

Ethics in the Public Sector – **Board refresher on key topics relating** **to public agency ethics**

June 24, 2025

San Bernardino CCD

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Ethics Refresher for Board Members – Agenda

- Conflicts of Interest – The Laws
- Brown Act (Meeting Guidelines) and Social Media
- Gifts and FPPC Form 700
- Political Activity/Campaigning Guidelines



Ethical Duties and Responsibilities of Governing Board

General Ethics Principles

- Encompass the values of trustworthiness, respect, fairness and responsibility.
- Transparency is key to the public's ability to ensure its elected and local officials are ethical in their public dealings.
- Public officials need to avoid even the appearance of impropriety.

Legislative Body's Authority

- Derived from California statutory law (Education Code and Government Code) and agency rules and regulations (Title 5 of the Cal. Code of Regs)

CONFLICTS OF INTEREST – THE LAWS

Conflicts of Interests — The Law

- *Penal Code § 68 — Prohibition Against Bribery*
- *Government Code § 1090*
 - Prohibits a Board member's financial interest in any contract under consideration by the District.
- *The Political Reform Act (Government Code § 87100)*
 - Prohibits a Board member's use of their official position to influence a District decision in which the Board member has an economic interest.
- *Common Law Conflicts of Interest*
 - Prohibits a Board member from placing themselves in a position where their private, personal interests may conflict with their official duties.

Government Code § 1090 — Contracts

- **General Rule** — Public officials 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.
 - Two components to this law:
 - One which proscribes the **individual Board member** who has a financial interest; and
 - One which proscribes **the Board itself** from being involved in the contract.
 - Purpose — Prohibits self-dealing by public officials/employees as applied to contracts.
 - “No man can faithfully serve two masters whose interests are or may be in conflict.” *Thomson v. Call* (1985) 38 Cal.3d 633, 648.

Questions for a Possible Section 1090 Conflict

- ① Is a person an officer or employee?
- ② Is there a contract?
- ③ Did the person “make” the contract?
- ④ Do they have a financial interest?
- ⑤ Is there a statutory remote interest?
- ⑥ Is there a statutory “non-interest?”
- ⑦ Does the “rule of necessity” apply?
- ⑧ What to do if there is a financial interest?

Consequences of a § 1090 Violation

- Contracts made in violation of Section 1090 are void and voidable.
- Any payments made to the contracting party must be returned and no claim for future payments.
- The public entity is entitled to retain any benefits.
- Four-year statute of limitations on criminal prosecution.

Thomson v. Call (1985) 38 Cal.3d 633
Gov. Code, § 1092

Political Reform Act Conflicts

General Rule

A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a **governmental decision** in which the official knows or has reason to know the official has a financial interest.

Gov. Code, § 87100

Steps to analyze possible violation

- 1 Is the individual a public official?
- 2 Will the official be making, participating in making, or attempting to use position to influence decision?
- 3 Does the official have an economic interest in the decision?
- 4 Is the interest directly or indirectly involved in the decision?
- 5 Is interest material?
- 6 Is it reasonably foreseeable that the decision will have a material effect?
- 7 Is the financial effect distinguishable from effect on the public?
- 8 Is the official's participation nonetheless required?

AB 1439: Levine Act - “Pay-to-Play” (Govt. Code 84308)

- Became effective on January 1, 2023. Now, Government Code section 84308 applies as follows:
 - Section 84308 now applies to agencies whose members are directly elected by voters including local elected officials such as special district and county Board members; and
 - Officials are prohibited from accepting, soliciting, or directing a contribution exceeding \$250 from a party or participant for 12 months preceding the decision and 12 months following the final decision.

AB 1439: Levine Act - “Pay-to-Play” (Govt. Code 84308)

- A “**party**” is any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
- A “**participant**” is a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use, **and** has a financial interest in the decision.
- A party to a proceeding before an agency involving a license, permit, or other entitlement for use must disclose on the record any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months to an official of the agency.

Common Law Prohibition Against Conflicts of Interest

- ***Basic Principle:***

- A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public...
- The courts have found there is a common law prohibition against conflicts of interest in order to achieve fairness from public officers and bodies.
 - Public officers are required to exercise their powers in an unbiased manner;
 - Individuals seeking consideration from public bodies are entitled to be given fair and unprejudiced treatment, without private interests, pecuniary or otherwise.

