



# Archdiocese of Agana

CHANCERY OFFICE

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Protocol No.: 2017-037

## CONFLICTS OF INTEREST/ PRIVATE INUREMENTS POLICY

### Purpose

The purpose of this conflicts of interest and private inurement policy is to protect the Archdiocese's interest when it is contemplating entering into a transaction or arrangement that might benefit the interests of private individuals, including but not limited to employees and individuals performing work on behalf of the Archdiocese and other persons in a position to influence the affairs of the Archdiocese. This policy is intended to supplement but not replace any applicable local laws governing conflicts of interest applicable to non-profit and charitable corporations. This policy should be distributed to existing and future executives, officers, trustees, directors, and members of advisory boards, councils and committees.

### Introduction

Non-profit charitable, religious, and educational organizations obtain their tax-exempt status under the theory that they perform valuable services for society and lessen the burdens of government. If a tax-exempt organization allows its money or other property to be used for private rather than public gain (i.e., for "private inurement" or "private benefit"), then it risks losing its exemption. In addition, under the "intermediate sanctions" provisions of the Internal Revenue Code, "disqualified persons" such as Archbishops, CFOs, other Archdiocesan officials, board members, major donors doing work for the Archdiocese, etc., who receive "excess benefits" are subject to an excise tax ranging from 25% to 200%, depending on the circumstances. Furthermore, any organizational manager who knowingly facilitates such an excess benefit is subject to a 10% tax. In light of these IRS restrictions and, more importantly, in order to assist the Archdiocese in fulfilling its responsibilities to act as a competent and trustworthy steward of church goods, the Archdiocese has developed this policy.

### Identifying a Private Inurement or Private Benefit Problem

In brief, "private inurement" is the payment or diversion of an exempt organization's assets to its officials, officers, directors, employees, relatives, friends, major donors, or others in a special relationship to the organization who can influence or control the policy or the day-to-day activities of the organization for less than full and adequate consideration. It is a broad concept that can exist in a variety of transactions under a variety of circumstances. Private inurement also extends to the use of organizational assets for "private benefits" such as sales, leasing, construction contracts, service transactions, etc., at other than fair market value or the exploitation of the exempt organization for the benefit of a private business (e.g., "sweetheart deals," promotional schemes, and/or giveaways to private individuals or businesses). Thus, under IRS regulations, a private benefit is similar to, but broader than, private inurement.

To avoid a material private inurement or benefit in the types of transactions described above, the particular Archdiocesan parish, school, or agency must enter into transactions for its benefit, rather than for a private party's benefit, and exercise due diligence to ensure that the proposed transaction is fair and reasonable such that under the circumstances the organization could not have obtained a more advantageous arrangement with reasonable effort. In addition to screening proposed transactions through the applicable councils, boards, or trustees, care should be taken to follow Archdiocesan policies and procedures pertaining to the signing of contracts.

### **Conflicts of Interest**

A conflict of interest may exist when persons employed by the "Archdiocese" (i.e., the Central Administrative Office, parishes, schools, Archdiocesan agencies, and/or affiliated entities), those volunteers of the Archdiocese holding trusteeships or other management authority, or those serving on advisory or consultative boards, councils or committees have a direct or indirect financial interest, as defined below.

### **Financial Interest**

A person has a "financial interest" if the person has, directly or indirectly, through business, investment, or family (including spouses; brothers or sisters; spouses of brothers or sisters; ancestors; children, grandchildren, and great grandchildren; and spouses of children, grandchildren, great grandchildren, Godfather, and Godmother, any one of the following:

- a. An ownership or investment interest in any entity with which the Archdiocese has a transaction or arrangement;
- b. A compensation arrangement with the Archdiocese or with any entity or individual with whom the Archdiocese has a transaction or arrangement;
- c. A potential ownership or investment interest with, or compensation arrangement with, any entity or individual with whom the Archdiocese is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

### **Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest and all material facts. Reports should be made to Archdiocesan personnel as designated by the Archbishop, i.e., vicar general, chancellor, attorney, chief financial officer or internal auditor. Reports should include relevant information that is discernible.

### **Investigation**

The designated Archdiocesan personnel shall be responsible for a thorough and expeditious investigation of the actual/possible conflict of interest.

Proposed decisions on disposition of a case will be discussed with the Archbishop or his designee(s). The results of all reported conflicts of interest and the final resolution shall be reported to the Audit Committee.

**Subsequent Conflicts and Disclosures**

Notwithstanding previous disclosures of actual or potential conflicts of interest, an individual shall make a new disclosure of conflicts when any matter involving the conflict of interest arises for discussion or action. In the event that an individual is uncertain whether an actual or potential conflict of interest exists, the individual should make disclosure of the circumstances that may give rise to an actual or potential conflict.

**Confidential or Privileged Information**

Information known to be confidential that is acquired by individuals in the course of employment or association with the Archdiocese and its affiliated entities shall be used only for the benefit and purposes of the Archdiocese. Individuals shall neither disclose confidential information outside the scope of their authorized duties nor utilize their position or association with the Archdiocese for personal identification or advantage, although there may be instances, based on the use of careful discretion and judgment, where incidental use of the association with the Archdiocese may be appropriate.

By signing below, I hereby acknowledge that I have completely read and fully understand the Archdiocese of Agaña’s Conflicts of Interest/Private Inurement’s Policy.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Supervisor Signature

Date: \_\_\_\_\_