Avoiding Conflicts of Interest



San Bernardino County School Boards Association

In Association With the Inland Personnel Council

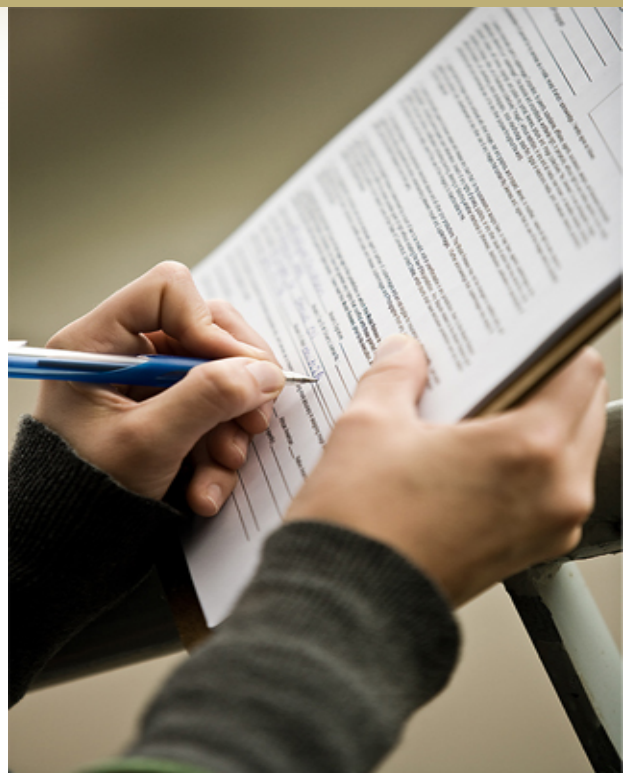
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A Professional Law Corporation

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General Overview

Agenda

- Conflicts of Interest
  - Government Code Section 1090
  - Political Reform Act
  - Common Law Conflicts
- Economic Interest Disclosures
  - Form 700
  - Gifts
  - Exceptions
  - Enforcement
- Questions and Discussion

Why Are We Here Today





Conflicts of Interest

Government Code Section 1090, et seq.

General Rule - Conflicts

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

California Government Code section 1090

Conflicts of Interest

Government Code Section 1090, et seq.

General Rule - Conflicts

As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California Government Code section 1090

Conflicts of Interest

- Government Code Section 1090
  - Applies to Board Members, Officers, Employees, and Consultants
  - No Financial Interest in Any Contract:
    - May Not Execute Contracts on Behalf of Agency
    - No Involvement in Preliminary Discussions, Negotiations, Planning, or Solicitation of Bids
    - Mere Membership on Board Establishes a Presumption That Member Participated or Influenced Transaction

Full Disclosure?

- Under Government Code section 1090, disclosure of the interest is not enough.
- Does not Guarantee an Absence of Influence.
- "…it has been suggested that knowledge of a fellow officer's interest may lead other officers to favor an award which would benefit him." *Thomson v. Call* (1985) 38 Cal.3d 633.

Financial Interest Can Be…

Direct or Indirect Interest

- Personal or Spouse's Income or Business
- Son or Daughter's Business
- Stock Holder

Remote Interest

- Defined by Code (GC § 1091)
- District Can Still Contract
- Must Fully Disclose, Document in the Official Record, and Disqualify

Non-Interest

- Defined by Code (GC § 1091.5)
- No Need to Disclose

Exceptions Unique to School Districts

- Collective Bargaining Agreements
  - Board member may vote to approve even if it reflects a financial interest, provided it applies evenly to a large group of employees
- Employment of Spouse
  - Board Member Elected First – Spouse Cannot be Hired
  - Spouse Hired Less than One Year Before Board Member Elected – Spouse Cannot Remain Employed with the District
  - Spouse Hired More than One Year Before Board Member Elected – Spouse Must Remain in Current Position, No Promotions

Very Limited Exceptions

- "Remote Interest"
  - If a "remote interest" is present, as defined in Government Code section 1091, the contract may be executed if the officer:
    - Discloses his or her financial interest in the contract to the public agency,
    - Such interest is noted in the body's official records, and
    - The officer completely abstains from participation in making the contract.
- "Non-Interest"
  - If a "noninterest" is present, as defined in Section 1091.5, the contract may be executed without the abstention of the officer or employee, and generally a noninterest does not require disclosure.

Conflicts of Interest

PENALTIES FOR VIOLATIONS

- Up to $1,000 fine or one year imprisonment
- Permanent disqualification from holding public office
- Contracts are void AND voidable
- Loss of any consideration received for services rendered or property conveyed

Political Reform Act

Government Code Section 87100, et seq.

General Rule - PRA

No public official may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying financial conflict of interest.

California Government Code section 87100

Political Reform Act

Government Code Section 87100, et seq.

General Rule - PRA

"Public official" means every member, officer, employee or consultant of a state or local government agency.

