Fagen Friedman & Fulfrost LLP

CONFLICTS OF INTEREST

I. Conflict of Interest Laws

Conflict of interest laws are grounded on the notion that government officials owe paramount loyalty to the public, and that personal or private financial considerations on the part of government officials should not be allowed to enter the decision making process.

A. The Political Reform Act.

The Political Reform Act, Government Code section 81000 et seq., is usually the starting point when analyzing conflict of interest laws in California. The Act must be consulted before proceeding with any transaction in which a public official may have a conflict of interest because it supersedes other conflict of interest laws where inconsistencies exist. (Gov't Code § 81013.) The Fair Political Practices Commission ("FPPC") is the agency primarily charged with the responsibility of advising officials, informing the public, and enforcing the Act's conflict of interest provisions.

One of the legislative declarations at the outset of the Act forms the foundation of its conflict of interest provisions: "Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Gov't Code § 81001(b).) The stated intent of the Act was to set up a mechanism whereby "income of public officials which may be materially affected by their official actions . . . is disclosed and in appropriate circumstances the officials . . . [are] disqualified from acting in order that conflicts of interest may be avoided." (Gov't Code § 81002(c).)

A conflict of interest arises when a public official's actions could potentially result in a material financial benefit to that official. The Act provides, in pertinent part, as follows:

> No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Gov't Code § 87100.)

Under the Act, public officials are disqualified from participating in government decisions in which they have a financial interest. The Act, however, does not prevent officials from owning or acquiring financial interests that conflict with their official duties, nor does the mere possession of such interests require officials to resign from office. The disqualification provision of the Act hinges on the effect a decision will have on a public official's financial interests. When a decision is found to have the requisite effect, the official is disqualified from making,