



Rochester & Genesee Valley Railroad Museum

**CONFLICT OF INTEREST
POLICY**

ADOPTED JULY 6, 2017

Background

The Rochester and Genesee Valley Railroad Museum (RGV) is subject to the New York Not-for-Profit Corporation Law with respect to its governance, including dealing with conflicts of interest. The Nonprofit Revitalization Act of 2013 (NPRO) imposes several new requirements with respect to conflicts of interest, in addition to following established common law and organizational best practices relative to these concerns.

Additionally, RGV is an organization described in Sections 501(c)(3) and 509(a)(1), (2) or (3) of the Internal Revenue Code of 1986, as amended (the “Code”), and so is subject to the requirements of Code Section 4958 with respect to various dealings with interested persons.

The Trustees and officers of RGV are responsible for upholding a public trust. We are called to a higher standard of stewardship in order to meet the special privileges that our tax-exempt status allows. The action of the Trustees and officers should meet or exceed these higher standards rather than only minimally satisfy the requirements of tax-exempt status. Areas of behavior to be avoided include personal conflicts of interest by Trustees and officers, their families and business associates, questionable investments, improper treatment of consumers, improper use of funds raised (especially for personal remuneration), expensive and inefficient fundraising practices, failure to meet legal requirements and similar offenses.

RGV has adopted the following policy designed to avoid any possible conflict between the personal interests of Trustees and officers and the interest of RGV. The purpose of this policy is to insure that decisions about operations of RGV, and the use and disposition of its assets are made solely in terms of benefits to RGV and are not influenced by any private profit or other personal benefit to the individuals affiliated with RGV who take part in the decision.

In addition to actual conflicts of interest (as defined by this policy), Trustees, officers and employees are also obliged to avoid actions that could be perceived or interpreted to be in conflict with RGV’s interest. While these situations are not specifically covered by this policy, such individuals should disclose these situations as they arise for consideration by the Board, committee or individuals reviewing the matter to determine whether the individual should be recused from deliberations and voting.

This Conflict of Interest Policy (the “Policy”) is intended to contain in a single policy the relevant legal rules and best practices which govern RGV and its handling of conflicts of interest which include related party transactions as defined under the New York Not-for-Profit Corporation Law.

No policy can anticipate the fullest range of factual circumstances which may entail a conflict of interest. Accordingly, it is important to interpret and apply this Policy in a way which best assists RGV’s governing Board and others in meeting their obligations under

the law. Questions arising under or about this Policy should be forwarded to the Board of Trustees, or the Board's designee for consideration and resolution.

Who is subject to this Policy?

Any person who is a Related Party (Interested Person) is subject to this policy. Related Party is defined as:

(1) Any individual who currently serves in any of the following capacities:

(A) a voting member of the Board of Trustees of RGV or Board of any Affiliate of RGV ; or

(B) an officer of RGV or of any Affiliate of RGV, including, but not limited to (i) a President or Chair, Chief Executive Officer (CEO), Chief Operating Officer (COO) and any other individual who has ultimate responsibility (individually or shared) for implementing the decisions of the Board or for supervising the management, administration, or operation of RGV (e.g., President); and (ii) a Treasurer, Chief Financial Officer (COO) and any other individual who is authorized to spend or commit RGV funds, including, but not limited to, Museum Manager and Superintendents; or

© a Key Volunteer or Employee of RGV or any Affiliate of RGV as defined in (4), below..

(2) Any Relative of those persons listed in (1) above. "Relative" includes: spouse; domestic partner as defined in New York Public Health law Section 2954-A; ancestors; siblings (whether whole or half-blood); children (whether natural or adopted); grandchildren; great-grandchildren; and spouses of siblings, children, grandchildren, and great-grandchildren.

(3) Any entity in which an individual listed in (1) or (2) has a controlling interest. A controlling interest is defined as:

(A) for corporations: ownership (direct or indirect) of more than 35% of the combined voting power;

(B) for partnerships or personal service corporations: ownership (direct or indirect) of more than 5% of the profit interest; and

© for trusts or estates: ownership (direct or indirect) of more than 35% of the beneficial interest.

(4) A Key Volunteer or Employee includes any person who currently is, or was at any time during the past year, in a position to exercise substantial influence over the affairs of RGV. Facts and circumstances indicating that a person is in a position to exercise substantial influence include, but are not limited to the following:

the person is a founder or creator of RGV;
the person is a substantial contributor¹ to RGV;
the person's compensation, privileges and/or other benefit(s) is based primarily on revenues from RGV's activities that the person controls;
the person has or shares authority to control or determine a substantial part of RGV's capital expenditures, operating budget, or compensation for employees;
the person manages a discrete segment or activity of RGV that is a substantial part of RGV's activities, assets, income, or expenses;
the person owns a controlling interest in a corporation, partnership, or trust that is considered a Related Party; and
the "person" is a non-stock organization controlled directly or indirectly by one or more Related Parties.

