

Governing Board

Sheila A. Grilli, *President*
John E. Márquez *Vice President*
John T. Nejedly *Secretary*
Greg Enholm
Vicki Gordon
Debora van Eckhardt, *Student*

Chancellor

Helen Benjamin, Ph.D.



pathways to success

College Presidents

Contra Costa College
Denise Noldon, Ph.D.
Diablo Valley College
Peter Garcia
Los Medanos College
Bob Kratochvil

GOVERNING BOARD AGENDA
CONTRA COSTA COMMUNITY COLLEGE DISTRICT

Special Meeting

February 20, 2013

Public Session	1:00 p.m.
Closed Session	4:00 p.m.

George R. Gordon Education Center
500 Court Street
Martinez, California 94553

925.229.1000	Phone
925.370.2019	Fax

www.4cd.edu

Governing Board

Sheila A. Grilli, *President*
John E. Márquez, *Vice President*
John T. Nejedly, *Secretary*
Greg Enholm
Vicki Gordon



Chancellor
Helen Benjamin, Ph.D.

Contra Costa College Denise Noldon, Ph.D.
Diablo Valley College Peter Garcia
Los Medanos College Bob Kratochvil

**NOTICE OF SPECIAL MEETING
of the
GOVERNING BOARD**

Notice is hereby given that the Governing Board of the Contra Costa Community College District will hold a special meeting on **Wednesday, February 20, 2013, at 1:00 p.m.** at the George R. Gordon Education Center for professional development activities regarding the Brown Act, ethics and conflict of interest.

Sheila A. Grilli
President, Governing Board

Notices Posted:

Contra Costa College, San Pablo
Diablo Valley College, Pleasant Hill
Los Medanos College, Pittsburg
Brentwood Center, Brentwood
San Ramon Campus, San Ramon
Education Center, Martinez

CONTRA COSTA COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD AGENDA
George R. Gordon Education Center
500 Court Street
Martinez, California 94553

February 20, 2013
Special Meeting
Open Session: 1:00 p.m.
Closed Session: 4:00 p.m.

TABLE OF CONTENTS

I. CALL SPECIAL MEETING TO ORDER – 1:00 P.M.

- Call special meeting to order. Notation of Board member(s) absent under provisions of Board Report No. 30-F, 2.12.86.

II. PLEDGE OF ALLEGIANCE TO THE U.S. FLAG – 1:05 P.M.

III. PUBLIC COMMENT

According to Government Code Section 54954.2(a), when responding to public comment, Governing Board members and staff may respond as summarized below:

- *briefly respond to statements made or questions posed by persons making public comment;*
- *ask questions for clarification or make a brief announcement;*
- *provide a reference to staff or other resources for factual information;*
- *request staff to report back to the body at a later meeting; or*
- *direct staff to place the matter on a future agenda.*

IV. GOVERNING BOARD PROFESSIONAL DEVELOPMENT ACTIVITIES - 1:10 P.M.
(Patrick Wilson, Senior Associate Counsel, School and College Legal Services of California)

- A. Brown Act
- B. Ethics
- C. Conflict of Interest
- D. Proposed Conflict of Interest policy and procedure

V. CLOSED SESSION – APPROXIMATELY 4:00 P.M.

- A. Public employee discipline/dismissal/release
 - 1. Case No. 02-01-12
 - 2. Case No. 07-01-12
 - 3. Case No. 02-01-13

VI. RECONVENE PUBLIC SESSION - APPROXIMATELY 4:30 P.M.

- Announcement of reportable actions taken by Governing Board in closed session

VII. SIGN DOCUMENTS

VIII. ADJOURN – 4:40 P.M.

More detailed information about the agenda can be obtained at the office of the Chancellor. The Contra Costa Community College District will provide reasonable accommodations for disabled individuals planning to attend Board meetings. Please call the Executive Coordinator to the Board at 925.229.6821, for information and arrangements.

The mission of the Contra Costa Community College District is to attract students and communities, to cultivate a sustainable culture of wellbeing, learning, success and achievement for our students. As a District, we are dedicated to continuously increasing our ability to serve the evolving needs of our students and community by providing accessible, equitable and outstanding higher education learning opportunities and support services. All decisions about resources are informed by looking at access and success through an equity lens.

BROWN ACT

Governing Board Special Meeting
February 20, 2013

THE RALPH M. BROWN ACT
2013

§ 54950. Declaration, intent; sovereignty In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

§ 54950.5. Short title This chapter shall be known as the Ralph M. Brown Act.

§ 54951. Local agency As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

§§ 54951.1, 54951.7. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 2.3, 2.5, operative April 1, 1994

§§ 54951.1, 54951.7. Repealed by Stats.1993, c. 1138 (S.B.1140), §§ 2.3, 2.5, operative April 1, 1994

§ 54952. Legislative body, definition As used in this chapter, "legislative body" means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.
- (c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.
 - (B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.
- (2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.
- (d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

§ 54952.1. Member of a legislative body of a local agency; conduct Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

§ 54952.2. Meeting; prohibited communications; exclusions from chapter

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b)(1) 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.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

§ 54952.3. Simultaneous or serial order meetings of a subsequent legislative body; compensation and stipends

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

§ 54952.5. Repealed by Stats.1993, c. 1138 (S.B.1140), § 6, operative April 1, 1994

§ 54952.6. Action taken As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative

body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

§ 54952.7. Copies of chapter to members of legislative body of local agencies A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

§ 54953. Meetings to be open and public; attendance

(a) 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.

(b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

(d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

§ 54953.1. Testimony of members before grand jury The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

§ 54953.2. Legislative body meetings to meet protections and prohibitions of the Americans with Disabilities Act All meetings of a legislative body of a local agency that are open and public shall meet the protections and

prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 54953.3. Conditions to attendance A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Right to record proceedings; conditions; audio or video recordings made by or under direction of local agencies

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

§ 54953.6. Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 54953.7. Allowance of greater access to meetings than minimal standards in this chapter

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

§ 54954. Time and place of regular meetings; special meetings; emergencies

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

- (5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- (6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- (7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.
- (c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:
 - (1) Attend a conference on nonadversarial collective bargaining techniques.
 - (2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.
 - (3) Interview a potential employee from another district.
- (d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.
- (e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

§ 54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

§ 54954.2. Agenda; posting; action on other matters; posting on Internet Web site

(a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 54954.3. Opportunity for public to address legislative body; adoption of regulations; public criticism of policies

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

§ 54954.4. Reimbursements to local agencies and school districts for costs

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget

enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

§ 54954.5. Closed session item descriptions For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)
or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

§ 54954.6. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements

(a)(1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take

place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

- (d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.
- (e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:
- (1) The property owners subject to the assessment.
 - (2) The voters within the local agency imposing the tax or assessment.
- (f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.
- (g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.
- (h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

§ 54955. Adjournment; adjourned meetings The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

§ 54955.1. Continuance Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 54956. Special meetings; call; notice; meetings regarding local agency executive salaries, salary schedules, or compensation in form of fringe benefits; posting on Internet Web site

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

- (c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:
- (1) A legislative body as that term is defined by subdivision (a) of Section 54952.
 - (2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 54956.5. Emergency meetings in emergency situations

- (a) For purposes of this section, "emergency situation" means both of the following:
- (1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.
 - (2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.
- (b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.
- (2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.
- (c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.
- (d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.
- (e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.
- (c) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

§ 54956.6. Fees No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

§ 54956.7. Closed sessions, license applications; rehabilitated criminals Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

§ 54956.75. Closed session; response to confidential final draft audit report; public release of report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

§ 54956.8. Real property transactions; closed meeting with negotiator Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

§ 54956.81. Investment of pension funds; closed session Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

§ 54956.86. Charges or complaints from members of local agency health plans; closed hearings; members' rights Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

§ 54956.87. Records of certain health plans; meetings on health plan trade secrets

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete

the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

§ 54956.9. Pending litigation; closed session; lawyer-client privilege; notice; memorandum

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

§ 54956.95. Closed sessions; insurance pooling; tort liability losses; public liability losses; workers' compensation liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

§ 54956.96. Joint powers agency; legislative body; closed session; confidential information

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

§ 54957. Closed sessions; personnel matters; exclusion of witnesses

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

§ 54957.1. Closed sessions; public report of action taken

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

§ 54957.2. Minute book record of closed sessions; inspection

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

§ 54957.5. Agendas and other writings distributed for discussion or consideration at public meetings; writings distributed less than 72 hours prior to meeting; public records; inspection; closed sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

(b)(1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may

post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

§ 54957.6. Closed sessions; salaries, salary schedules or fringe benefits

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

§ 54957.7. Disclosure of items to be discussed in closed sessions

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

§ 54957.8. Multijurisdictional law enforcement agency; closed sessions by legislative or advisory body of agency

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed

pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

§ 54957.9. Disorderly conduct of general public during meeting; clearing of room In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

§ 54957.10. Closed sessions; local agency employee application for early withdrawal of funds in deferred compensation plan; financial hardship Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

§ 54958. Application of chapter The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

§ 54959. Penalty for unlawful meeting Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

§ 54960. Actions to stop or prevent violations of meeting provisions; applicability of meeting provisions; validity of rules or actions on recording closed sessions

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has

custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

§ 54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c)(1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant

to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

§ 54960.2. Actions to determine past violations by legislative body; conditions; cease and desist letters; responses by legislative body; unconditional commitments to cease; resolutions to rescind commitments

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c)(1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To _____:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

- (2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.
- (3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.
- (4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.
- (d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.
- (e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

§ 54960.5. Costs and attorney fees A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency. A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 54961. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct or child abuse

- (a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.
- (b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

§ 54962. Closed session by legislative body prohibited Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

§ 54963. Confidential information acquired during an authorized closed legislative session; authorization by legislative body; remedies for violation; exceptions

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury. [FN1]

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

Education Code § 72000. Suits; names; meetings; vote

(a) The district and its governing board may sue and be sued, and shall act in accordance with Section 70902.

(b) The district name shall be adopted and changed as follows:

(1) The first governing board of any new community college district shall, at the first meeting of the board or as soon as practicable thereafter, name the district. The district shall be designated as the "_____ Community College District."

(2) The governing board of a community college district may, by resolution, change the name of the district or of any of the community colleges maintained by the district. However, the name shall continue to contain the words "Community College District" or "Community College," as appropriate.

(3) Whenever a petition is presented to the governing board of a community college district, signed by at least 15 qualified electors of any community college district, asking that the name of the district, be changed, the governing board shall, at its next regular meeting, designate a day upon which it will conduct a hearing and act upon the petition, which hearing shall not be less than 10 days nor more than 40 days after that regular meeting. The clerk of the governing board shall give notice to all interested parties by sending a notice of the time for the hearing of the petition. Notices shall be mailed at least 10 days before the day set for the hearing. At the hearing the board shall by resolution either grant or deny the petition, and if the petition is granted, the clerk shall notify the Board of Governors of the California Community Colleges of the change of the name of the district or of any community college maintained by the district.

(4) The name "_____ Community College District" and the names of community colleges maintained by the district are the property of the district. No person shall, without permission of the board, use these names, or any abbreviation of them, or any name of which these words are a part in any of the following ways:

(A) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity or enterprise.

(B) To imply, indicate or otherwise suggest that any organization, or any product or service of the organization is connected or affiliated with, or is endorsed, favored or supported by, or is opposed by one or more California community colleges, the Board of Governors of the California Community Colleges, or the office of the Chancellor of the California Community Colleges.

(C) To display, advertise, or announce these names publicly at or in connection with any meeting, assembly, or demonstration, or any propaganda, advertising or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity or program.

(D) The provisions of this section shall not preclude the use of the name "_____ Community College" or "_____ Community College District" by any person or organization otherwise subject to this section using the name immediately prior to the effective date of this section, so long as the name is not used in additional, different ways.

(E) Nothing in this section shall interfere with or restrict the right of any person to make a true and accurate statement in the course of stating his or her experience or qualifications for any academic, governmental, business, or professional credit or enrollment, or in connection with any academic, governmental, professional or other employment whatsoever.

(5) Any reference to junior colleges or junior college districts in any law shall be deemed to refer to community colleges and community college districts, respectively.

(c) Meetings of the governing board shall be held as follows:

(1) Within 20 days after the appointment of the community college board provided for by Section 72023, the board of governors shall call an initial organizational meeting of the board by giving at least 10 days' notice by registered mail to each member, for the purposes of organizing the community college board.

At the initial organizational meeting the community college board shall organize by electing a president from its members and a secretary, and may transact any other business relating to the affairs of the community college district.

(2) (A) The governing board of each community college district shall hold an annual organizational meeting. In a year in which a regular election for governing board members is conducted, the meeting shall be held on a day within a 15-day period that commences with the date upon which a governing board member elected at that election takes office. Organizational meetings in years in which no regular election for governing board members is conducted shall be held during the same 15-day period on the calendar. Unless otherwise provided by rule of the governing board, the day and time of the annual meeting shall be selected by the board at its regular meeting held immediately prior to the first day of such 15-day period, and the board shall notify the county superintendent of

schools of the day and time selected. The secretary of the board shall, within 15 days prior to the date of the annual meeting, notify in writing all members and members-elect of the date and time selected for the meeting.

(B) If the board fails to select a day and time for the meeting, the county superintendent of schools having jurisdiction over the district shall, prior to the first day of such 15-day period and after the regular meeting of the board held immediately prior to the first day of the 15-day period, designate the day and time of the annual meeting. The day designated shall be within the 15-day period. He or she shall notify in writing all members and members-elect of the date and time.

(C) At the annual meeting, the governing board of the community college district shall organize by electing a president, from its members, and a secretary.

(3) As an alternative to the procedures set forth in paragraph (2), in a community college district the boundaries of which are coterminous with the boundaries of a city and county, the governing board members of which district are elected in accordance with a city and county charter, the annual organizational meeting of the governing board may be held between January 8 and January 31, inclusive, as provided in rules and regulations adopted by the board. At the annual organizational meeting the community college district governing board shall organize by electing a president and vice president from its members.

(4) Subject to this section, the governing board of any community college district shall hold regular monthly meetings and shall by rule and regulation fix the time and place for its regular meetings. The action shall be given proper notice to all members of the board of the regular meetings.

(d) The governing board shall conduct its meetings as follows:

(1) A notice identifying the location, date, and time of the meeting shall be posted in each community college maintained by the district at least 10 days prior to the meeting and shall remain so posted to and including the time of the meeting.

(2) The governing board shall conduct its meetings within the boundaries of the community college district, except as provided in subparagraphs (A) and (B).

(A) The governing board may meet outside of its district boundaries for the limited purpose of meeting with another local agency so long as the meeting meets both of the following criteria:

(i) The meeting occurs within the boundaries of one of the participating local agencies.

(ii) The meeting is open and accessible to the public, including the residents of the district whose board is meeting outside the boundaries of the district.

(B) The governing board may meet outside of its district boundaries if the board finds it necessary to meet in closed session with its attorney to discuss pending litigation and if the attorney's office is located outside of the boundaries of the district.

(3) Except as otherwise provided by law, the governing board shall act by majority vote of all of the membership constituting the governing board.

(4) Every official action taken by the governing board of every community college district shall be affirmed by a formal vote of the members of the board, and the governing board of every community college district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken.

(5) Notwithstanding any other provision of law, if a community college district governing board consists of seven members and not more than two vacancies occur on the governing board, the vacant position or positions shall not be counted for purposes of determining how many members of the board constitute a majority. Whenever any of the provisions of this code require unanimous action of all or a specific number of the members elected or appointed to the governing board, the vacant position or positions shall be excluded from determination of the total membership constituting the governing board.

Education Code § 72023.5. Student members; state court findings of unlawfulness

(a)(1) The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, of one or more nonvoting students. These students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

(2) The students selected to serve on the governing board, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or

its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district. The term of the student members shall be one year commencing on June 1 of each year.

(3) The nonvoting student members appointed pursuant to this section shall be entitled to mileage allowance to the same extent as regular members, but are not entitled to the compensation prescribed by Section 72425.

