered." This exception to the rule permits the district to buy items from a business owned by a trustee if the board, as part of its motion, finds that no other business in the community offers the same services, the district wishes to buy locally, and the district has had an ongoing relationship with the business prior to the trustee purchasing the business.