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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: School Board Members  
FROM: Bob Butler, Assistant Executive Director, WASB  
RE: Incompatibility of Office  
Date: April 2016

The doctrine of incompatibility is a common law doctrine that bars a person from holding two offices where one office is superior to the other, so that the duties exercised under each might conflict to the detriment of the public, or where the nature and duties of two offices are such that public policy considerations bar one person from discharging the duties of both offices. There is an exception to this for a board member who volunteers to be a coach or an advisor. There is not an exception for a board member who chooses to be a paid employee, either full-time, part-time or as a per diem substitute. Please see below (*emphasis added*):

*120.20 School board members; compatible positions. (1) A school board member may serve as a volunteer coach or a supervisor of an extracurricular activity if all of the following apply:*

*(a) The school board member does not receive compensation for serving as a volunteer coach or supervisor.*

*(b) The school board member agrees to abstain from voting on any issue that comes before the school board that substantially and directly concerns the activity that he or she coaches or supervises while he or she is serving as a volunteer coach or supervisor.*

*(c) The school board receives the results of a criminal background investigation of the school board member conducted by the department of justice or the federal bureau of investigation.*

*(2) Subsection (1) (b) may not be construed to require a school board member who is serving as a volunteer coach or supervisor to abstain from voting on the school district's annual budget.*

*(3) Notwithstanding s. 120.001, this section applies to members of a school board of a common, union high, or unified school district.*

*Please see 2015 Wisconsin Act 92*

The above highlighted language requires the board member to abstain from voting on a coaching or advisor position even if he/she is not receiving any compensation, directly or indirectly for the work that she/he performs for the District. The doctrine is designed to preclude the possibility of conflicts or inconsistency in carrying out the functions of two offices. It is well recognized that if one office is subordinate to another, the two offices are incompatible. The consequence of violating the doctrine of incompatibility is severe - by accepting a second office that is incompatible with a person's first office, he person loses his or her first office.

One avenue that a board member might consider pursuing if he/she believes that he/she may have a conflict of interest would be to seek a formal (and confidential) ethics opinion from the Government Accountability Board. There is a process established for this under Ch. 19 of the state statutes. The contact information for the GAB is <http://gab.wi.gov/contact>.

Please see the legal comments on incompatibility of offices and conflicts of interest attached hereto.