(4) A nonvoting student member shall be seated with the members of the governing board and shall be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

(5) A nonvoting student member shall not be included in determining the vote required to carry any measure before the board.

(6) A nonvoting student member shall not be liable for any acts of the governing board.

(b) Notwithstanding subdivision (a), the nonvoting student member or members selected to serve on the governing board of a community college district pursuant to subdivision (a) may do any of the following:

(1) Make and second motions at the discretion of the governing board.

(2) Attend closed sessions, other than closed sessions on personnel matters or collective bargaining matters, at the discretion of the governing board.

(3) Receive compensation, at the discretion of the governing board, up to the amount prescribed by Section 72425.

(4) Serve a term of one year commencing on May 15 of each year, at the discretion of the governing board.

(c) It is the intent of the Legislature that any decision or action, including any contract entered into pursuant thereto, upon the motion or second of a motion of a student member, shall be fully legal and enforceable against the district or any party thereto.

(d) The governing board of each community college district that affords the student member or members of the board any of the privileges enumerated in subdivision (b) shall, by May 15 of each year, adopt rules and regulations implementing this section. These rules and regulations shall be effective until May 15 of the following year.

(e) If a state court finds this section is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under this statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief may be awarded. In any action in which the court finds this section is unlawful, the California Community Colleges are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief.

Education Code § 72103. Eligibility; community college district employees; term limits; electoral approval

(a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the community college district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a community college district without further qualifications.

(b)(1) An employee of a community college district may not be sworn into office as an elected or appointed member of that community college district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a community college district and an elected or appointed member of that community college district's governing board prior to January 1, 1992, this subdivision shall apply when he or she is reelected or reappointed, on or after January 1, 1992, as a member of the community college district's governing board. This section does not apply to an individual who is usually employed in an occupation other than teaching and who also is employed part time by the community college district to teach no more than one course per semester or quarter in the subject matter of that individual's occupation.

(c) Notwithstanding any other provision of law, the governing board of a community college district may adopt or the residents of the community college district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the community college district may serve on the governing board of a community college district. Any proposal to limit the number of terms a member of the governing board of a community college district may serve on the governing board of a community college district shall apply prospectively only and shall not become operative unless it is submitted to the electors of the community college district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(d)(1) An initiative measure proposed pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) A proposal submitted to the electors by the governing board pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 6 (commencing with Section 9500) of Division 9 of the Elections Code.

Education Code § 72121. Public meetings

Except as provided in Sections 54957 and 54957.6 of the Government Code and in Section 72122 of, and subdivision (c) of Section 48914 of, this code, all meetings of the governing board of any community college district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

(a) Minutes shall be taken at all of those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may commence an action by mandamus or injunction pursuant to Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action taken by the governing board in violation of this subdivision or subdivision (b) of Section 72129 is null and void.

Education Code 72121.5. Agenda; public participation; regulations

It is the intent of the Legislature that members of the public be able to place matters directly related to community college district business on the agenda of community college district governing board meetings, and that members of the public be able to address the board regarding items on the agenda as such items are taken up. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. Such regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regularly scheduled meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on such matters at the same meeting at which such testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

Education Code § 72122. Closed sessions

The governing board of a community college district shall, unless a request by the student has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action in connection with any student of the community college district, if a public hearing upon the question would lead to the giving out of information concerning students which would be in violation of state or federal law regarding the privacy of student records.

Before calling a closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the student is a minor, notify the student and his or her parent or guardian, or the student if the student is an adult, of the intent of the governing board of the district to call and hold the closed session. Unless the student, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of the written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider those matters shall be conducted by the governing board in closed session. If the written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at the meeting that might be in conflict with the right to privacy of any student other than the student requesting the public meeting or on behalf of whom the meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the community college district shall be taken at a public meeting and the result of that action shall be a public record of the community college district.

The governing board of a community college district may hold closed sessions to consider the conferring of honorary degrees or to consider gifts from a donor who wants to remain anonymous.

Education Code § 72129. Special meetings; notice

(a) Special meetings may be held at the call of the president of the board or upon a call issued in writing and signed by a majority of the members of the board.

(b) A notice of the meeting shall be posted at least 24 hours prior to the special meeting and shall specify the time and location of the meeting and the business to be transacted and shall be posted in a location that is freely accessible to members of the public and district employees.

Education Code § 72530. Prohibited activities; misdemeanor; contract or appointment voidness

(a) The offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the granting of any instructor's certificate, the appointment of any instructor, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of which he or she is a member is a party, or the acceptance by any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor.

(b) Any contract or appointment obtained from the governing board of any community college district by corrupt means is void.

Education Code § 72533. Prohibitions applicable to members of governing boards of community college districts and citizens' oversight committees

The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of community college districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10.

Government Code § 3549.1. Public meeting provisions; exemptions

All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

- (a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
- (c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.
- (d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

THE 10 MOST COMMON BROWN ACT ERRORS

1. Committee Meetings

With one exception, the Brown Act applies to all committees created by formal action of the governing board.

- only ad hoc advisory committees composed only of board members comprising less than a quorum of the board are exempt from the Brown Act.
- Standing committees of the board are subject to the Brown Act.
- Committees appointed by the CEO (superintendent) under his or her own authority are not subject to the Brown Act.
- See Government Code section 54952(b).

2. Private Communications Among Board Members—No Serial Meetings Allowed

Except during a duly noticed meeting, Board members shall not use a series of communications of any kind, directly or indirectly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the body.

- See Government Code section 54952.2.

3. Teleconferencing

If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

- See Government Code section 54953(b)(3).

4. **Agenda Requirements**

At least 72 hours before a regular meeting (24 hours for special meeting), the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

- See Government Code sections 54954.2 and 54956.

5. **Newly Elected Members Subject to Brown Act**

Such individuals must conform their conduct to the Brown Act upon election but before taking office. For example, meetings between incumbents and newly elected members could constitute a majority of the Board.

- See Government Code section 54952.1,

6. **Hearing Charges or Complaints**

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

- See Government Code section 54957(b)(2).

7. **Announcement Prior to Closed Session**

Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

- See Government Code section 54957.7(a).

8. **Writings Distributed Prior to or At a Board Meeting Must be Available to the Public**

- See Government Code section 54957.5.

Written materials distributed to the Board of Education within 72 hours of the Board meeting are available for public inspection immediately upon distribution at the _____ (location and address).

This does not apply to closed session materials.

9. **Public Reporting on Personnel Actions Taken in Closed Session**

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

* * *

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

- See Government Code section 54957.1.

10. Confidentiality of Closed Session

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

- See Government Code section 54963.

SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Margaret M. Merchat

*A Joint Powers Authority serving school and
college districts throughout the state*

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@scsclcal.org

Attorneys
Nancy L. Klein
Marko H. Fong
Carl D. Corbin
Patrick C. Wilson
Loren W. Soukup
Frank Zotter, Jr.
Kristina T. Jansen

Of Counsel
Robert J. Henry
Virginia A. Riegel
Janna L. Lambert

LEGAL UPDATE

January 17, 2012

~~~~~  
Susanne K. Reed  
(1947 - 2010)

To: Superintendents/Presidents, Member Community College Districts

From: Patrick C. Wilson, Senior Associate General Counsel <sup>PCW</sup>

Subject: Brown Act Amendments  
Memo No. 02-2012 (CC)

---

Effective January 1, 2012, the Brown Act has been amended as follows:

1. The District is now required to post the Board's regular and special meeting agendas on its web site, if any, in a timely manner (at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting).

The District must also timely post on its web site, if any, the agendas for any meetings for committees created by the Board (except ad hoc committees) if: (1) the members of the committee are compensated for their appearance at the meeting and (b) one or more of the members of the committee is also a member of the Governing Board of the District. See Government Code §§ 54954.2(a)(1), (d)(1-2).

Note that Education Code § 15280 requires that meetings of a District bond oversight committee shall be noticed "in the same manner as the proceedings of the Governing Board." Thus, in light of the above amendment, the BOC agendas should now be posted on the District's website, if any. Section 15280 requires that BOC minutes, documents received, and reports issued shall also be made available on the District web site.

2. A District may not consider at a special meeting the salary or compensation, including fringe benefits, for a "local agency executive," which includes the superintendent of the District and the head of any department of the District. See Government Code § 54956 and Government Code § 3511.1(d). These matters must be considered at a regular meeting.

# SCHOOL AND COLLEGE LEGAL SERVICES of California

*eral Counsel*  
Margaret M. Merchat

**Attorneys**  
Janna L. Lambert  
Nancy L. Klein  
Marko H. Fong  
Adam S. Ferber  
Carl D. Corbin  
Patrick C. Wilson  
Virginia A. Riegel  
Loren W. Soukup  
Frank Zotter, Jr.

*A Joint Powers Authority serving school and  
college districts throughout the state with offices in  
Eureka, Hayward, San Rafael, Santa Cruz and Santa Rosa*

*Reply to:*  
**Santa Rosa Office**  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@scslsca.org](mailto:santarosa@scslsca.org)

## LEGAL UPDATE

November 5, 2008

*Employer-Employee  
Relations Coordinator*  
Robert S. Latchaw

*Of Counsel*  
Joseph C. Kinkade  
Susanne K. Reed  
Noel J. Shumway  
Ralph D. Stern

**To:** Superintendents/Presidents, Member Community College Districts

**From:** Patrick C. Wilson, Senior Associate General Counsel *PCW*

**Subject:** Brown Act Amendments  
Memo No. 13-2008 (CC)

This update addresses two recent amendments to the Brown Act.

### I.

#### **New Public Disclosure Requirement for Board Materials**

As many of you know, effective July 1, 2008, the Brown Act was amended to require a public agency to make available for public inspection all non-exempt materials distributed to the governing board less than 72 hours before a meeting. The documents must be available to the public at the same time they are provided to the Board regardless of whether any request has been made for the records.

Section 54957.5 of the Brown Act provides in relevant part:

"a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made

available upon request without delay. However, **this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.**

**(b)(1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.**

**(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency.**

The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

**(3) This subdivision shall become operative on July 1, 2008.**

**(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof." [(d), (e) omitted.]**

Thus, public agencies must make available to the public all staff reports and other public materials distributed to the Board at the same time that they are sent to Board members if distributed less than 72 hours before the meeting.

As for staff reports and other public materials distributed more than 72 hours before the meeting, we believe the best practice is to make these reports and materials available to the public on the web or otherwise at the time the agenda is posted.

## II.

### Serial Meetings Restricted

Effective January 1, 2009, the Brown Act has been revised to explicitly prohibit serial meetings that include any discussion of Board business by a majority of the Board. This is a significant change.

#### A. Background

The Brown Act defines a "meeting" as any "congregation of a majority of the members of a legislative body..." that has gathered to address issues relevant to the jurisdiction of the board.<sup>1</sup>

The term "meeting" is not limited to gatherings at which action is taken; "deliberative gatherings" are included as well. *Sacramento Newspaper Guild v. Sacramento County* (1968) 263 Cal.App.2d 41. Deliberation includes not only collective decision making, but also "the collective acquisition and exchange of facts preliminary to the ultimate decision." *Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234.

The term "meeting" is usually construed expansively "to prevent local legislative bodies from evading the requirements of the Brown Act. . . . An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices." *Sacramento Newspaper Guild*, 263 Cal.App.2d at 48.

Thus, an informal luncheon at which a quorum of the legislative body is present and the public's business is discussed is a "meeting" within the meaning of the Brown Act. Similarly, a session in which a board gathers information from prospective contractors about their qualifications to perform services for the district is a "meeting" subject to Brown Act requirements, even though no commitment is made to retain the persons interviewed.

The definition of "meeting" does not include 1) individual contacts or conversations between an individual member of the Board and any other person, or 2) the one-way transmission of materials or information to the Board so long as the materials do not include any discussion of the position or comments of any specific Board member regarding any matter within the purview of the Board.

---

<sup>1</sup> There are limited circumstances when a meeting of less than a quorum of the Board to conduct business must also be noticed under the Brown Act. For example, Government Code §54952 (b) provides that a committee composed of less than a quorum of the board that is a "standing" committee is covered by the Brown Act.

However, when an individual contact or a one way communication with a Board member is thereafter discussed by a quorum of the Board, collectively or serially, an impermissible "serial meeting" under the Brown Act may have occurred. For example, a series of telephone calls by which the members of a legislative body commit themselves to a decision concerning public business has been held to be a "meeting" for purposes of the Brown Act. *Stockton Newspapers, Inc.*, 171 Cal.App.3d at 102-103.

Section 54952.2 (b) of the Brown Act was added in 1993 to specifically address "serial meetings" among Board members. It provides

"Except as authorized pursuant to section 54953 (which deals with teleconferencing), any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited."

**B. The Wolfe Decision.**

In *Wolfe v. City of Fremont* (2006) 144 Cal.App.4<sup>th</sup> 533, the Court of Appeal addressed the permissibility of meetings between the city manager and individual city council members for the purpose of discussing a policy issue that would be discussed at a future public meeting:

"The current language of the Brown Act contains no reference to, and does not expressly prohibit, serial meetings. Nonetheless, the substance of *Stockton Newspapers* is preserved in subdivision (b) of section 54952.2, which prohibits the members of a legislative body, acting outside a public meeting, from using "direct communication, personal intermediaries, or technological devices" as a means for "a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body. In other words, section 54952.2, subdivision (b) now prohibits a legislative body from using virtually any means-whether "direct communication, personal intermediaries, or technological devices" to reach a "collective concurrence" outside the public forum.<sup>FN6</sup>

FN6. Accordingly, serial individual meetings that do not result in a "collective concurrence" do not violate the Brown Act. This is in contrast to nonpublic "meetings," as that term is defined in section 54952.2, subdivision (a), which are unconditionally prohibited. (§ 54953.)"

The *Wolfe* court's comments, particularly the statement in footnote 6 that "serial individual meetings that do not result in a "collective concurrence" do not violate the Brown Act," were controversial. So much so that, earlier this year, the legislature passed and the Governor signed Senate Bill 1732 overturning footnote 6, effective January 1, 2009.

### **C. The 2008 Brown Act Amendments Rejecting *Wolfe*.**

Senate Bill 1732 prohibits a majority of the members of a legislative body from using 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.

Thus, the amendment expands the definition of "meeting" beyond that discussed in *Wolfe*, which only barred serial meetings used "to reach a collective concurrence" as to legislative action.

In an attempt to address the concerns that the amendment would prevent communications between staff and the Board, the amendment also provides that the new law does not prevent a local agency staff official, employee, or individual from engaging in separate communications outside of a Brown Act-authorized meeting with members of the legislative body in order to answer questions or provide information regarding a subject matter within the legislative body's jurisdiction, **provided the staff, employee, or individual does not communicate the comments or position of any other member of the legislative body.**

### **D. The Text of the New Brown Act Amendments**

The text of the Brown Act amendments, effective January 1, 2009, as they relate to serial meetings, are set forth below.

"SECTION 1. (a) The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act . . . to require that a series of individual meetings by members of a body *actually result in* a collective concurrence to violate the prohibition rather than also including the process of *developing* a collective concurrence as a violation of the prohibition. (b) It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a)."

SEC. 3. Section 54952.2 of the Government Code is amended to read:

54952.2. (a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) **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.**

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body. [Section (c) omitted.]

#### **E. Conclusion**

Effective January 1, 2009, the Brown Act explicitly prohibits serial meetings that include any discussion of Board business by a majority of the Board.

We recommend that, if questions are raised prior to a meeting regarding an agenda item and you conclude it is appropriate to respond in writing to the entire Board, you should respond with a report that is distributed to all Board members and is made available to the public at the same time pursuant to the policy described at the beginning of this memorandum under section I. The report should not communicate the comments or position of any member of the Board regarding Board business.

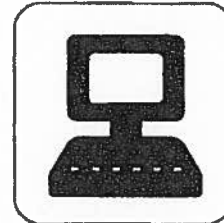
Emails or other communications that directly or indirectly circulate among a majority of the Board that **"discuss, deliberate, or take action on any item of business"** are impermissible unless the communication occurs in public or in closed session at a duly noticed meeting.

Please note that any email or written communication with or among the Board may be a public record subject to production. Any such document should be written with the expectation that it may be disclosed to the public.

Please contact any of our attorneys if you or your Board members have any questions regarding these matters.

## A NOTE ABOUT BLOGGING AND SOCIAL NETWORKING SITES

Decision-makers who are covered by open meeting laws must avoid situations in which the majority of a legislative body uses the Internet to communicate with each other about a matter of agency business. For this reason, decision-makers must take care when responding to each other's blogs, posts on social networking sites (such as Facebook) or e-mails.



The so-called "Web 2.0" creates opportunities for people to present information on websites in the form of a journal. These sites also allow visitors to make comments or ask questions (called "posts" or "postings") in response to the others' comments.

For many decision-makers, blogging offers an effective way to share information with and communicate with constituents. For example, rather than having to field 10 e-mails asking the same question, an official can post a response on his or her blog and refer folks to the answer. Blogging can also a good way to keep the public informed, especially as fewer people turn to newspapers for information.

The open meeting laws do not stop one-way communications from members of legislative bodies to others. An example would be a "frequently asked questions" piece on an official's website that does not involve two-way communications among legislative body members. But a majority of decision-makers participating in a blog or other web-based conversation could constitute a "meeting" within the meaning of the open meeting laws. This means that the meeting must be held in accordance with all open meeting requirements, in an appropriate (ADA accessible) location, with prior notice and an agenda.

What is the theory underlying these restrictions? One is that the general public has a right to know that decision-making on a particular issue may occur. There is also an underlying concept of decision-makers facing their constituents as they deliberate on issues, as well as the obligation to hear the thoughts of the full range of constituents (not just those on the Internet) should constituents choose to offer them.

For more information, see the Everyday Ethics for Local Officials column "Taking the Bite Out of Blogs: Ethics in Cyberspace" (see [www.ca-ilg.org/blogs](http://www.ca-ilg.org/blogs)).



# SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel  
Margaret M. Merchat

Attorneys  
Nancy L. Klein  
Marko H. Fong  
Carl D. Corbin  
Patrick C. Wilson  
Loren W. Soukup  
Frank Zotter, Jr.  
Kristina T. Jansen

*A Joint Powers Authority serving school and  
college districts throughout the state*

## LEGAL UPDATE

April 23, 2012

Reply to:  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

Of Counsel  
Robert J. Henry  
Virginia A. Riegel  
Janna L. Lambert