(5) Facts and circumstances indicating that a person is not a Key Volunteer or Employee include, but are not limited to the following:

the person is an independent contractor whose sole relationship to RGV is providing professional advice and who has no decision-making authority and will derive no direct or indirect benefit from the transaction except for the customary fees for professional advice;
the person is the direct supervisor of an individual who is not a Key Employee;
the person does not participate in any management decisions affecting RGV as a whole or affecting a discrete segment of the organization that represents a substantial portion of its activities, assets, income, or expenses of RGV, as compared to RGV as a whole;
the person receives any preferential treatment based on the size of the person's donation when that preferential treatment is also offered to all other donors making comparable contributions and offered as a part of a solicitation intended to attract a substantial number of contributions.

(6) An Affiliate is any entity controlled by, in control of, or under common control with RGV.

Who is NOT subject to this Policy?

Other organizations that are tax-exempt under Code Section 501(c)(3).

¹ Substantial contributor is any individual who contributes more than \$5,000 to RGV, provided that such amount is more than 2% of the total contributions and bequests received by RGV during RGV's most recently completed fiscal year and four (4) preceding fiscal years. Contributions from spouses are aggregated for these purposes.

Any RGV Member, Volunteer or Employee who is not highly compensated² and is not otherwise considered a Related Party under this Policy.

What transactions or relationships are subject to this Policy?

Any transaction, agreement or other arrangement in which a Related Party has a financial or organizational interest, and in which RGV or any Affiliate is a participant (“Related Party Transaction”).

What steps need be taken?

The Board³ shall approve a Related Party Transaction only where the Board determines that the transaction is fair, reasonable and in RGV’s best interests. The Board shall utilize the following process to approve transactions subject to this Policy:

The Board must approve the Related Party Transaction in advance. Any member of the Board who has a conflict of interest as defined in this Policy may not participate in the vote, nor may he or she be present during voting or deliberations.

.The Board must make its decision with reliance on appropriate data about comparable arrangements to the extent they are available.⁴

The Board must adequately document its decision and deliberations in the corporate records.

Annual Disclosure Statements

Prior to initial election and annually thereafter, all Officers and Trustees shall complete, sign, and submit to the Secretary a written statement identifying, to the best of the Trustee’s knowledge, any entity of which such Trustee is an officer, director, trustee, member, owner, or employee, and with which RGV has an actual or potential

² Highly compensated employee is defined under Code Section 414(q)(1)(B)(I) and is adjusted annually for inflation. The amount for 2014 is \$115,000. Organizations can choose to set this amount at a hard dollar threshold if they prefer as long as it is equal to or lower than the statutory amount.

³ Only independent Trustees may participate in the review and approval of such transactions. Review and approval may also be delegated to a committee comprised entirely of independent Trustees (e.g. Audit Committee).

⁴ This is required for any Related Party Transaction in which a Related Party has a substantial financial interest (not defined by the Act).

relationship, and whether there is a conflict of interest. The disclosure of a relationship shall not, by itself, constitute a conflict of interest. The Board may require the same submission to be made by certain Key Volunteers or Employees. The Secretary shall provide a copy of all completed disclosure statements to the chairperson of the Audit Committee.

Disclosure of Conflicts of Interest

A Volunteer or Employee of RGV with a potential conflict of interest in a particular matter shall promptly and fully disclose the potential conflict to his/her supervisor, or to the RGV Secretary (or designee). The individual shall thereafter refrain from participating in deliberations, discussions, as well as any decisions, relating to the matter, and follow the direction of the Board or supervisor regarding which Corporate actions are subject to this conflict of interest determination. Likewise, any RGV Member may report any apparent conflict that comes to his/her attention to the Secretary (or designee). The President shall be responsible for determining the proper way for RGV to handle decisions which involve unresolved employee conflicts of interest. In making such determinations, the President may consult with legal counsel.

The President (or designee) shall report to the Board at least annually concerning conflicts of interest which have been disclosed and contracts and transactions involving conflicts which the President has approved.

Oversight/Administration

This policy shall be overseen and administered by the Board⁵ including the adoption of any amendments to this policy.

⁵ Policy may be overseen and administered by the Board (with only independent directors participating) or by a committee of the Board comprised solely of independent directors.