California Government Code section 82048(a)

Political Reform Act

- Government Code Section 87100
- Applies to Board Members, Officers, Employees, and Consultants
- A Public Official Cannot Participate in Any Governmental Decision in Which He/She Has a Financial Interest.
- Financial Interest Exists When:
  - Reasonable that Decision Will Have Material Financial Effect on:
    - Member
    - Member of Immediate Family
- Exceptions: Rule of Necessity, Disqualification

Political Reform Act

APPLIES TO SIX TYPES OF FINANCIAL INTERESTS:

- Business ownership, direct/indirect interest >$2000
- Real Property in or near jurisdiction >$2000
- Any income over $500 within 12 mos. of decision, including spouse's income
- Business entity as director, officer, manager, employee
- Gifts over $520 within 12 mos. of decision
- Personal finances of the official or immediate family (spouse and dependent children)

Political Reform Act

IF DISQUALIFIED:

- Agency may still act, but disqualified official may not participate in the decision in any way
- Disqualification (and reason) must be publically announced

HOWEVER:

- Rule of Necessity: Exception if participation is legally required – Government Code section 87101

PENALTIES:

- Misdemeanor, fine up to $10,000
- Loss of position, prohibition from office

Non-Statutory Conflicts of Interest

- Common Law Conflicts of Interest:
  - Expectation that public officials act without bias and for the primary benefit of the public
    - Private interests, financial or otherwise, should not color decisions
    - Those seeking consideration from a public body are entitled to fair and unprejudiced treatment
  - There is no prohibition on voting on matters on which a public official has expressed a particular view
- Appearance of Impropriety
  - Courts have held that public officials must avoid actual conflicts and the appearance of impropriety
  - The goal is to remove or limit the possibility of any personal influence having a bearing on a public official's decision making

Economic Interest Disclosure - PRA

Government Code Section 87100, et seq.

General Rule - Disclosure

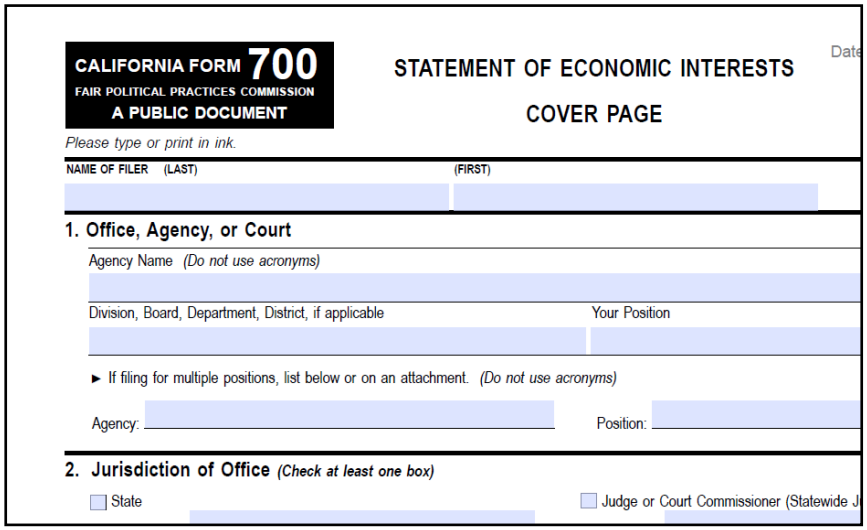
Assets and income of public officials which may be materially affected by their official actions should be *disclosed* and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

California Government Code section 81002(c)

Economic Interest Disclosure –
Government Code Section 87200

FORM 700

- Filed upon taking office/leaving office/annual basis.
- Requires disclosure of personal financial interests and gifts.
- Informs the public about potential conflicts.
- Alerts you to conflicts.
- Signed under penalty of perjury.
- Becomes a public document.



CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION
A PUBLIC DOCUMENT

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date

Please type or print in ink.

NAME OF FILER (LAST) (FIRST)

1. Office, Agency, or Court

Agency Name *(Do not use acronyms)*

Division, Board, Department, District, if applicable | Your Position

► If filing for multiple positions, list below or on an attachment. *(Do not use acronyms)*

Agency: Position:

2. Jurisdiction of Office *(Check at least one box)*

State Judge or Court Commissioner (Statewide J

Economic Interest Disclosure

Form 700 Statement of Economic Interests

- When to file:
  - Upon taking office (within 30 days)
  - Upon leaving office (within 30 days)
  - **On an annual basis (postmarked by April 1)**
- Where to file:
  - Local officers (school districts) file with your agency's filing officer
  - State officers file with the county clerk/recorder
- Who files:
  - Based on local conflict of interest code (Board Bylaw 9270)
  - List of "code filers" and categories of disclosure

Limitations on the Receipt of Gifts

Government Code Sections 82028, 89503, 89506; Cal. Code Regs., Title 2, Section 18940, et seq.