~~~~~  
Susanne K. Reed
(1947 - 2010)

To: Superintendents/Presidents, Member Community College Districts

From: Robert J. Henry, Of Counsel
Patrick C. Wilson, Senior Associate General Counsel *PCW*

Subject: Required Protocol When the Governing Board Approves or Extends the
Superintendent's Contract or Sets the Salary of the Superintendent
Memo No. 07-2012(CC)

This update reviews the recommended protocol when the governing board wishes to approve or extend the superintendent/president's contract or set the salary of the superintendent/president.

A. BOARD APPROVAL OF OR AMENDMENT TO EMPLOYMENT CONTRACTS

The statutes with respect to a governing board's approval of a district superintendent/president's employment agreement are set forth in the Government Code.

1. Open Session Ratification of the Superintendent's Contract.

Government Code sections 53260-53264 apply to various local agency employment agreements, including community college districts contracts involving the superintendent and other high level administrators.

Section 53262 provides that the contract of employment of a district superintendent "shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes." This provision assumes that the governing board took action in closed session to appoint or re-employ the superintendent pursuant to Government Code section 54957. If a closed session discussion occurs but no action is taken in closed session, any subsequent public

session action should be described as an "approval" of the contract rather than a "ratification" of the contract.

The requirement to approve or ratify the contract in public session exists for new contracts and for extensions or other amendments of existing contracts.

Effective January 1, 2012, any such action must be taken at a regular meeting only. GC 54956(b).

If the governing board takes action in closed session to approve the contract at a regular meeting, the open session agenda must have an action item as follows:

1.0 Ratification of Superintendent's Employment Agreement

This description can appear under any open session action item, including a "consent" agenda item. The term "ratification" makes it clear that the board already took action in closed session on the same subject (which would have been "reported out" by the board, as described below).

If the board did not take action in closed session, the open session agenda would have an action item as follows:

*1.0 Consideration and Possible Approval of Superintendent's
Employment Agreement*

The action taken to approve or ratify the agreement must be duly noted in the minutes.

2. Closed Session Consideration of the Contract (Excluding Compensation).

As noted above, section 54957 of the Brown Act authorizes, but does not require, a governing board to meet in closed session to consider the appointment or employment of any employee of the public agency. Section 54957 also allows, but does not require, a board to take action in closed session with respect to the appointment or employment of employees.

Any closed session consideration of the superintendent's employment or continued employment should be described on the agenda as follows:

*1.0 Public Employee Appointment/Employment
(Government Code section 54957)
Title: Superintendent*

3. Reporting Action Taken in Closed Session.

Section 54957.1 of the Brown Act requires certain public disclosures after closed session if "reportable action" was taken in closed session. As applicable here, section 54957.1(a)(5) provides that following the closed session the board "shall publicly report any action taken in closed session, and the vote or abstention of every member present ... to appoint [or] employ ... a public employee ..."

Thus, following any closed session during a regular meeting where the board votes to approve or extend the superintendent's contract, the board president must publicly announce the action taken and the vote of each board member present. This announcement must be made in public session at the same regular meeting as the closed session and the action and vote must be noted in the minutes.

Even though the board has publicly disclosed the closed session action, the board must still ratify the employment agreement in public session as described above.

B. THE BOARD'S CONSIDERATION OF THE SUPERINTENDENT'S SALARY

1. Closed Session Discussion of the Superintendent's Salary.

Section 54957 provides that a closed session held pursuant to that section shall not include discussion or action on proposed compensation.

Thus, when the board meets in closed session pursuant to section 54957 to consider the employment or further employment of the superintendent, no discussion of salary can take place.

Section 54957.6 of the Brown Act authorizes the board to meet in closed session with its "designated representatives regarding the salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees ..."

Under this section, the board may discuss the superintendent's salary in closed session. The superintendent should not be present in the closed session during this discussion. The protocol for any closed session discussion of the superintendent's salary should be exactly the same as for a closed session discussion of salaries for represented employees: In closed session the board will give instructions to its negotiator (typically the board president) who will then meet with the Superintendent outside of the closed session and report back to the board on the results of the discussion. When an "agreement" has been reached (it being recognized that the board may unilaterally set the salary of all unrepresented employees) that "agreement" must be "sunshined" by way of the open session ratification described above.

If the closed session is to include a discussion of the superintendent's salary or compensation package the agenda should contain the following closed session description:

1.0 Conference with labor negotiator (Government Code 54957.6)

Agency negotiator: (specify name)

Unrepresented employee: Superintendent

The public session ratification of the contract will occur after the closed session, as described above.

C. ADDITIONAL CONSIDERATIONS

- Effective January 1, 2012, all agendas must be posted on the District website. GC 54956(c).
- The Board cannot approve a Superintendent contract at a special meeting.
- Effective January 1, 2012, any superintendent contract shall not include "an automatic renewal of [the] contract that provides for an automatic increase in the level of compensation that exceeds a cost of living adjustment." GC 3511.2(a).
- The Superintendent contract cannot include a cash settlement upon termination that is greater than 18 months salary. GC 53260(a).
- Effective January 1, 2012, "City of Bell" legislation involving abuse of office requires certain agencies to include in high level administrator contracts a reference to the reimbursement provisions of Government Code sections 53243-53243.4. It is not clear if these provisions apply to school and college districts. Thus, we recommend including the following provision in the contract: "To the extent applicable to college districts, this Agreement is subject to the provisions of Government Code sections 53243-53243.4 which requires reimbursement under the circumstances stated therein."
- The Superintendent contract is a public record. GC 53262(b).

Office of the Attorney General
State of California
Opinion No. 83-304

*1 July 28, 1983

THE HONORABLE DAVID ROBERTI
MEMBER OF THE CALIFORNIA SENATE

THE HONORABLE DAVID ROBERTI, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Are meetings of the academic senate or faculty council of a California community college subject to the open meeting requirements of the Ralph M. Brown Act?

CONCLUSION

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act.

ANALYSIS

The Ralph M. Brown Act, Government Code section 54950 et seq., requires that 'legislative bodies' of 'local agencies' as defined in the act hold their meetings open to the public unless expressly excepted by the act, or unless impliedly excepted by some other confidentiality provision of the law such as the attorney-client privilege. (63 Ops. Cal. Atty. Gen. 820, 821 (1980).) 'Local agency' includes a school district, including a California community college district. (See Gov. Code, § 54951; Atty. Gen. Unpub. Opn. I.L. 76-222.) 'Legislative body' for purposes of the act is not restricted to the actual governing board or body of a local agency. It includes as well (1) 'any board or commission thereof, or other body on which officers of a local agency serve in their official capacity' (Gov. Code, § 54952); (2) boards, commissions or committees 'which exercise any [delegated] authority of a legislative body' (Gov. Code, § 54952.2); (3) 'planning commission, library boards, recreation commission, and other permanent boards or commissions of a local agency' (Gov. Code, § 54952.5); and (4) 'any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency' (Gov. Code, § 54952.3).

As will be evident from an examination of the functions of an academic senate or faculty council (hereinafter 'academic senate'), the basic issue presented is whether an academic senate is an advisory commission, committee or body within the meaning of section 54952.3 of the Government Code. Stated otherwise, is a community college academic senate an advisory body of the community college district board, and has it been formed by 'formal action' of that board as contemplated by the Ralph M. Brown Act?

California community colleges are established pursuant to division 7 of title 3 of the Education Code. (Ed. Code, § 71000 et seq.) At the state level, there is a Board of Governors of the California Community Colleges which essentially oversees all community college districts in the state. (Ed. Code, §§ 71000-71095.) Individual districts and their governing boards are established pursuant to section 72000 et seq. of the Education Code. With respect to the statewide Board of Governors, section 71079 of the Education Code provides:

*2 'The board of governors shall establish minimum procedures to be used by district governing boards to insure to faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration.'

Then, with respect to each individual district governing board, section 72292 of the Education Code provides:

'The district governing board shall establish rules and regulations governing student conduct. The district governing board shall establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level.'

Thus, the statewide board of governors is to establish certain minimum procedures to be used by district governing boards and district governing boards are to establish local procedures not inconsistent therewith which grant faculty and students the opportunity to voice their opinions.

The statewide Board of Governors has carried out its legislative mandate as above stated by adopting sections 53200-53206 of title 5 of the California Administrative Code. These sections provide for the establishment of academic senates at the district level, and provide for their powers, duties and functions.

Section 53200, subdivision (b) of these administrative regulations defines the terms 'academic senate' and 'faculty council' to mean

'... an organization formed in accordance with . . . [the regulations] whose primary function is, as the representative of the faculty, to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters.'

(Emphasis added.)

Similarly, section 53203 of the administrative regulations provides:

'After consultation with the administration of its community college, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.' (Emphasis added.)

Accordingly, it is clear that an academic senate is an advisory body to the local governing board of a California community college district, the 'legislative body' of such a district. Thus, an academic senate meets the initial test of section 54952.3 of the Ralph M. Brown Act of being 'an advisory commission, advisory committee, or advisory body of a local agency,' that is, of the community college district.

Less clear is whether an academic senate, as such an 'advisory body,' meets the second requirement of section 54952.3 of the Government Code. Such requirement is that it be 'created by charter, ordinance, resolution or by any similar formal action of a legislative body or member

of a legislative body of a local agency.' Section 53201 of title 5 of the California Administrative Code states:

'In order that the faculty may have formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established at the college and/or district level.'

*3 Section 53202 of title 5 of the California Administrative Code then sets forth the procedure for forming an academic senate. It provides:

'The following procedure shall be used to establish an academic senate or faculty council:

'(a) The faculty of a community college shall vote by secret ballot to form an academic senate or faculty council.

'(b) In multi-college districts, the faculty of the district colleges may vote whether or not to form a district academic senate. Such vote shall be by secret ballot.

'(c) The governing board of the district shall recognize the academic senate or faculty council and authorize the faculty to:

'(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

'(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

'(d) The faculty may provide for the membership of part-time faculty members in the academic senate or faculty council.

'(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate or faculty council with the same functions as stated in 35200(b) and 53201.'

Accordingly, an academic senate is not formed 'by charter, ordinance or resolution' of the district board in the sense that a single act of the board, ipso facto, establishes the body. Thus, the ultimate issue is whether it can be said to have been formed 'by any similar formal action' of the 'legislative body,' that is, the district governing board, within the meaning of the Ralph M. Brown Act.

At first blush, one might conclude that an academic senate is formed not by the district board, but by vote of the faculty of the community college or colleges. However, reference to section 53202 of title 5 of the California Administrative Code, subdivision (c)(1) and (2), *supra*, discloses that certain steps or actions are also required of the district board after the faculty vote. Furthermore, it is to be recalled that the administrative regulations with respect to formation of these bodies, as well as locally mandated regulations (see Education Code, secs. 71079 and 72292, *supra*), have been adopted and are adopted to satisfy requirements of the law. These requirements are that procedures be established 'to be used by district governing boards' which provide for the expression of opinions of faculty and students. Consequently, it can be said that the establishment of an academic senate is attributable to the district board as well as to the faculty by its vote.

In this respect, the following language in the recent decision, Joiner v. City of Sebastopol (1981) 125 Cal.App.3d 799, 805, is germane. It sets forth the approach to be taken as to the interpretation of 'formal action' as used in section 54952.3 of the Government Code. Such is that the section be construed broadly. (*Id.* at p. 805, *fn.5.*) The court reasoned:

*4 'We conclude also on the basis of undisputed facts that the proposed committee was 'created by . . . formal action' of the city council. Respondent concedes that the city council, though it did not formally adopt a resolution, nevertheless took 'formal action' when it designated two of its members to meet with two planning commission members. It follows (since that designation was pursuant to a unanimously approved plan) that the city council also took 'formal action' when it adopted the proposed agenda for the meeting, i.e., that the group which was to meet would interview applicants and report back to the city council with recommendations. And, since the city council instigated that procedure as a means of fulfilling its responsibility to fill a vacancy on the planning commission, the 'creation' of the committee must be attributed to the council's action. The fact that the procedure was contingent upon the planning commission's compliance does not detract from that conclusion. A contrary view would lead to the unacceptable conclusion that a legislative body which desired to evade the strictures of Government Code section 54952.3 could do so simply by declaring that the existence of an advisory committee including nonmembers of the governing body was contingent upon the nonmembers being willing to serve.'

Accordingly, by a parity of reasoning, it would seem that the legally mandated joint action to be taken by the faculty of a community college and a district board in establishing an academic senate constitutes the requisite 'formal action' contemplated by section 54952.3 of the Government Code. We, therefore, conclude that an academic senate of a California Community College is an advisory body within the meaning of section 54952.3 of the Government Code, and its meetings fall within the open meeting requirements of the Ralph M. Brown Act. [FN1]

JOHN K. VAN DE KAMP
Attorney General

CLAYTON P. ROCHE
Deputy Attorney General

[FN1] We therefore do not reach or discuss the question whether, if it is not such an 'advisory body,' it would, however, meet another definition of 'legislative body' set forth in the Ralph M. Brown Act. (See Gov. Code, §§ 54952, 54952.2, 54952.5.)

608 F.3d 540, 93 Empl. Prac. Dec. P 43,911, 257 Ed. Law Rep. 854, 10 Cal. Daily Op. Serv. 7409, 2010 Daily Journal D.A.R. 8896

United States Court of Appeals,
Ninth Circuit.
Ken BLAIR, Plaintiff-Appellant,

v.