Common Law Prohibition Against Conflicts of Interest

- The common law prohibition does not go so far as to prevent public officials from voting on matters on which they have expressed particular views.
- **Appearance of Impropriety** — California courts have repeatedly held that the conflict of interest laws apply not only to actual conflicts, but also to the “appearance of impropriety.”
 - Public office is a public trust created in the interest and benefit of the people.
 - Public officers are obligated to discharge their responsibilities with integrity and fidelity.

BROWN ACT (MEETING GUIDELINES) AND SOCIAL MEDIA

The Brown Act – Primary Rule

- **All meetings** of the **legislative body** of a **local agency** shall be **open and public**, and all persons shall be permitted to attend any **meeting** of the legislative body of a local agency, **except as otherwise provided in this chapter**.

Gov. Code, § 54953

- If a given entity fits within any definition of a legislative body, then it is subject to the various requirements of the Brown Act.

What is a “Serial Meeting”?



- “A Majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” (Gov. Code, § 54952.2(b)(1))
- Examples:
 - Hub and Spoke
 - Daisy Chain

What is Not a “Serial Meeting”?

- An ***employee or official*** of a local agency may engage in ***separate conversations or communications*** outside of a meeting with members of a legislative body in order ***to answer questions or provide information*** regarding a matter within the jurisdiction of the agency, if that person does ***not communicate the comments or position of any other member*** to other members of the legislative body.

Gov. Code, § 54952.2(b)(2)

AB 992: Social Media Use – Gov. Code. 54952.2

- Effective Jan. 1, 2021 (sunsets in 2026)
- Certain communications involving a legislative body's members on an internet-based social media platform do not constitute meetings under the Brown Act.
- Under AB 992, a legislative body's members **may** engage in **separate communications** on an internet-based social media platform to:
 - “Answer questions”;
 - “Provide information to the public”; and/or
 - Solicit public input on matters within the body's jurisdiction.



AB 992: Social Media Use – Gov. Code. 54952.2

- A majority of the legislative body **may not** “discuss among themselves” “business of a specific nature” within the body’s jurisdiction, which encompasses:
 - “Comments or use of digital icons that express reactions to communications”
 - Any communications posted or shared on social media between members of the legislative body
 - Responses to the same communication on social media, such as the use of emoji, the “like” button on Facebook or Instagram, and/or retweeting on Twitter
- Trustees also may not directly respond to a social media communication made, posted, or shared by any other member of the same legislative body regarding a matter within a legislative body’s subject matter jurisdiction.

Teleconferencing



- The Act permits “teleconferencing,” for all purposes in connection with any meeting.

Gov. Code, § 54953(b)

- “Teleconferencing” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through audio or video, or both.

Virtual Meetings — Are Zoom Meetings Still Allowed?



AB 2449 – Required Conditions

- Requires that a majority (quorum) of the members of the legislative body participate:
 - (1) In person;
 - (2) From a singular, physical location clearly identified on the agenda;
 - (3) That is open to the public; and
 - (4) Situated within the boundaries of the territory over which the local agency exercises jurisdiction.

If YES to all 4 points, then AB 2449 may be used for the minority members (up to 2 members of a 5-member Board OR up to 3 members of a 7-member Board) to meet remotely under the following conditions:

AB 2449/AB 557 Amendments – Required Conditions

- Conditions required to meet remotely:
 - The local agency has to provide either of the two options below for the public to remotely observe the meeting and provide comments:
 - (1) A two-way audiovisual platform (e.g., Zoom, Microsoft Teams, Google Meet); OR
 - (2) A two-way telephonic service AND a live webcasting of the meeting (e.g., live-streaming on YouTube while making a landline available for the public to dial-in to provide comments).
 - The minority member(s) must be attending remotely due to **“just cause”** or **“emergency circumstances.”**

GIFTS AND FPPC FORM 700

Economic Interest Disclosure: FPPC Form 700 (Government Code section 87200)

- Covered Officials:
 - Community College District Trustees
 - Public Officials who manage public investments
 - Other officials designated by local agency conflict of interest code

Economic Interest Disclosure: FPPC Form 700

- Requires disclosure of personal financial interests, including income. Income includes “gifts” received from certain sources.
- Signed under penalty of perjury.
- Mandatory filers defined by law and listed in Local Conflict of Interest Codes.
 - Identifies which types of economic interests each position must disclose; categories of disclosure assigned to each position.
 - Disclosure categories linked to official’s job duties.

