



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

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San Bernardino CCD

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Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego



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Ethics Refresher for Board Members – Agenda

- Introduction/Applicable Ethics Policies
- Conflicts of Interest – The Laws
- Gifts and FPPC Form 700
- Political Activity/Campaigning Guidelines



AB 2158 — Required Ethics Training

- **Amends Government Code §§ 53234, 53235, and 53235.1**
 - Expands AB 1234 training to schools and COEs and charter schools effective 2025
 - Now requires completion of ethics training by district, county office, and charter school governing board members regardless of whether compensation or expense reimbursement is received
 - Applies to employees designated by a local agency to receive ethics training
 - Ethics course must be for at least two hours and taken every two years
- **Applicable to Community College Districts?**
 - *Not technically/unresolved?* Ethics training requirement applies to officials of “local agencies” as defined in Gov. Code § 53234 to add school districts, COEs and charter schools, but did not add “community college districts.”

Duties of Public Officials

- Board Policy 2715 (Code of Ethic/Standards of Practice)
 - The Board maintains high standards of ethical conduct for its members...each member of the Board will
 - avoid any situation that may constitute a conflict of interest and disqualify themselves from participating in decisions in which they have a financial interest;
 - act as a whole and recognize that individual trustees have no legal authority outside the meetings of the Board;
 - maintain independent judgement unbiased by private interests or special interest groups;
 - ensure adherence to the law, regulations, and policies;
 - Promotion and maintain good relations and effective working relationships with other Board members and District admin. and staff; and.
 - maintaining confidentiality of closed sessions, recognizing that deliberations of the Board in closed session are not to be released or discussed without the prior approval of the Board.

Duties of Public Officials

- Board Policy 2200 (Board Duties and Responsibilities)
 - The Board of Trustees governs on behalf of the citizens of the District...
 - Each Board member is committed to/accepts the following responsibilities...
 - Understand their role;
 - Act in the community's best interests; and
 - Create a positive climate;
- Administrative Policy 3050 (Institutional Code of Ethics)
 - The District recognizes its responsibility and obligation...to conduct its business with honesty, integrity, professionalism, and quality in the performance of those operations and functions necessary to achieve its established mission...
 - Employees of the District share the fundamental responsibility to always act with integrity and in a manner that reflects the best interests of the District and its students

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. Changed Govt. Code section 84308 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 \$500 from a party or participant for 12 months preceding the decision and 12 months following the final decision [raised from \$250, effective Jan. 2025].
 - There are “cure” provisions for elected officials who inadvertently accept such donations or learn that a decision involves a party or participant and a donation of more than \$500.

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 (though not a participant) 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 five hundred dollars (\$500) 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.

GIFTS AND FPPC FORM 700

Conflict of Interest Code

- Administrative Policy 2712 (Conflict of Interest Code)
 - Designated Positions
 - Separate attachment to AP 2712;
 - List includes Board of Trustees, Chancellor, Executive Chancellor, and most Admin.;
 - Different disclosure categories for different positions; and
 - Disclosures are public records.

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**

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.

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.

Limitations on the Receipt of Gifts - Policies

- Administrative Policy 2710 (Conflict of Interest)
 - District policy sets forth broadly described, general rules regarding gifts
 - FPPC website (fppc.ca.gov) is a reliable source for up-to-date information
 - Be aware of any internal documentation/handbooks that are updated annually with the latest information on gift limits and other guidelines
 - Not to be confused with (but not disregarded either!) the District's BP/AP 3820 (Gifts and Donations), which sets forth procedures for accepting gifts, donations, and bequests made to the District and/or its auxiliary organizations.

Limitations on the Receipt of Gifts - 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

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 any candidate for election to the Board.

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Initiative or referendum measures that are of legitimate interest to the District may be used only for informational purposes. The Board's position on ballot measures may be used only for informational purposes. The Board's position on ballot measures may be used only for informational purposes. The Board's position on ballot measures may be used only for informational purposes.

Dissemination of Objective Information

- 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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