BETHEL SCHOOL DISTRICT, a municipal corporation; Tom Seigel, superintendent of Bethel School District and in his individual capacity and his marital community; Jane Doe Seigel; Brenda Rogers, president of the Bethel School District school board and in her individual capacity and her marital community; John Doe Rogers; Susan Smith, vice president of the Bethel School District school board in her individual capacity and her marital community; John Doe Smith; John Manning, board member of the Bethel School District school board in his individual capacity and his marital community; Jane Doe Manning, Defendants-Appellees.

No. 08-35895.

Argued and Submitted Oct. 16, 2009.

Filed June 14, 2010.

Background: Former vice president of public school board brought § 1983 action against school district, district's superintendent, board's president, and others, alleging he was removed as board's vice president in retaliation for exercising his First Amendment rights to free speech and petition. The United States District Court for the Western District of Washington, Franklin D. Burgess, J., 2008 WL 4740159, granted defendants' motion for summary judgment, and vice president appealed.

Holding: The Court of Appeals, Burns, District Judge, held that removal of vice president from titular position on public school board did not violate First Amendment right to free speech.

Affirmed.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(Q) Education

92XVIII(Q)1 In General

92k1987 k. School board officials and meetings. Most Cited Cases

345 Schools ☒ KeyCite Citing References for this Headnote

345II Public Schools

345II(C) Government, Officers, and District Meetings

The First Amendment does not succor casualties of the regular functioning of the political process. U.S.C.A. Const. Amend. 1.

*542 Paul A. Lindenmuth, Law Offices of Ben F. Barcus & Associates, PLLC, Tacoma, WA, for the plaintiff-appellant.

William A. Coats and Daniel C. Montopoli, Vandeberg Johnson & Gandara, Tacoma, WA, for the defendants-appellees.

Appeal from the United States District Court for the Western District of Washington, Franklin D. Burgess, District Judge, Presiding. D.C. No. CV-08-5181-FDB.

Before: JOHNNIE B. RAWLINSON and CONSUELO M. CALLAHAN, Circuit Judges, and LARRY A. BURNS,^{FN*} District Judge.

FN* The Honorable Larry Alan Burns, District Judge for the Southern District of California, sitting by designation.

BURNS, District Judge:

Ken Blair maintains his First Amendment rights were violated when his fellow school board members voted to remove him as their vice president because of his relentless criticism of the school district's superintendent. The district court disagreed, and so do we. To be sure, the First Amendment protects Blair's discordant speech as a general matter; it does not, however, immunize him from the political fallout of what he says.

I BACKGROUND

Blair has served as a publicly elected member of the Bethel School District School Board since 1999. There are four other Board members, who are also publicly elected. The members of the Board elect their own president, vice president, and legislative representative. Blair has served in each position over the years, but most recently, until October 2007, he was the Board's vice president.

Defendant-Appellee Tom Seigel was hired as superintendent of the Bethel School District in 2000. Blair has been a persistent critic of Seigel almost from the beginning, repeatedly impugning his integrity and competence. There are many examples, but one makes the point: early in Seigel's first term, Blair apparently insinuated to the Board and to the State Auditor that Seigel was defrauding the school district by requesting reimbursement for his moving expenses when in fact Seigel had been moved by the military. Blair is apparently the only Board member who is dissatisfied with Seigel, and since 2005 he has consistently voted against renewing Seigel's contract.

On September 25, 2007, the Board voted 4-1 to extend Seigel's contract and raise his pay. Blair was the lone dissenter. The next day, he explained his dissenting vote to a newspaper reporter, who then quoted Blair in a story saying, "My biggest issue with the superintendent is trust.... I have too many examples to say he's doing a good job."

*543 Blair's statements to the reporter were the last straw for his fellow Board members, and on October 9, 2007 they voted to remove him as vice president. Blair then sued the Bethel School District, Seigel, and the other Board members under 42 U.S.C. § 1983, alleging that he was retaliated against for exercising his First Amendment rights to free speech and petition. The district court granted summary judgment for the defendants, finding the Board's action didn't prevent Blair from continuing to speak out, vote his conscience, and serve his constituents as a member of the Board. We agree with this finding, and with the district court's more general conclusion that the First Amendment doesn't shield public figures from the give-and-take of the political process.

II DISCUSSION

[1] ✓ [2] ✓ [3] ✓ [4] ✓ [5] ✓ The First Amendment forbids government officials from retaliating against individuals for speaking out. Hartman v. Moore, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006); see also Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir.1986). To recover under § 1983 for such retaliation, a plaintiff must prove: (1) he engaged in constitutionally protected activity; (2) as a result, he was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity; ^{FN1} and (3) there was a substantial causal relationship between the constitutionally protected activity and the adverse action. See Pinard v. Clatskanie School Dist. 6J. 467 F.3d 755, 770 (9th Cir.2006). Here, it is uncontested that Blair's votes as a Board member and his statements to the newspaper were protected by the First Amendment, and that Blair's advocacy against Seigel was the cause for the Board's decision to remove him from the vice president position. It is also uncontested that the members of the Board are "state actors." ^{FN2} Were this a typical First Amendment retaliation case, we would be left to evaluate only whether the Board's action would chill a person of ordinary firmness from continuing to speak out.

FN1. The district court held that "in order for governmental action to trigger First Amendment scrutiny, it must carry consequences that infringe upon protected speech." Blair v. Bethel Sch. Dist., No. C08-5181, 2008 WL 4740159 at *3 (W.D.Wash. Oct.24, 2008) (citation omitted). Just to be clear, we do not require *actual* infringement in retaliation cases. Rather, "[i]n a First Amendment retaliation case, an adverse ... action is an act that is *reasonably likely* to deter employees from engaging in constitutionally protected speech." Coszalter v. City of Salem, 320 F.3d 968, 970 (9th Cir.2003) (emphasis added). Put differently, the question is whether the alleged retaliation would "chill or silence a person of ordinary firmness" from continuing to speak out. Mendocino Envtl. Ctr. v. Mendocino County, 192 F.3d 1283, 1300 (9th Cir.1999).

FN2. To be liable under § 1983, a government official must be "acting, purporting, or pretending to act in the performance of his or her official duties." McDade v. West, 223 F.3d 1135, 1140 (9th Cir.2000). Although it is not obvious to us that the election (or demotion) of board officers is an official duty of the Board members-in the same category, for example, as overseeing the hiring of teachers and making curriculum decisions-we assume the Board members were state

actors because the issue is undisputed here. See Anderson v. Warner, 451 F.3d 1063, 1068 (9th Cir.2006) (whether an officer acts under state law turns on the nature and circumstances of his conduct).

But Blair's case is not a typical First Amendment retaliation case. What's different here is the "adverse action" Blair is challenging was taken by his peers in the political arena. The record makes clear that Blair's fellow Board members wanted *544 a vice president who shared their views. Because Blair didn't, they removed him by a procedurally legitimate vote. The peculiar context in which Blair's case arises distinguishes it from the ordinary retaliation case in three crucial ways.

[6] ✓ First, the adverse action Blair complains of was a rather minor indignity, and de minimis deprivations of benefits and privileges on account of one's speech do not give rise to a First Amendment claim. Rather, for adverse, retaliatory actions to offend the First Amendment, they must be of a nature that would stifle someone from speaking out. The most familiar adverse actions are "exercise[s] of governmental power" that are "regulatory, proscriptive, or compulsory in nature" and have the effect of punishing someone for his or her speech. Laird v. Tatum, 408 U.S. 1, 11, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972).

The prototypical plaintiff in these cases is a government worker who loses his job as a result of some public communication critical of the government entity for whom he works, e.g., Pickering v. Bd. of Educ. of Township High Sch. Dist., 391 U.S. 563, 564, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) (teacher dismissed by the Board of Education after sending a letter critical of the Board to a local newspaper), or a regulated entity that is stripped of its business license after engaging in speech that displeases the regulator, e.g., CarePartners, LLC v. Lashway, 545 F.3d 867, 871 (9th Cir.2008) (boarding home operators engaged in lobbying and other speech and petition activities which they alleged led to retaliation by the regulators), or a prisoner who is retaliated against by prison officials for filing grievances or initiating actions in court, e.g., Bruce v. Ylst, 351 F.3d 1283, 1286 (9th Cir.2003) (prison officials allegedly retaliated against prisoner on the basis of his jailhouse lawyering activities), or citizens who are allegedly targeted by law enforcement because of their political speech activities, e.g., Mendocino Envtl. Ctr., 192 F.3d at 1288-89 (police officers sued for engaging in conspiracy to falsely accuse political activists of a crime in an effort to inhibit their political activities).

Blair has little in common with these prototypical plaintiffs. Through the ordinary functioning of the democratic process, he was removed from a titular position on a school board by the very people who elected him to the position in the first place. The Board's objective in stripping Blair of his leadership position, ostensibly, wasn't to punish him for his advocacy but instead to put in place a vice president who better represented the majority view. But even if the Board's intent was to play political hardball in response to Blair's advocacy, his authority as a member of the Board was unaffected; despite his removal as Board vice president, he retained the full range of rights and prerogatives that came with having been publicly elected. The district court found Blair's removal from the Board leadership position didn't chill his speech, and the record supports that finding.

[7] ☒ Second, as the district court intuited, more is fair in electoral politics than in other contexts. It is common for political bodies to have internal leadership structures and for members of those bodies to be openly partisan in voting for and against one another for leadership positions. In fact, we *expect* political officials to cast votes in internal elections in a manner that is, technically speaking, retaliatory, *i.e.*, to vote against candidates whose views differ from their own. Indeed, an internal political leadership election is often a referendum on the majority point of view. Yet, to accept Blair's argument is to hold that the First Amendment prohibits elected officials from voting against candidates whose speech or views **545* they don't embrace.^{FN3} Experience and political reality convince us this argument goes too far; the First Amendment does not succor casualties of the regular functioning of the political process.^{FN4}

FN3. Blair argues his speech deserves enhanced protection because it was *political* speech that exposed corruption, mismanagement and waste within the Bethel School District. It is true that "[p]olitical speech lies at the core of the First Amendment's protections." Kaplan v. County of Los Angeles, 894 F.2d 1076, 1079 (9th Cir.1990). However, we have limited the heightened protection of speech on matters of public concern to private citizens and government employees speaking as private citizens. *See, e.g., Posey v. Lake Pend Oreille Dist. No. 84*, 546 F.3d 1121, 1123 (9th Cir.2008) (involving a high school "security specialist" who voiced concerns about a school district's safety and emergency policies). No equivalent protection has been extended to government officials engaged in the give-and-take of politics.

FN4. To be very clear, we do not suggest that the retaliatory acts of elected officials against their own can never violate the Constitution. Obviously, they can. *See Bond v. Floyd*, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966). In *Bond*, the plaintiff had been popularly elected to the Georgia House of Representatives, but was blocked from taking office by a vote of his peers on the trumped-up ground he could not, in good faith, take the requisite oath of office to support the Constitution. *Id.* at 118, 87 S.Ct. 339. The refusal to seat Bond was retaliatory and had the effect, deleterious to democracy, of nullifying a popular vote. *Id.* at 136-37, 87 S.Ct. 339. This would be a different case had Blair's peers somehow managed to vote him off the Board or deprive him of authority he enjoyed by virtue of his popular election-but they didn't. Bond and Blair have little more in common than the enmity of their peers.

To lend perspective to this point, we conceive little difference between what the Board's internal vote against Blair accomplished and what voters in a general public election might do if they too were disaffected by Blair's advocacy. In other words, it wouldn't have been controversial in the least-and certainly not a violation of the First Amendment-had Blair's constituents refused to support his reelection on account of his outspoken opposition to Superintendent Seigel. We see no reason the Board members' votes here should be regulated in a way that the general public's are not.

Third, it is significant that Blair isn't the only party in this case whose interests implicate First Amendment concerns. To the contrary, we assume *all* of the Board members have a protected interest in speaking out and voting their conscience on the important issues they confront-issues like teachers' pay, curriculum policy, and allocation of education resources. The First Circuit has recognized this point explicitly: "Voting by members of municipal boards, commissions, and authorities comes within the heartland of First Amendment doctrine, and the status of public

officials' votes as constitutionally protected speech [is] established beyond peradventure of doubt" Stella v. Kelley, 63 F.3d 71, 75 (1st Cir.1995). Blair offers no rationale for why this assumption does not apply to the Board's vote on the seemingly less important *internal* matter of who among them is best to fill certain titular, leadership positions.

Here, the vote to remove Blair as Board vice president communicated to Blair and to the public that the Board majority viewed Seigel's performance very differently from the way Blair saw it, and wanted to distance itself from Blair's criticism of the superintendent. The point isn't that the vote against Blair was protected speech simply because it was expressive. Almost all retaliatory actions can be said to be expressive, including those that are manifestly unconstitutional. But, while Blair certainly had a First Amendment right to criticize Seigel and vote against *546 his retention as superintendent, his fellow Board members had the corresponding right to replace Blair with someone who, in their view, represented the majority view of the Board.

While this is the first time our circuit has considered a First Amendment retaliation claim that arises in the context of the political process and public debate, both the Sixth Circuit and the Tenth Circuit have evaluated similar claims. In Zilich v. Longo, 34 F.3d 359, 361 (6th Cir.1994), the defendants were city council members who passed a resolution stating that an outgoing council member who had been a thorn in their side had never been qualified to hold office. The outgoing member sued on the ground the resolution was retaliation for his political opposition to the mayor. Id. at 363. The Sixth Circuit rejected the claim, recognizing that "[v]oting on legislative resolutions expressing political viewpoints may itself be protected speech," and concluding, "[a] legislative body does not violate the First Amendment when some members cast their votes in opposition to other members out of political spite or for partisan, political, or ideological reasons." Id.

Similarly, in Phelan v. Laramie County Cmty. Coll. Bd., 235 F.3d 1243, 1245-46 (10th Cir.2000), a community college board censured one of its trustees for violating an ethics policy by placing a newspaper ad encouraging the public to vote against a pending measure. The censured trustee sued, but the Tenth Circuit held that "[i]n censuring Ms. Phelan, Board members sought only to voice their opinion that she violated the ethics policy and to ask that she not engage in similar conduct in the future." Id. at 1248.

We agree with the analysis of the Sixth Circuit in Zilich and the Tenth Circuit in Phelan. Blair's removal from the titular position of Board vice president is, for First Amendment purposes, analogous to the condemning resolution in Zilich and the censure in Phelan, and those decisions support our conclusion here. Disagreement is endemic to politics, and naturally plays out in how votes are cast. While the impetus to remove Blair as Bethel School Board vice president undoubtedly stemmed from his contrarian advocacy against Siegel, the Board's action did not amount to retaliation in violation of the First Amendment.

Office of the Attorney General
State of California
Opinion No. 00-1210

*I November 14, 2001

THE HONORABLE DION ARONER
MEMBER OF THE STATE ASSEMBLY

THE HONORABLE DION ARONER, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question

Is a city required under the federal Americans with Disabilities Act to provide, as an accommodation for a disabled member of its city council or an advisory board who is unable to attend a regularly scheduled meeting of the council or board, a teleconferencing connection at the member's place of residence where members of the public would not be permitted to be present?

CONCLUSION

A city is not required under the federal Americans with Disabilities Act to provide, as an accommodation for a disabled member of its city council or an advisory board who is unable to attend a regularly scheduled meeting of the council or board, a teleconferencing connection at the member's place of residence where members of the public would not be permitted to be present.

ANALYSIS

We are asked whether a city is required under the federal Americans with Disabilities Act (42 U.S.C. §§ 12101-12213; "ADA") [FN1] to provide a teleconferencing connection for a member of the city council or a city advisory board unable to attend a council or board meeting due to a disability where the teleconferencing site would not be made available for members of the public to attend. We conclude that a city is not so required by federal law.