Economic Interest Disclosure: FPPC Form 700

- Where do you get it? FPPC website (fppc.ca.gov)
- 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:
 - With County Board of Supervisors
 - File with the district's Filing Officer
- **Form 700 is a public document once filed**

Limitations on the Receipt of Gifts

Government Code §§ 89503, 89506

- A “gift” is any payment/benefit provided to an official for which the official does not provide goods or services of equal or greater value, including a rebate/discount not offered in the regular course of business to members of the public.
- **Cannot accept gift(s) from one source worth more than \$630 in a single calendar year (aggregate).**
- **May not participate in decisions involving the source of gift(s) of \$630 or more in the previous 12-month period.**
 - \$630 is the gift limit for 2025-2026
 - Adjusted every 2 years tied to the CPI.
- Gifts aggregating \$50 or more must be reported on Form 700.

Exceptions!

- Gifts do **not** include (a partial list):
 - Prizes received in a manner not related to the official's status, in a bona fide competition.
 - Tickets for the official and 1 guest for admission to event where the official performs a ceremonial function.
 - Personalized plaques/trophies worth less than \$250.
 - Gifts from family members (as distant as first cousins once removed, includes in-laws and former in-laws).
 - Admission, food, minimal items (stress ball!) when making a speech.
 - Acts of neighborliness ("feeding your cat").
 - Benefits of wedding attendance

Made a Mistake?

- File an amendment to your Form 700 as soon as possible after you notice the error or omission.
- Find amendment schedules on FPPC's website.
- Complete only the schedule with the error. You should not complete the entire form again.
- Amendments are attached to the original statement. The original is not discarded.

Consequences

- Acceptance of gifts in excess of \$630 during the previous 12-month period disqualifies an official from participating in decisions involving the source of gift(s).
 - Note: Rolling 12-month period measured from the decision involving the source of the gift.
- Publicly identify the financial interest which gives rise to the conflict in sufficient detail to be understood by the public.
- Recuse himself/herself from discussing/voting on the matter.
- Leave the room except if matter is on the consent agenda.

POLITICAL ACTIVITY/CAMPAIGNING GUIDELINES

USE OF PUBLIC FUNDS

- In general, public funds may not be used for partisan election campaigning, but may be used to disseminate objective information
- Public funds may be used to engage in lobbying activities directed toward the members of the Legislature or Congress, because these expenditures are specifically authorized by statute



Board Policy 2716 (Political Activity)

Members of the Board of Trustees shall not use District funds, services, supplies, or equipment to urge the passage or defeat of any ballot measure or candidate, including but not limited to, any candidate for election to the Board.

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Initiative or referendum measures may be granted if all are of legitimate interest to the District. The Board may by resolution express the Board's position on ballot measures. Public resources may be used only for informational reports regarding the possible effects of District bond issues or ballot measures.

Dissemination of Objective Information

- Education Code section 35172 authorizes the governing boards of school districts to inform and make known to the citizens of the district educational programs and activities of the schools.
- Education Code section 7054 allows public resources to be used for “fair and impartial presentation of relevant facts” to aid the public in making informed decisions.



Distinguishing Between Election Campaigning and Objective Information

- The courts have not drawn a clear line between prohibited election campaigning and permissible objective information
- Public agencies may generally publish a fair presentation of facts relevant to an election matter

Governing Board Members

- Members of the governing board may privately, as individuals, participate in the political process and campaign for the passage or defeat of a ballot measure
- District employees may campaign outside of working hours as private individuals



Governing Board Members

- Public officials have the right to speak out on partisan matters as long as there is no improper expenditure of public funds by such officials
- A governing board may go on record at a public meeting as being in favor of or opposed to a particular measure



Question & Answer Session

Thank You

For questions or comments, please contact:

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