- A "gift" is any payment/benefit provided to an official that confers a personal benefit for which the official does not provide goods or services of equal or greater value, including rebate/discount not offered to the public in the regular course of business.
- No elected official/candidate/designated employee of a local agency may accept any gift(s) from one source worth more than $520 in a single calendar year. (Limit as of 1/1/21)
- Disqualified from participating in decisions involving the source of gift(s) of $500 or more during previous 12-month period.
- **Gifts aggregating $50 or more from a single source must be reported on Form 700.**

Economic Interest Disclosure

Form 700 Statement of Economic Interests

- Gifts Include:
  - Meals
  - Tickets/passes to sporting events, concerts, etc.
  - Parking passes
  - Rebates and discounts not available to the general public
  - Transportation and lodging
  - Forgiveness of a loan or debt
- Gifts are reportable regardless of the location of the donor (in-state v. out-of-state)

Economic Interest Disclosure

Form 700 Statement of Economic Interests

- Gifts do *not* include:
  - Gifts not used and within 30 days returned to donor or given to charity
  - Gifts from family members
  - Gifts of similar value exchanged on special occasions
  - Bequests or inheritances
  - Personalized plaques/trophies worth less than $250

Economic Interest Disclosure

Form 700 Statement of Economic Interests

Gifts

- Disclose:
  - The full name (no acronyms), address and business activity of the donor and intermediary, if any;
  - A description of the gift;
  - The amount or fair market value of the gift; and
  - The date on which the gift was received.

Changes to FPPC Gift Rules Effective January 1, 2012:

(From FPPC's "2012 New Changes to the Gift Rules")

- **Return or Donation of Gift within 30 days (Regulation 18941(c)(2))** — Only charitable donations of gifts made to 501(c)(3) organizations that are unconnected to the official or the official's immediate family will qualify for this exception.

Changes to FPPC Gift Rules (Cont'd)

- **<u>Subdivision (a)(8)(b) Reciprocal Exchanges</u>** — This new provision recognizes the reality that people get together with certain friends on an ongoing basis for meals, rounds of golf, movies, shows, sporting events etc., where they typically take turns paying for the benefit, so that over time the payments equal out.

  Note: the rule does not apply to any single payment over the gift limit.

Changes to FPPC Gift Rules (Cont'd)

- **Subdivision (a)(14) Wedding Attendance** — This new exception recognizes that normal benefits received attending a wedding are not the sorts of gifts that are intended to influence an official. People do not generally get married and have a wedding reception as a reason to get around the gift restrictions. Meals and entertainment received at a wedding are only potentially reportable to the extent that they exceed the benefits extended to the other guests attending the wedding.

Changes to FPPC Gift Rules (Cont'd)

- **Subdivision (a)(15) Bereavement Offerings** — Another new exception has been added to allow the receipt of items, such as flowers at a funeral, without gift reporting consequences. Again, this exception recognizes that there are some areas of common personal behavior that have no correlation with attempts to influence public officials in the performance of their duties and do not relate to the concerns addressed by the Act. Typical bereavement offerings are not reportable as gifts.

Changes to FPPC Gift Rules (Cont'd)

- **<u>Subdivision (a)(17)(C) Best Friends Forever</u>** — Gifts from long term personal friends where the friendship is not related to the official's position are also not subject to the Act's provisions, so long as the friend is not someone who lobbies the official's agency or who does business with or is regulated by the official's agency if the official is involved. (See subparagraph (D) (i-iii).)

Changes to FPPC Gift Rules (Cont'd)

- **Subdivision (a)(7) Home Hospitality** — The home hospitality exception is no longer an unlimited exception when it comes to who is providing the hospitality. The exception is not applicable unless the individual who provides the hospitality is someone "with whom the official has a relationship, connection, or association unrelated to the official's position." Lobbyists (who are otherwise subject to a ten dollar per month gift limit) and other individuals who do business or are regulated by an agency can no longer get around the gift restrictions by using the home hospitality exception, unless the host *has an independent relationship with the official and the hospitality is in connection with that relationship.*

Changes to FPPC Gift Rules (Cont'd)

- **Subdivision (a)(7) Home Hospitality** — continued . . .

  (e.g., a block party at your neighbor's house, a birthday party that your daughter is invited to attend at her classmate's home, a Passover meal at a long time associate's home.) With these restrictions now in place, the home hospitality exception covers more than just the host's primary home. Home hospitality can be extended at a vacation home or even a motorhome or boat. Before these changes, an official could go sailing off Catalina on a lobbyist's yacht but couldn't go fishing on a co-worker's boat, now it's the other way around. (See Home Hospitality definition in Regulation 18942.2.)

Enforcement

- The Attorney General, the FPPC and district attorneys are authorized to enforce the PRA through criminal sanctions, civil liability and civil penalties.
- A fine of up to the greater of $1,000 or three times the amount of the benefit, the amount the person failed to report, or unlawfully contributed, expended or gave or received, may be imposed upon conviction.
- Only a formal written opinion of the FPPC will confer immunity from liability under the PRA. (GC § 83114.)

Questions, Answers, & Discussion

Thank You

Questions or comments? Please contact:

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