Title I (§§ 12111-12117) of the ADA pertains to employment practices. [FN2] For our purposes, the principal prohibition of title I is found in section 12112

"(a) General rule

"No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

"(b) Construction

"As used in subsection (a) of this section, the term 'discriminate' includes—



Publications

Open Government

League of California Cities

Open and Public IV: A Guide to the Ralph M. Brown Act (2007)
(www.cacities.org/openandpublic).

The People's Business: A Guide to the California Public Records Act (2008)
(www.cacities.org/PRAGuide)

Office of the Attorney General

The Brown Act: Open Meetings for Local Legislative Bodies, 2003.
Available on the California Attorney General's website at <http://ag.ca.gov/>
(select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to <http://ag.ca.gov/publications/brownAct2003.pdf>.

Summary of the California Public Records Act, 2004. Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Public Records") or go to http://ag.ca.gov/publications/summary_public_records_act.pdf.

General

Institute for Local Government

Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethics (2009). Explains the role that values and public perception play in public service ethics (www.ca-ilg.org/ppoe).

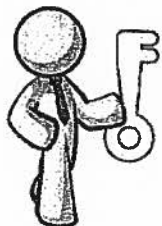
Ethics Law Compliance Best Practices (2005). Enables agencies to engage in a self-assessment of ethics law compliance practices (www.ca-ilg.org/bestpractices).

Walking the Line: What to Do if You Suspect an Ethics Problem (2005). Answers a frequently-posed question with an eight-step process (www.ca-ilg.org/whattodo).

Ethics Culture Assessment (2006). Enables local agencies and their leaders to assess and reflect on the agency's ethics culture (www.ca-ilg.org/culturechecks).

ETHICS

**Governing Board Special Meeting
February 20, 2013**



Ethics Law Principles for Public Servants:

KEY THINGS TO KNOW

Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises under these principles, public officials should consult agency counsel.

Personal Financial Gain Laws

Generally speaking, California law says public officials:

- » Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- » Must disclose their financial interests to the public.
- » Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests.
- » Cannot have an interest in a contract made by their agency.
- » Cannot be involved in agency decisions that affect an official's future employer.
- » Cannot lobby their agency for pay for a year following their departure from the agency.

Perk Issues: Including Compensation, Use of Public Resources and Gift Laws

Generally speaking, California law says public officials:

- » Receive limited compensation for their service to the public.
- » Cannot receive compensation for speaking, writing an article or attending a conference.
- » Are reimbursed for only those expenses allowed in agency expense reimbursement policies because those expenses have a demonstrable public purpose and necessity.
- » Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- » Cannot send mass mailings at public expense.
- » Cannot make gifts of public resources or funds.

For more information on these principles, see www.ca-ilg.org/EthicsLaws.

- » Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$440 (2013-14 proposed) from a single source in a given year.
- » May only accept free trips and travel expenses under limited circumstances.
- » May not accept free or discounted transportation from transportation companies.
- » May not use campaign funds for personal benefits not directly related to a political, legislative or governmental purpose.

Transparency Laws

Generally speaking, California law says public officials:

- » Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests include such kinds of interests as: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- » Disclose information about who has agreed to commit significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- » Disclose campaign contributions.
- » Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- » Allow the public to participate in meeting, listenening to the public's views before decisions are made.
- » Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- » Disclose gifts given to the public agency and how they are ultimately used.

Fair Process Laws and Merit-Based Decision-Making

Generally speaking, California law says public officials:

- » Cannot receive loans from those within the agency or with whom the agency contracts; loans from others must meet certain requirements.
- » Cannot engage in vote-trading.
- » Have a responsibility to assure fair and competitive agency contracting processes.
- » Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- » Must conduct public hearings in accordance with fair process principles.
- » Cannot participate in decisions that will benefit their immediate family (spouse or domestic partner and dependent children).
- » Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- » Cannot participate in entitlement proceedings—such as land use permits—involving campaign contributors (does not apply to elected bodies).
- » Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed body).
- » Cannot solicit agency employee support for their political causes.
- » Cannot retaliate against those who whistle-blow.

Laws Prohibiting Bribery

Penal Code § 68. Bribes; executive or ministerial officers, employees, or appointees; asking or receiving; punishment

(a) Every executive or ministerial officer, employee, or appointee of the State of California, a county or city therein, or a political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or action upon any matter then pending, or that may be brought before him or her in his or her official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars (\$10,000), whichever is greater, and, in addition thereto, forfeits his or her office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment, in this state.

(b) In imposing a restitution fine pursuant to this section, the court shall consider the defendant's ability to pay the fine.

Education Code § 72530. Prohibited activities; misdemeanor; contract or appointment voidness

(a) The offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the granting of any instructor's certificate, the appointment of any instructor, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of which he or she is a member is a party, or the acceptance by any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor.

(b) Any contract or appointment obtained from the governing board of any community college district by corrupt means is void.

Education Code § 72533. Prohibitions applicable to members of governing boards of community college districts and citizens' oversight committees

The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of community college districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10.

Misuse of Public Funds

Penal Code § 424. Embezzlement and falsification of accounts by public officers; misappropriation; unauthorized loan, use or private profit; failure to pay over or transfer public moneys; punishment

(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,

2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,

3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,

5. Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,

6. Willfully omits to transfer the same, when transfer is required by law; or,

7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;--

Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

(b) As used in this section, "public moneys" includes the proceeds derived from the sale of bonds or other evidence or indebtedness authorized by the legislative body of any city, county, district, or public agency.

(c) This section does not apply to the incidental and minimal use of public resources authorized by Section 8314 of the Government Code.

Government Code § 8314. Use of public resources for unauthorized purposes

(a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

(b) For purposes of this section:

(1) "Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

(2) "Campaign activity" means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. "Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

(3) "Public resources" means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.

(4) "Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated.

(c)(1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

(2) If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city.

(3) No civil action alleging a violation of this section may be commenced more than four years after the date the alleged violation occurred.

(d) Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(e) The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code.

Prohibitions Against Acceptance of Free or Discounted Transportation by Transportation Companies

Cal. Const., Art. XII, § 7. A transportation company may not grant free passes or discounts to anyone holding an office in this State; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission.



Everyday Ethics for Local Officials

Let's Not Make a Deal: Vote-Trading and Similar Practices Raise Legal and Ethical Issues

February 2007

QUESTION

I am a newly elected official. When I ran for office, I pledged to support a certain policy I'll call "X." After working with staff at our agency, a resolution to do X is now pending before our governing body.

One of my colleagues called me yesterday and said that he would vote for resolution "X" if I would vote for "Y," a cause he's championing. I confess I was taken aback and very uncomfortable. Am I right to be concerned?

ANSWER

Yes, you are right to be concerned. There are a number of issues to be aware of in such a situation.

First, when your constituents elected you, they elected you to use your best judgment on all issues that come before you. That means that you have a responsibility to vote only for proposals that you genuinely believe are in the public's interests.

Any time a public official considers something other than the public's best interests in making a decision, that official falls short of both legal and ethical obligations to his or her constituents. An easy example is when an official votes for something in exchange for money - everyone understands that such a practice is a bribe, which of course is a crime.

Vote-Trading is a Felony

Perhaps less well-known is the fact that vote-trading is also a crime for both state and local officials. Vote-trading for state officials has been a crime for some time, as have other improper influences on the legislative process.¹ Recent amendments to the Penal Code extended the prohibition to local officials:²

[A]ny member of the legislative body of a city, county, city and county, school district, or other special district, who ... gives, or offers or promises to give, any official vote in consideration that ... another member of the legislative body ... shall give this vote either upon the same or another question, is punishable by imprisonment in the state prison for two, three, or four years and ... by a restitution fine of not less than \$2,000 or not more than \$10,000.³

To underscore the seriousness of the offense, vote-trading (like other forms of bribery and crimes against the legislative power) also subjects an official to forfeiture of office and forever being disqualified from holding office.⁴

Like bribery, vote-trading is a form of quid pro quo (you do this for me, I'll do that for you). Quid pro quos are always legally risky and fall short of ethical standards for public officials.

Vote-Trading and Interagency Agreements

The Attorney General explored the boundaries of the prohibition against vote-trading in an opinion on interagency agreements. The issue was whether a memorandum of understanding (MOU) between a county and cities within the county in which the agencies all committed to take various actions would constitute an illegal exchange of votes.

The Attorney General said "no." He made a distinction between trade-offs *between jurisdictions* and trade-offs *between individual decision-makers*.

The hallmark of illegal vote-trading, according to the AG, is when one or more elected officials condition his or her vote on some other official voting one way or another on the "same or another question." The reason this is improper is that the officials are making their decision on the prospect of personal gain or advantage, rather than upon an objective and unbiased evaluation of the matter being voted upon.⁵

The Ethics of Vote-Trading and Similar Legislative Strategies

Why are quid pro quos a bad thing? Isn't cooperation and compromise with colleagues a good thing?

Let's look at the much maligned practice of "earmarking" in Congress. Earmarking is the process of designating funds for certain local projects in appropriations legislation. The system survives on a similar sort of "you-scratch-my-back, I'll-scratch-yours" mentality that results in the expenditure of billions of dollars of taxpayer resources. According to

► IF I GET INTO TROUBLE, CAN THE AGENCY PAY MY DEFENSE?

Don't count on it. To provide a defense in a criminal action, for example, the agency must find that:

1. The criminal action or proceeding is brought on account of an act or omission in the official's service to the public entity;
2. Such defense would be in the best interests of the public entity; and
3. The individual's actions were in good faith, without actual malice and in the apparent interests of the public entity.³¹

If the issue is the failure to disclose financial interests, for example, it may be particularly difficult for the agency to make the last finding—that the failure was in the apparent interests of the public entity. Moreover, even if the agency could make these findings, it doesn't have to. There may be strong political pressures not to.

Similarly, an agency may refuse to provide a defense in a civil action if it finds the actions in question related to corruption or fraud.³² Also, public agencies are not responsible for damage awards designed to punish or make an example of someone.³³

Note that, in these situations, the agency's attorney is not an individual public official's attorney, with attendant protections for attorney-client confidences. The agency attorney's obligations are to the entity as a whole — not to any one official in that agency.³⁴

CONFLICT OF INTEREST

Governing Board Special Meeting
February 20, 2013

Contractual Conflicts of Interest

Government Code § 1090. Conflicts of interest contracts, sales and purchases

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.

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.

Government Code § 1090.1. Acceptance of commissions for placement of insurance

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

Government Code § 1091. Remote interest of officer or member

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of

employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

Government Code § 1091.4. Conditions giving rise to a remote interest by an officer or member who has a financial interest in a contract

(a) As used in Section 1091, "remote interest" also includes a person who has a financial interest in a contract, if all of the following conditions are met:

(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.

(2) The contract is for either of the following:

(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.

(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.

(3) The person did not participate in the formulation of the contract on behalf of the district.

(4) At a public meeting, the governing body of the district, after review of written

documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price and that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.

(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

Government Code § 1091.5. Interests not constituting an interest in a contract

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is

disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.

(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

(13) That of an officer, employee, or member of the Board of Directors of the California Housing

Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:

(A) The loan product or program is or may be originated by any lender approved by the agency.

(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

Government Code § 1097. Penalty for violations

Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Margaret M. Merchat

Attorneys

Janna L. Lambert
Nancy L. Klein
Marko H. Fong
Adam S. Ferber
Carl D. Corbin
Patrick C. Wilson
Virginia A. Riegel
Loren W. Soukup

*A Joint Powers Authority serving school and
college districts throughout the state with offices in
Capitola, Eureka, Hayward, San Rafael and Santa Rosa*

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
(707) 578-0517 Fax
santarosa@scslscal.org

*Employer-Employee
Relations Coordinator*
Robert S. Latchaw

Of Counsel
Joseph C. Kinkade
Susanne K. Reed
Noel J. Shumway

LEGAL UPDATE

October 15, 2008

To: Presidents/Superintendents, Member Community College Districts

From: Patrick C. Wilson, Senior Associate General Counsel ^{pcw}

Subject: Issues Relating to District Employment of the Spouse of a Board Member
Memo No. 11-2008(CC)

With an election approaching, there have been a number of inquiries regarding the legal issues that arise when the spouse of a district employee seeks election to the district's governing board.

CONCLUSION

Pursuant to Government Code §1090, a long-term employee whose spouse is appointed to or elected to the governing board may not be promoted by the board. The spouse of a new employee (less than one year at the district) may not be elected or appointed to the board unless the other spouse resigns first. In other situations when §1090 is inapplicable, the board member must abstain from any board matter that uniquely affects the spouse.

ANALYSIS

Employment of the Spouse of a Board Member

A. Initial Employment

Government Code section 1090 provides as follows:

"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.

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."

Section 1090, when applicable, prohibits the Board from entering into the prohibited contract: the governing board simply cannot act on the matter. The provisions of the statute cannot be avoided by having the financially interested board member abstain from participating in the contract.

Section 1090 has been construed to prohibit a spouse from being *initially* employed by a district while the other spouse is a member of the board. Thus, California Attorney General Opinion 97-807 concluded that "the spouse of a member of the governing board of trustees of a school district may not be hired by the district, whether as a substitute teacher or in any other employment capacity." This conclusion is based on the fact that, since California is a community property state, one spouse necessarily has a financial interest in the earnings of the other spouse.

B. Ongoing Employment

Government Code section 1091.5(a)(6) provides as follows:

"(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

* * *

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or office holding if his or her spouse's employment or office holding has existed **for at least one year prior to his or her election or appointment.**" (Emphasis added.)

Thus, if a spouse has been an employee of the district for at least one year prior to the election to the board of the other spouse, then the spouse running for the board may be elected or appointed to and serve on the governing board. However, even in this circumstance, the board is nonetheless limited in its ability to affect the employment status of the employee spouse.

C. Restrictions Regarding the Change of Employment Status of an Ongoing Employee Whose Spouse is a Board Member

The exception to section 1090 cited above, which permits a board member to assume office so long as his or her spouse has been an employee for at least one year prior to the election, is narrowly construed. The governing board is prohibited from acting to change the employment status of the employee spouse in most instances. For example:

- the board cannot promote the spouse while the other spouse is a board member. *Thorpe v. Long Beach Community College District* (2000) 83 Cal. App. 4th 655.
- the spouse, if a substitute teacher when the other spouse joins the board, cannot be made a temporary or probationary employee by the board. 69 Ops.Cal.Atty.Gen. 255 (1986).
- the board may not approve a selective reclassification of a classified employee's position if the employee's spouse is a member of the board and the reclassification makes the employee eligible for a salary increase. 84 Ops.Cal.Atty.Gen. 175 (2001).
- the board may not avoid these provisions by adopting a policy to delegate to the district superintendent the authority to contract on behalf of the board since the Education Code requires that the board ratify the actions of the superintendent regarding contracts. 87 Ops.Cal.Atty.Gen. 9 (2004).

D. Political Reform Act of 1974

Government Code section 87100 of the Political Reform Act provides 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."

Government Code section 87103 provides, in part, as follows:

"A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official

status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.”

Thus, when section 1090 is inapplicable, the Political Reform Act requires that the board member abstain from any discussion or vote on any matter that uniquely affects the spouse.

Office of the Attorney General
State of California
Opinion No. 03-508

*I February 11, 2004

THE HONORABLE GREG AGHAZARIAN
MEMBER OF THE ASSEMBLY

THE HONORABLE GREG AGHAZARIAN, MEMBER OF THE ASSEMBLY, has requested an opinion on the following question:

May the governing board of a school district avoid the conflict of interest provisions of Government Code section 1090 by adopting a policy delegating to the district superintendent its authority to contract on behalf of the district and thus allow the superintendent to approve a promotion for the spouse of a member of the governing board as well as lease school equipment from a firm that employs the spouse of another board member?

CONCLUSION

The governing board of a school district may not avoid the conflict of interest provisions of Government Code section 1090 by adopting a policy delegating to the district superintendent its authority to contract on behalf of the district and thus allow the superintendent to approve a promotion for the spouse of a member of the governing board as well as lease school equipment from a firm that employs the spouse of another board member.

ANALYSIS

In 1988, a school district hired an employee as a noon aide at an elementary school and thereafter granted her various promotions to secretarial and administrative positions. In 1996, the employee's spouse was elected to the governing board of the district. In 2002, the spouse of another board member went to work for a firm that leased copy machines to the district. The firm has more than 10 employees, and the leases have been executed over the prior eight years without competitive bidding. The spouse has no ownership interest in the firm and has not been personally involved in the leasing of equipment by the firm.

The district's governing board has delegated to the district superintendent its authority to approve promotions and purchase and lease school equipment under the terms of Education Code section 35161, which provide:

"The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board, and may delegate to an officer or

employee of the district any of those powers or duties. The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated.”

The question presented for resolution is whether the district superintendent may exercise his delegated authority to approve a promotion for the spouse of the one board member and lease equipment from a firm that employs the other board member's spouse without violating the conflict of interest provisions of Government Code section 1090 [FN1] We conclude that the conflict of interest prohibition cannot be avoided by the board's delegation of its authority to the superintendent.

Section 1090 states in part:

*2 “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.”

The prohibition of section 1090 is specifically applicable to the members of the governing board of a school district. (Ed. Code, § 35233.)

The purpose of section 1090 “is to remove or limit the possibility of any personal influence, either directly or indirectly which might bear upon an official's decision, as well as to void contracts which are actually obtained through fraud or dishonest conduct.” (Stigall v. City of Taft (1962) 58 Cal.2d 565, 569; see Thorpe v. Long Beach Community College Dist. (2000) 83 Cal.App.4th 655, 659; Fraser-Yamor Agency, Inc. v. County of Del Norte (1977) 68 Cal.App.3d 201, 215.)

Section 1090, when it applies, stands as an absolute bar to entering into the prohibited contract. For example, the prohibition cannot be avoided by having the board member with the proscribed interest abstain from participating in the decision-making process. (Thomson v. Call, *supra*, 38 Cal.3d at p. 649; Fraser-Yamor Agency, Inc. v. County of Del Norte, *supra*, 68 Cal.App.3d at pp. 211-212.)

It is well established that the financial interest of one spouse will be attributed to the other spouse for purposes of section 1090. (Thorpe v. Long Beach Community College Dist., *supra*, 83 Cal.App.4th at p. 659; 85 Ops.Cal.Atty.Gen. 34, 36 (2002); 69 Ops.Cal.Atty.Gen. 257, 258, fn. 5 (1986).) Further, an employee of a school district has a contractual relationship with the governing board of the district concerning the terms of that employment. (Thorpe v. Long Beach Community College Dist., *supra*, 83 Cal.App.4th at p. 659; 84 Ops.Cal.Atty.Gen. 175, 177 (2001); 69 Ops.Cal.Atty.Gen. 102, 106 (1986).) While a school employee may remain employed after his or her spouse becomes a member of the school district board, section 1090 prohibits the district from promoting the employee if the promotion requires the approval of the board. (§ 1091.5, subd. (a)(6); Thorpe v. Long Beach Community College Dist., *supra*, 83 Cal.App.4th at pp. 663-664; 84 Ops.Cal.Atty.Gen., *supra*, at pp. 178-180; 80 Ops.Cal.Atty.Gen. 320, 321-322 (1997); 69 Ops.Cal.Atty.Gen. 255, *supra*, at p. 260.) [FN2]

Similarly, a school district board generally may not lease school equipment from a firm that employs the spouse of a board member. (See 85 Ops.Cal.Atty.Gen. 34, 35-36 (2002); 81 Ops.Cal.Atty.Gen. 169, 171-172 (1998).) Limited exceptions apply where certain “remote interests” and “noninterests” have been defined as not coming within section 1090's prohibition.

(§§ 1091, 1091.5.) Under the particular circumstances presented here, the board member's interest would not qualify as either a remote interest under the provisions of section 1091 or a noninterest under the provisions of section 1091.5[FN3]

*3 Nonetheless, it is contemplated that the promotion approval and lease agreement would not be granted or executed by the school district board itself, but rather by the district superintendent under his statutorily delegated authority. May section 1090's prohibition be avoided by the board if it is the district superintendent who enters into the contracts pursuant to Education Code section 35161?

Each school district in the state is under the control of a governing board. (Ed. Code, § 35010, subd. (a).) A school board may act in any manner that is not inconsistent with state law and not inconsistent with the purpose for which school districts are established. (Cal. Const., art. XIV, § 14; Ed. Code, § 35160.) The Legislature has given express authority to school boards to enter into contracts for employment (Ed. Code, §§ 45109 [non-merit-system districts], 45241 [merit-system districts]) and the purchase of goods and services (Ed. Code, §§ 17595-17606; Pub. Contract Code, § 20111; see 71 Ops.Cal.Atty.Gen. 266, 268 (1988).)

The Education Code thus provides that a school district's authority to enter into contracts, whether related to employment or the purchase or lease of equipment, remains vested in the governing board; and when a district superintendent or other administrator participates in the making of the contract, he or she does so not independently but on behalf of the board. (§§ 35161, 35035; see §§ 17595 et seq.; California Sch. Employees Assn. v. Personnel Commission (1970) 3 Cal.3d 139, 142, 143; Personnel Com. v. Barstow Unified School Dist. (1996) 43 Cal.App.4th 871, 878, 879-880; see Main v. Claremont Unified School Dist. (1958) 161 Cal.App.2d 189, 204, disapproved on another ground in Barthuli v. Board of Trustees (1977) 19 Cal.3d 717.)

Moreover, the Education Code requires that every official action taken by the governing board-including contracts-be affirmed by a formal vote of the members of the board. (Ed. Code, §§ 17604, 35163.) And when the board affirms an act that has been delegated to a subordinate, the act becomes the act of the board itself. (See California Sch. Employees Assn. v. Personnel Commission, supra, 3 Cal.3d at p. 145.) Indeed, a contract that has not been ratified or approved by the governing board is invalid. (El Camino Community College Dist. v. Superior Court (1985) 173 Cal.App.3d 606, 616; Santa Monica Unified Sch. Dist. v. Persh (1970) 5 Cal.App.3d 945, 952.) [FN4]

In light of these authorities, we find that a governing board may not avoid the conflict of interest provisions of section 1090 by adopting a policy delegating its authority to the district superintendent to enter into contracts. (See Thomson v. Call (1985) 38 Cal.3d 633, 649.) While clearly the governing board may delegate its contractual authority to the district superintendent (Ed. Code, §§ 17595-17606, 35161, 35035), the superintendent's contractual powers remain subject to the review and control of the governing board as a matter of law. As Education Code section 35161 itself states: "The governing board, however, retains ultimate responsibility over the performance of those powers and duties so delegated." Any policy that purports to divest the governing board of its responsibility to contract on behalf of the district would be contrary to

state law. (Cal. Const., art. XIV, § 14; Ed. Code, §§ 35010, subd. (b), 35160; see California Sch. Employees Assn. v. Personnel Commission, supra, 3 Cal.3d at pp. 143-144.)

*4 The present circumstances may be distinguished from those in certain of our prior opinions where we have concluded that a public agency board may avoid violating section 1090 when the contract is made by an "independent" government official who does not have a conflict of interest. For example, in 57 Ops.Cal.Atty.Gen. 458 (1974), we concluded that a county purchasing agent, who had independent statutory authority to contract on behalf of the county, could contract with a county supervisor to provide tow truck services to the county. (See also 21 Ops.Cal.Atty.Gen. 90 (1953); 14 Ops.Cal.Atty.Gen. 78 (1949); 3 Ops.Cal.Atty.Gen. 188 (1944).) "The significant fact in each of these opinions is the independent status of the party contracting on behalf of the government agency." (21 Ops.Cal.Atty.Gen., *supra*, at p. 92.) That fact is not present here, since a district superintendent's authority to contract remains subject to the review and ratification of the governing board under state law.

We conclude that the governing board of a school district may not avoid the conflict of interest provisions of section 1090 by adopting a policy delegating to the district superintendent its authority to contract on behalf of the district and thus allow the superintendent to approve a promotion for the spouse of a member of the governing board as well as lease school equipment from a firm that employs the spouse of another board member.

Bill Lockyer
Attorney General

Susan Duncan Lee
Deputy Attorney General

[FN1]. All references hereafter to the Government Code are by section number only.

[FN2]. The board's approval is normally required when there is a change of the employee's job description, title, and compensation as distinguished from "a regular salary or merit step increase that typically requires no direct board action." (Thorpe v. Long Beach Community College Dist., supra, 83 Cal.App.4th at p. 663.)

[FN3]. Of course, any leases executed by the district before section 1090 became applicable, because they were entered into either before the one spouse became a board member or before the other spouse became an employee of the firm, would be valid. (See 84 Ops.Cal.Atty.Gen. 34, 35-38 (2001).)

[FN4]. Education Code section 17606 provides an exception to this general rule for certain transactions having a value of less than \$100.

 [West Reporter Image \(PDF\)](#)

38 Cal.3d 633, 699 P.2d 316, 214 Cal.Rptr. 139

View Cal./Cal.App. version

Supreme Court of California.
Bruce THOMSON et al., Plaintiffs and Appellants,
v.
Hubert CALL et al., Defendants and Appellants;
City of Albany et al., Defendants and Respondents.

S.F. 24693.
May 23, 1985.
As Modified July 20, 1985.
Rehearing Denied July 29, 1985.


City resident brought taxpayers' suit challenging validity of contract whereby corporation which sought use and building permits for high-rise residential project agreed to purchase parcel of land from city council member and conveyed parcel to city for use as public park in exchange for permits. Defendants included the city, city council member and his wife, corporation and other corporate defendants. The Superior Court, Alameda County, Robert H. Kroninger, J., found that city council member and his wife were liable, and city council member and his wife appealed. The Supreme Court, Kaus, J., held that: (1) city council member violated statute forbidding city officers from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members, and (2) city was entitled to retain land and recover purchase price plus interest from city council member and his wife.

Affirmed.


Opinion 150 Cal.App.3d 354, 198 Cal.Rptr. 320, vacated.

Mosk, J., filed a concurring and dissenting opinion.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)


 268 Municipal Corporations

 268VII Contracts in General

 268k231 Individual Interest of Officer

 268k231(1) k. In general. Most Cited Cases

 316H Public Contracts  [KeyCite Citing References for this Headnote](#)

 316HI In General

 316Hk107 k. Individual interest of contracting officer or body; conflict of interest. Most Cited Cases

Under statute forbidding city officers from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members, proscribed interest includes any direct interest such as that involved when officer enters directly into contract with body of which he is a member. West's Ann.Cal.Gov.Code § 1090.

[2]  [KeyCite Citing References for this Headnote](#)

48 Cal.App.4th 289, 55 Cal.Rptr.2d 555, 111 Ed. Law Rep. 870, 96 Cal. Daily Op. Serv. 5920, 96 Daily Journal D.A.R. 9647

Judges and Attorneys

Court of Appeal, Third District, California.
The PEOPLE, Plaintiff and Respondent,
v.
Louis HONIG III, Defendant and Appellant.

No. C015357.
Aug. 7, 1996.
Rehearing Denied Sept. 4, 1996.

State Superintendent of Public Instruction (defendant) was convicted in the Superior Court, Sacramento County, No. CR111247, James L. Long, J., of making official contracts in which he had financial interest, arising from written agreement with school districts whereby state provided funds for payment of district employees while they were on leaves of absence in order to work for nonprofit corporation that paid rent to defendant and substantial salary to his wife. Defendant appealed. The Court of Appeal, Sparks, J., held that: (1) evidence supported finding that contracts violated conflict-of-interest statutes; (2) financial interest proscribed by conflict-of-interest statute is not required to be "material" or "direct"; (3) knowledge is implied element of "willful" violation of conflict-of-interest statutes; (4) defendant was not entitled to present evidence of value of contracts to state; (5) transactions at issue were "contracts" rather than "grants"; (6) Attorney General had authority to prosecute action; and (7) trial court had discretion to impose restitution as condition of probation, but was not required to do so.

Affirmed in part, set aside and remanded with directions in part.

Nicholson, J., issued concurring and dissenting opinion.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k110 k. Duties and performance thereof in general. Most Cited Cases

Conflict-of-interest statutes are based upon truism that person cannot serve two masters simultaneously. West's Ann.Cal.Gov.Code §§ 1090, 1097.

[2] ☒ KeyCite Citing References for this Headnote

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k110 k. Duties and performance thereof in general. Most Cited Cases

Conflict-of-interest statutes are concerned with what might have happened, rather than merely what actually happened; they are aimed at eliminating temptation, avoiding appearance of impropriety, and assuring government of officer's undivided and uncompromised allegiance. West's Ann.Cal.Gov.Code §§ 1090, 1097.

[3] ☒ KeyCite Citing References for this Headnote

Conflicts of Interest under the Political Reform Act

Government Code § 87100. Public officials; state and local; financial interest

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.

Government Code § 87103. Financial interest in decision by public official

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Government Code § 87200. Applicability

This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the

High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.



Fair Political Practices Commission

Top 3 Searches: form 700 • political reform act • independent expenditures

19

[HOME](#) [CONTACT LIST](#) [FILING OFFICERS](#) [ETHICS](#) [PRESS CENTER](#) [ENFORCEMENT](#)

Print

Can I Vote? Overview of the Conflicts Laws

"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

- You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, and
- a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).

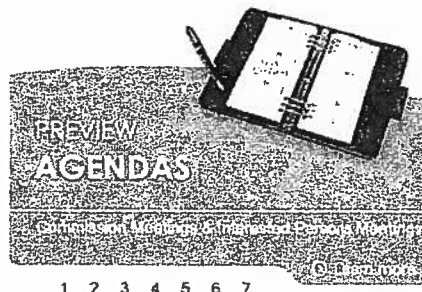
Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most, if not all, mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.
- Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.
- The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.

Here are the eight steps:

- Step One: Are you a "public official" within the meaning of the rules?
- Step Two: Are you making, participating in making, or influencing a governmental decision?
- Step Three: What are your economic interests? That is, what are the possible sources of a



FPPC Toll-Free

1-866-ASK-FPPC (1-866-275-3772)
 Monday and Tuesday
 9:00am - 11:30am & 1:30pm - 3:30pm
 Wednesday and Thursday
 9:00am - 11:30am

Conflict of Interest

[Adopting a Conflict-of-Interest Code](#)
[Agency Conflict-of-Interest Code Biennial Notice](#)
[Can I Vote?](#)
[Holding 2 Positions](#)
[Exemptions from Conflict-of-Interest Codes](#)



financial conflict of interest?

- Step Four: Are your economic interests directly or indirectly involved in the governmental decision?
- Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?
- Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
- Step Seven: If you have a conflict of interest, does the "public generally" exception apply?
- Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

PUBLIC OFFICIAL

Step One : Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality - you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are toughest to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

GOVERNMENTAL DECISION

Step Two : Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- Make a governmental decision (for example, by voting or making an appointment).
- Participate in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- Influence a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion or judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict - Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Regulations section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must publicly identify in detail the economic interest that creates the conflict, step down from the dais and must then leave the room. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

- The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.
- Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she may not sit in the public area and listen to the discussion.
- Supervisor Robertson rents a home to a county employee. The county employee is the subject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him. He may not attend the closed session or obtain any non-public information from the closed session.

ECONOMIC INTERESTS

Step Three : What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income, a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total \$440 or more within 12 months prior to the decision about which you are concerned.
- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

DIRECTLY OR INDIRECTLY INVOLVED?

Step Four : Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in " and therefore directly affected by " a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations if you have questions as each case arises. Note also that the next step in the analysis " applying the right standard to determine whether an impact is material " depends in part on whether the interest is directly or indirectly involved. The regulations, Sections 18704 through 18704.5, and other helpful information can be found on the FPPC's web site, <http://www.fppc.ca.gov>.

MATERIALITY (IMPORTANCE)

Step Five : What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

DOES A CONFLICT OF INTEREST RESULT?

Step Six : Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"PUBLIC GENERALLY" EXCEPTION

Step Seven : If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific segments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.10.

ARE YOU REQUIRED TO PARTICIPATE?

Step Eight : Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

CONCLUSION

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much, if not more, on the facts of your particular situation as it does on the law.
- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.
- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

An important note

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code 7781000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line "1-866-ASK-FPPC" as far in advance as possible.

How to Contact Us:

- Mail:
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
- Website:
www.fppc.ca.gov
- Telephone:

Toll-free advice line: 1-866-ASK-FPPC(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line: 1-800-561-1861

(revised 7-27-05)

California Fair Political Practices Commission

Frequently Asked Questions: Form 700 Disclosure

The FAQs listed below are selected from questions often asked of the FPPC. Please use the FPPC toll free advice line or email advice service for specific guidance. Keep in mind that the Form 700 is a public document and many agencies now post the forms on agency websites.

General Questions

1. Q. Do all officials have the same disclosure requirements for Form 700 reporting?
 - A. No. The majority of individuals that file Form 700 must do so by following the rules set forth in the agency's conflict-of-interest code. Before completing the Form 700, be sure you know the disclosure category for your position. For example, since job duties differ from agency to agency, an analyst for one agency may not have the same reporting requirements as an analyst working for another agency.

Officials listed in Gov. Code Sec. 87200 (e.g. boards of supervisors, city council members, planning commissioners, elected state officials, etc.), must report all investments and income as well as real property interests in their agency's jurisdiction.
2. Q. Do I have to read all of the information before completing the Form 700?
 - A. Each individual must verify the Form 700's content under penalty of perjury. Therefore, all effort must be made to understand the instructions. When necessary, contact the FPPC for specific, personal guidance. Immunity from an enforcement action can only be provided to you when you write to request formal written advice.
3. Q. Where do I file my Form 700?
 - A. Local and state officials file with their agency. Only retired judges serving on assignment and legislative staff file the Form 700 directly with the FPPC. Certain statements then are forwarded to the FPPC by the state or local agency.
4. Q. If I postmark my Form 700 by the due date, is it considered filed on time?
 - A. Yes.
5. Q. I hold various positions for which I need to file a Form 700. Am I required to file a statement for each position?
 - A. Yes, however you may complete an expanded statement covering the disclosure requirements for all positions. Be sure to file an originally signed statement with each filing officer.
6. Q. Do filers need to complete the entire Form 700 when they leave office?
 - A. Yes. All of the same schedules are required for the assuming office, the annual, and the leaving office filings.

California Fair Political Practices Commission
Frequently Asked Questions:
Form 700 Disclosure

7. Q. I was recently hired into a newly created management position in my agency's Information Technology Department. How do I complete the Form 700?
- A. Because this is a newly created position, the law requires that you report economic interests under the broadest disclosure category in the agency's conflict-of-interest code unless you are provided a written document stating otherwise. Generally, you will file the Form 700 with the agency within 30 days of the date of hire.
8. Q. Are board members of a nonprofit public benefit corporation that operates two California charter schools officials who must file Form 700s?
- A. Yes. Members of charter schools are officials and must file Form 700s.

Income Questions

9. Q. Do I have to report my spouse's or registered domestic partner's income?
- A. Generally, you must report 50% of your spouse's salary disclosing the employer's name as the source of income on Schedule C. If your spouse or registered domestic partner is self-employed, report the business entity on Schedule A-2. Remember: governmental salary is never reported. You must check your disclosure category, if applicable.
10. Q. I own a business in which I have received income from clients of \$10,000 or more, but their names are confidential. Must I disclose their names on Schedule A-2, Part 3?
- A. Yes. However, Regulation 18740 (available at www.fppc.ca.gov) provides a procedure in which a client's name may not be disclosed if disclosure of the name would violate a legally recognized privilege under California law. Requests for exemptions must be submitted to the FPPC Executive Director.

Investment Questions

11. Q. All my investment decisions are made by my account manager and I have no input into where my funds are invested. Am I required to disclose the investments contained in this account?
- A. Yes, you must disclose on Schedules A-1 or A-2 any investments worth \$2,000 or more in a business entity located or doing business in your jurisdiction. Also check your conflict-of-interest code, if applicable, to determine if the investment is reportable.
12. Q. I have funds invested in a retirement account. Must I report the investments held in the retirement account?
- A. Investments held in a government defined-benefit pension program plan (i.e. CalPERS) are not reportable. However, assets held in some retirement accounts such as a defined contribution plan 401(k) must be disclosed if the account holds such items as common stock. You may have to contact your account manager for assistance in determining what assets are held in your account.

California Fair Political Practices Commission
Frequently Asked Questions:
Form 700 Disclosure

13. Q. My spouse and I have a living trust that holds rental property in my jurisdiction, our primary residence, and investments in diversified mutual funds. How do I disclose this trust?
- A. Disclose the name of the trust, the rental property and its income on Schedule A-2. Your primary residence, if used exclusively as your personal residence, and investments in diversified mutual funds registered with the SEC are not reportable.

Real Property Questions

14. Q. Is my personal residence reportable?
- A. If you are required to disclose real property, pursuant to your agency's conflict-of-interest code, any personal residence occupied by you or your family (including a vacation home) is not reportable if used exclusively as a personal residence. However, a residence for which you claim a business deduction is reportable if the portion claimed as a tax deduction is valued at \$2,000 or more. The amount of the tax deduction is not relevant. In addition, any residence for which you receive rental income is reportable if it is located in your jurisdiction.
15. Q. I have to report my personal residence and I am not comfortable listing the street address. Do I have any other options?
- A. Yes. Instead of listing the street address, you may list the assessor's parcel number.

Enforcement Question

16. Q. What is the penalty for not filing my Form 700 on time?
- A. A fine of \$100 may be assessed. In addition, if your failure to file is referred to the FPPC Enforcement Division, the fine will increase up to a maximum of \$5,000 per violation. In 2010, the FPPC collected more than \$25,000 in fees for late statements.

CA FPPC Adv. A-08-095, 2008 WL 2782930 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission
*1 MR. JOHN A. SHUPE

FPPC File No. **A-08-095**

July 16, 2008

Mr. John A. Shupe
Shupe and Finkelstein
177 Bovet Road, Suite 600
San Mateo, California 94402-3191

Re: Your Request for Advice

Dear Mr. Shupe:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act"). [FN1] You are acting General Counsel for the Foothill DeAnza Community College District. District Trustee Betsy Bechtel has authorized you to request advice from the Commission on the questions below.

This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, Commission advice is limited to obligations arising under the Act. We do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTIONS

- ① Does Trustee Bechtel, who is a director of a local private bank, have a disqualifying conflict of interest under Government Code Section 87100 if she participates in a community college district governing board vote to ratify a district check payable to that bank?
- ② May Trustee Bechtel participate in routine votes to ratify district warrants including payments to the private bank for amounts owing to the bank by virtue of contracts previously entered into by the bank and the district?

CONCLUSIONS

1. Ms. Bechtel has a disqualifying conflict of interest under the Act. She may not participate in the Board's vote to ratify a community college district check payable to the private bank.
2. Ms. Bechtel has a disqualifying conflict of interest and may not participate in governing board votes to approve payments to the bank made pursuant to a previously agreed upon contract.

FACTS [FN2]

Ms. Bechtel is a member of the board of trustees for the Foothill DeAnza Community College District, the boundaries of which cover several communities in Santa Clara County. Trustee Bechtel is a retired employee of a private bank. She owns stock in that bank which she derived from that employment,

which constitutes less than three percent of the stock of the bank. She receives dividends from that stock which constitute less than five percent of her total annual income. She also receives pension payments from the bank which constitute more than five percent of her total annual income. In addition, the Trustee holds a seat on the board of directors of the private bank, but is not on the bank's loan committee.

When the bank's proposed contract with the district came up for action by the governing board in 2006 Trustee Bechtel recused herself. From time to time, however, warrants are presented for ratification by the governing board, occasionally including warrants for payments to the bank for services rendered to the District under the same 2006 contract.

***2** Your first question involves the governing board's vote to ratify a district check payable to the private bank described above. The district does not do its banking at this institution. However, one of the contractors which the district selected to perform construction work on district property chose the bank as the depository of the retainage sums withheld by the district from payment to the contractor. The district check which would be the subject of a Governing Board vote to ratify is payment of some or all of the retainage money owed by the district to the contractor. The bank will hold funds in an interest bearing account until the district and the contractor agree that the retainage should be released. At that point the bank will pay the money over to the contractor.

Your second question is whether the Trustee's disqualification continues with respect to board actions to approve payments to the bank where the obligation to pay is based on the 2006 contract. Approximately every two months the governing board is presented with a consent agenda item to "approve all warrants." "Warrants" are district payments to employees for wages and salary and to vendors for services or goods sold. In most cases the payments have already been made, i.e., the checks have already been signed by the appropriate district administrator and mailed out to the vendor. "Ratification" in this sense is an after the fact approval required by Education Code Sections 81655 and 81656. The Trustee had a disqualifying conflict of interest with respect to the previous board vote on the 2006 contract with the bank. The Trustee removed herself from that matter in the fashion required by law. However, the Trustee questions the need to continue disqualifying herself from later consent agenda votes to ratify warrants to the bank, since the underlying contract has already been formed, is valid, and the payment which is to be ratified is legally owed.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "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." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted an eight-step analysis for determining whether an official has a disqualifying conflict of interest. (Regulation 18700(b).)

Step 1. Is the Trustee a public official?

Section 82048 defines a public official as "every member, officer, employee or consultant of a state or local government agency." We have advised that a community college district is a local government agency. (*Washington Advice Letter*, No. A-02-034a.) As a member of the Foothill DeAnza Community College District, Ms. Bechtel is a public official subject to the Act's conflict-of-interest rules. (Section 82041.)

Step 2. Is the Trustee making a governmental decision?

***3** A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course

of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) In voting to approve a district check payable to a private bank, Trustee Bechtel is making a governmental decision as defined in Regulation 18702.1. Despite the facts that the governing board of the community college district regularly votes to ratify district warrants on its consent agenda, and that the ratification is "after the fact" approval of checks already mailed by the district administrator, the approval of warrants is making a governmental decision within the meaning of Regulation 18702.1. We have advised that the routine approval of warrants constitutes making a governmental decision in the *Wilder* Advice Letter, No. A-00-018, the *Buck* Advice Letter, No. A-98-056, and the *Loeffler* Advice Letter, No. A-96-337. [FN3]

Step 3. The Trustee's relevant economic interests.

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from an official's economic interests, as described in Section 87103 and Regulations 18703-18703.5. The economic interests relevant to the Trustee are:

- An economic interest in a *business entity* in which he or she has a direct or indirect investment of \$2,000 or more, or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(a) and (d); Regulation 18703.1(a)-(b).)
- An economic interest in any *source of income*, including promised income, totaling \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)

Trustee Bechtel holds the position of director of a private bank. As a retired employee of the bank, she owns stock in the bank, receives dividend income, and receives pension payments from the bank which constitutes more than five percent of her annual income. Under the Act, the Trustee has an economic interest in the private bank because she is a director of the bank. (Section 87103(d) and Regulation 18703.1(b).) The bank may also qualify as an economic interest of hers because she has an investment in the bank's stock which is presumably worth more than \$2,000 and she receives income from the bank. [FN4] (Sections 87103(a) and (c); Regulations 18703.1 and 18703.3.)

Step 4. Will the Trustee's economic interests be *directly* or *indirectly* involved in the governmental decision?

Under Regulation 18704.1(a), a person, including business entities and sources of income, is *directly* involved in a decision before an official's agency when that person, either directly or by an agent:

- "(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
- *4 "(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person."

The private bank is *directly* involved in the Governing Board's decisions to approve payments to that bank. (Regulation 18704.1(a).) (Regulation 18704.1(a); *Wilder* Advice Letter, No. A-00-018; *Jeffries* Advice Letter, No. A-99-032; *Buck* Advice Letter, No. A-98-056; and *Loeffler* Advice Letter, No. A-96-337.)

Step 5. What materiality standard applies?

A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's economic interest is *material*. (Regulation 18700(a).) Different materiality standards apply depending on the type of economic interest and whether that interest is directly or indirectly involved in the agency's decision. Under Regulations 18705.1(b) and 18705.3(a), the financial effect of a governmental decision on a business entity that is *directly* involved in a governmental decision is presumed to be material. [FN5]

Step 6. Is it reasonably foreseeable that the financial effect of the governmental decisions on the Trustee's economic interests will meet the applicable materiality standard?

A material financial effect on an economic interest is "reasonably foreseeable" if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) Under the Act and regulations, it is substantially likely that the governing board's decision to approve a payment to the private bank will have a material financial effect on the bank of which Ms. Bechtel is a director. Consequently, the Trustee has a conflict of interest and must disqualify herself from voting to approve warrants payable to the bank. As a practical matter, it would be best to remove from the consent calendar the items for which the Trustee is disqualified. This would enable the Trustee to participate in decisions regarding the consent calendar.

We have provided similar advice concerning the payment of warrants in the past. The *Wilder* Advice Letter, No. A-00-018, advised that a school district board member had a disqualifying conflict of interest in district decisions about the approval of the payment of warrants for contracts with Xanthos, a nonprofit corporation where she worked. The *Buck* Advice Letter, No. A-98-056, advised that a water district director may not participate in governmental decisions to approve the payment of warrants to the Water Education Foundation which was a source of income to him because his wife was a salaried staff member there. The *Loeffler* Advice Letter, No. A-96-336, concluded that a councilmember employed by P.G.&E. and owning more than \$10,000 of stock in P.G.&E. may not participate in votes on routine warrant payments from the city to P.G.&E. for electrical and gas utility service. The *Kohn* Advice Letter, No. A-93-052 stated that councilmembers with investments of \$10,000 or more in GTE may not participate in decisions on the consent calendar regarding the payment of bills to GTE for telephone service provided to the city. In the *Williamson* Advice Letter, No. I-92-628, we advised a councilmember employed as vice president of Simi Valley Bank, where the city banked, that she could not authorize a warrant payable to the bank, though she could approve warrants drawn on the bank.

Steps 7 and 8. Do the "public generally" or the "legally required participation" exceptions apply?

***5** The facts presented do not indicate that the public generally rule contained in Regulation 18707, or the narrow exception contained in Regulation 18708 for situations where officials are legally required to participate in a decision despite having a conflict of interest, apply here.

If you have other questions on this matter, please contact me at (916) 322-5660.
Sincerely,

Scott Hallabrin
General Counsel

By: Hyla P. Wagner
Senior Counsel
Legal Division

FN1. The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FN2. The additional facts you provided on July 8, 2008 are incorporated into this letter.

FN3. Only in the *Jeffries* Advice Letter, No. A-99-032, where the Board of a Water District

reviewed the bills/invoices that staff had paid, but the board of directors did not formally "approve" the expenditures and the warrant register was listed as a "receive and file" matter on the board's agenda, did we find that reviewing the bills paid by staff did not constitute making or participating in a governmental decision. In that case no action was required by the Board members and they did not comment on or question the payment of the bills.

FN4. The Act defines "income" as a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent or proceeds from any sale. (Section 82030 (a).) With respect to the dividend and pension income the trustee receives, the term "income" does not include dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission. (Section 82030(b)(5).) Pension payments fall within the Act's definition of income unless they are received under a defined benefits pension plan qualified under Internal Revenue Code Section 401(a). (Section 82030(b)(11).)

FN5. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.

CA FPPC Adv. A-08-095, 2008 WL 2782930 (Cal.Fair.Pol.Prac.Com.)

END OF DOCUMENT

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works

CA FPPC Adv. I-07-025, 2007 WL 867116 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission
*1 EUGENE WHITLOCK

FPPC File No. **I-07-025**

March 12, 2007

Eugene Whitlock
Deputy County Counsel
County of San Mateo
Hall of Justice and Records, 6th Floor
400 County Center
Redwood City, California 94063-1662

RE: Your Request for Informal Assistance

Dear Mr. Whitlock:

This letter is in response to your request for advice on behalf of the Honorable Julie Borden, Board Member of the Hillsborough City School District ("District"), regarding the conflict-of-interest provisions of the Political Reform Act (the "Act"). [FN1] Because the nature of your question is fact-sensitive, and thus not appropriate for formal written advice, we provide you with informal assistance. [FN2]

QUESTIONS

1. Does Board Member Borden have a conflict of interest under the Act if she makes, participates in making, or attempts to use her official position to influence the consideration or approval of a proposed plan before the District regarding renovation and construction of West Hillsborough Elementary School which is 350 feet away from her residence?
2. If Board Member Borden has a conflict of interest, would the "public generally" exception under the Act permit her to participate in the District's decisions regarding the renovation or construction of the West Hillsborough Elementary School?

CONCLUSIONS

1. Because Board Member Borden owns real property within 500 feet of West Hillsborough Elementary School, the financial effect of District decisions regarding the elementary school on the value of her residence is presumed to be material. However, this presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the Board Member's residence. Reasonable reliance on an appraisal by a disinterested and qualified real estate professional, if based on an accurate understanding of the pertinent facts and circumstances, including the factors listed in regulation 18705.2(b)(1)(A)-(C), will generally be sufficient to rebut this presumption.

2. Assuming Board Member Borden has a conflict of interest regarding decisions affecting West Hillsborough Elementary School, the "public generally" exception (Step 7) may permit Board Member Borden to participate in the decision, despite her conflict of interest, if either (1) 10% or more of all property owners or homeowners in the District, or (2) 5,000 property owners or homeowners in the District would be affected, and the governmental decisions in question would affect her economic

Interest in substantially the same manner as it would affect the significant segment identified.

FACTS

Julie Borden is a member of the Governing Board of the Hillsborough City School District ("District"). Board Member Borden owns her family's residence located at 340 Alberta Way in Hillsborough, California. It is a one-story, single family residence in a residential neighborhood. Board Member Borden's interest in her house has a value exceeding \$2,000. As indicated in an independent appraisal report by Enright & Company, Inc. [File: 07-549] dated January 2007 (the "Enright Report"), which you enclosed with your request for advice, most residences in the Board Member's immediate neighborhood have lot sizes and conditions similar to her residence.

*2 The nearest boundary of Board Member Borden's residence is 350 feet from the nearest boundary of West Hillsborough Elementary School (the "Elementary School"), one of the District's four school sites. Your letter provides no information regarding the location of any other District school campuses relative to the Board Member's house.

In November 2002, District voters approved a \$66.8 million general obligation bond measure for school renovation and construction, including work at the Elementary School. The District's Board will also consider revising their District-wide Master Plan and, specifically, a building strategy for the Elementary School. You write that the District is studying the following renovation options for the Elementary School, scheduled to commence in the summer of 2007: (1) ADA upgrades (interior and exterior), and (2) renovation of classrooms, for a total estimated cost of \$6 million.

For 2008, the District is considering adding four additional classrooms and the cost is estimated to be between \$2 million and \$4 million.

The Enright Report, on page four, states that "[b]ased on the analyses presented within this appraisal consultation report, and subject to the assumptions and limiting conditions, to follow, **it is concluded that renovation of the West Hillsborough Elementary School would not have any financial effect on the subject property.**" (Emphasis in original.) Neither the Enright Report or your letter contains information regarding, e.g., the number of property owners or residential property owners in the District, or the median residential lot size in the District.

ANALYSIS

The primary purpose of the Act's conflict-of-interest provisions is to ensure that "[p]ublic officials, whether elected or appointed, [should] perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them." (Section 81001(b).) In furtherance of this goal, section 87100 of the Act prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Determining whether a conflict of interest exists under section 87100 requires analysis of the following questions as outlined below.

Steps One and Two: Is the individual a "public official" and will he be making, participating in making, or attempting to influence a government decision?

Board Member Borden is considered a "public official" that makes, participates in making, or attempts to use her official position to influence governmental decisions in her role as a school board member.

[FN3]

Step Three: Identify the public official's economic interests.

Section 87103 provides that a public official has a "financial interest" in a governmental decision "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on any of the official's economic interests, described as follows:

- *3 • A public official has an economic interest in a business entity in which he or she has a direct or indirect investment [FN4] of \$2,000 or more (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (section 87103(d); reg. 18703.1(b));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (section 87103(b); reg. 18703.2);
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (section 87103(c); reg. 18703.3);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (section 87103(e); reg. 18703.4);
- A public official has an economic interest in his or her personal finances, including those of his or her immediate family - this is the "personal financial effects" rule (section 87103; reg. 18703.5).

Board Member Borden has an interest in her real property worth at least \$2,000. Therefore, she has an economic interest in her real property. You have not identified any other possible economic interests associated with this official.

Step Four: For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use her official position to influence.

Once an official identifies an economic interest, he or she must determine whether it is "reasonably foreseeable" that the decision(s) in question will have a "material financial effect" on that interest. First, the official must decide whether the economic interest is directly or indirectly involved in the specific decision in question. (Reg. 18700(b)(4).) Having established the degree of involvement, the official can then identify the materiality standard appropriate to the circumstances. (Reg. 18700(b)(5).) The official then knows what financial effect would be considered "material" under the Act. Finally, the official must decide whether such a material financial effect is a "reasonably foreseeable" consequence of the decision(s) at issue. (Reg. 18700(b)(6).)

Real Property: Real property in which a public official has an economic interest is directly involved in a governmental decision if, for example:

"(1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located 'within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision' if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area." (Regulation 18704.2 (a).)

*4 Board Member Borden owns a residence, the border of which is 350 feet away from the nearest boundary of the Elementary School. Thus, pursuant to regulation 18704.2 (a)(2), her real property is directly involved in the decision(s) in question.

Steps Five and Six: Materiality and Reasonable Foreseeability.

Step Five asks whether a conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's economic interest is "material." (Reg. 18700(a); see also regs. 18705 - 18705.5.)

Step Six asks whether an effect on an economic interest is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. (Reg. 18706(a).) A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.) But first, we apply the Step Five analysis.

When real property is directly involved in a governmental decision, as here, there is a presumption under the Commission's regulations that the financial effect of the decision upon the real property is material. (Reg. 18705.2(a)(1) and (a)(2).) This presumption can only be rebutted by proof that it is not reasonably foreseeable that the decisions will have any financial effect at all on the real property. (Regulation 18705.2(a)(1).) The magnitude of the financial effect is irrelevant. If there is any financial effect at all (i.e., even "one penny"), the effect is presumed to be "material."

Because Board Member Borden's residence has been found to be directly involved under Step Four of the analysis, the financial effect of the governmental decision(s) being contemplated on her residence are presumed to be material. However, the determination as to whether the materiality presumption is rebutted (and whether a material financial effect on an economic interest is reasonably foreseeable) is based upon the presence or absence of certain facts. Therefore, these are factual questions that the public official is ultimately responsible to decide.

An appraisal by a disinterested and qualified real estate professional, based upon an accurate understanding of all pertinent facts and circumstances, including those listed as factors in regulation 18705.2(b)(1)(A)-(C), [FN5] will generally be considered a good faith effort by a public official to assess the financial effect of a decision on his or her real property, sufficient to rebut the presumption of the regulation 18705.2(a)(1). (*Wainwright* Advice Letter, No. A-03-179; *Wallace* Advice Letter, No. A-03-069; *Vadon* Advice Letter, No. A-02-080.) The Act does not require a theoretically exhaustive or perfect appraisal. (*Jenkins* Advice Letter, No. A-99-153.) The presumption can be rebutted only when the appraisal concludes that there will be no financial effect on the official's real property, as the appraiser has concluded in Board Member Borden's case.

*5 However, a public official may not simply rely on a third-party appraisal without further inquiry into the qualifications of the appraiser, whether he or she considered the factors listed in our regulations, and whether the conclusions reached by the appraiser are objectively defensible, i.e., based on a full and accurate assessment of all pertinent facts and circumstances. When a third-party appraisal meets these standards, a public official may rely on the appraisal to conclude that the presumption of regulation 18705.2(a)(1) has been rebutted. [FN6]

Step Seven: Will the Governmental Decision Have a Financial Effect on the Public Official's Economic Interests that is Indistinguishable from the Effect on the Public Generally?

An official who otherwise has a conflict of interest in a decision may still participate in the decision under the "public generally" exception. This exception applies if a "significant segment" of the jurisdiction or the official's election district is affected by the governmental decision in "substantially the same manner" as it would affect the public official, the public official may participate in the decision. (Section 87103; Reg. 18707(a).)

Real Property, Significant Segment: Assuming the Enright Report does not rebut the presumption of materiality found under Step Five, above, she has a conflict of interest based on her interest in her real property. Specific subdivisions of regulation 18707.1 define a "significant segment," based on the economic interest involved. When the economic interest which gives rise to the conflict of interest is an interest in real property, the significant segment is defined as:

"(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the

official's agency or the district the official represents; or
"(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency." (Reg. 18707.1(b)(1)(B)(i) - (ii).)

Because you do not present any data in your letter regarding how many property owners or homeowners are in the jurisdiction of the Board Member's District, we cannot identify a significant segment on which to base our analysis.

Substantially the Same Manner: If you can determine that a significant segment will be affected by a decision, it is next necessary to determine if the public official's economic interest will be affected in substantially the same manner as the rest of the segment. If the answer is "yes," then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. (Reg. 18707(b)(4).) To assess whether a significant segment will be financially affected in substantially the same manner, all measurable effects from the decision must be identified. Comparing financial effects is necessarily a factual process.

As noted above, Board Member Borden has an interest in real property located within the area. If she determines that a significant segment of property owners or homeowners will be financially affected by the decisions in a manner substantially similar to the financial effect on her real property, the "public generally" exception would apply.

Public Generally, Small Jurisdictions: Regulation 18707.10 (which became operative on January 13, 2007) is an additional exception to the conflict of interest rules under the Act which public officials in small jurisdictions may use. If a public official is found to have a conflict of interest under the first six steps of the eight-step analysis, but meets all six requirements under 18707.10(a), that official may still participate in the governmental decision(s) at issue. Those six requirements are:

- *6 "(1) The jurisdiction of the public official's agency has a population of 30,000 or less and covers a geographic area of ten square miles or less;
- "(2) The public official is required to live within the jurisdiction;
- "(3) The public official, if elected, has been elected in an at-large jurisdiction;
- "(4) The official's property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;
- "(5) The official's property is located on a lot not more than one-quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction; and
- "(6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value."

Since your request does not provide us with facts allowing us to apply the above six requirements, we cannot evaluate whether this exception would apply.

Step Eight: Is Board Member Borden Legally Required to Participate in the Decision?

Section 87101 permits officials otherwise disqualified from making governmental decisions to participate in decisions when their participation is legally required. This is the case if a quorum can not be achieved without the participation of disqualified public officials. Since you do not present us with any facts indicating that this exception may apply, we do not provide an analysis of its potential application.

Sincerely,

Luisa Menchaca
General Counsel

By: Andreas C. Rockas
Senior Counsel

Legal Division

FN1. Government Code sections 81000 - 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FN2. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

FN3. A public official "makes a governmental decision" when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Section 87100; reg. 18702.1.) A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive review, the official negotiates, advises or makes recommendations to the decision maker regarding the governmental decision. (Section 87100; reg. 18702.2.) A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Section 87100; reg. 18702.3.)

FN4. An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) "Immediate family" is defined at section 82029 as an official's spouse and dependent children.

FN5. The factors listed under regulation 18705.2(b)(1) include: "(A) The development potential or income producing potential of the real property in which the official has an economic interest; [¶] (B) The use of the real property in which the official has an economic interest; [¶] (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood."

FN6. Please bear in mind the important qualification that the Commission does not act as a finder of fact in its advice giving capacity, and that the ultimate responsibility for the reasonable assessment and disclosure of all pertinent facts rests with the public official. (See, e.g., *Oderman* Advice Letter, No. A-02-340; *O'Hara* Advice Letter, No. A-00-174.)

CA FPPC Adv. I-07-025, 2007 WL 867116 (Cal.Fair.Pol.Prac.Com.)

END OF DOCUMENT

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works

Office of the Attorney General
State of California
Opinion No. 07-807

*1 January 14, 2009

THE HONORABLE NORMA J. TORRES
MEMBER OF THE STATE ASSEMBLY

THE HONORABLE NORMA J. TORRES, MEMBER OF THE STATE ASSEMBLY, has
requested an opinion on the following question:

May a city redevelopment agency enter into a loan agreement for commercial property
improvement where the recipient of the proposed loan is a corporation solely owned by the adult,
non-dependent son of an agency board member who also resides with the board member in the
same rented apartment?

CONCLUSION

The circumstance that the recipient of a proposed commercial property improvement loan from a
city redevelopment agency would be a corporation solely owned by the adult, non-dependent son
of an agency board member who also resides with the board member in the same rented
apartment does not, by itself, preclude the agency from entering into an agreement to make that
loan. However, to avoid a conflict between her official and personal interests, the board member
should abstain from any official action with regard to the proposed loan agreement and make no
attempt to influence the discussions, negotiations, or vote concerning that agreement.

ANALYSIS

We are informed that a city redevelopment agency is considering whether to enter into a loan
agreement for commercial property improvement and that the recipient of the proposed loan is to
be a corporation solely owned by the adult son of an agency board member. We are also told
that, while the son resides with the board member in the same rented apartment, we may assume
for purposes of this analysis that he is not dependent on the board member for
support.[FN1] Given this context, we are asked whether the agency may enter into the proposed
loan agreement without violating any conflict-of-interest laws. As relevant here, those laws
consist of two statutory schemes; Government Code section 1090 and its related provisions and
the Political Reform Act of 1974, as well as the common law doctrine against conflicts of
interest. For the reasons that follow, we conclude that the given circumstances, by themselves,
would not preclude the agency from entering into the proposed loan agreement, but that, to avoid
a conflict between her official and personal interests, the board member should completely
abstain from any official action with regard to the proposed loan agreement and make no attempt
to influence the discussions, negotiations, or vote concerning that agreement.

Government Code section 1090

Our consideration of the question presented first requires that we undertake an analysis under Government Code section 1090, [FN2] which generally forbids the board of a public agency from entering into a contract in which one of its members has a personal financial interest. [FN3] In the words of the statute, "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...." [FN4]

*2 A city redevelopment agency is a public body, [FN5] and members of its governing board are thus public officials within the meaning of section 1090, which applies to virtually all members, officers, and employees of such agencies. [FN6] An agreement by a public agency to loan money is treated as a contract for purposes of section 1090. [FN7]

Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their public agencies. [FN8] Under section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." [FN9] Such an interest may be direct or indirect, but the "evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality." [FN10] A contract that violates section 1090 is void. [FN11]

With these principles in mind, we consider whether the familial relationship between the redevelopment agency board member and the member's adult son will, by itself, render the proposed loan agreement between the agency and the member's son's corporation invalid under section 1090. We considered a similar question in 88 Ops. Cal. Atty. Gen. 222 (2005). At issue in that opinion was whether the adult son of a redevelopment agency board member could acquire real property within the redevelopment zone without causing the member to violate Health and Safety Code section 33130(a), which prohibits agency officers and employees from acquiring "any interest in any property included within the project area within the community," including "any indirect financial interest" in such property. [FN12] Because the statute under analysis did not further specify what constituted a prohibited "indirect financial interest," we found it appropriate to consult other conflict-of-interest statutes, including section 1090, to determine whether the parent-adult child relationship between the agency member and his son would give rise to the member having a cognizable financial interest in the property his son sought to purchase. [FN13] Our review of analogous statutory schemes led us to conclude that no such prohibited interest would arise solely on account of the parent-adult child relationship. [FN14]

Here, where we are called upon to analyze section 1090 and its related provisions directly, rather than by comparison, the result is the same. For purposes of this analysis, we note that the Legislature has expressly defined certain "remote interests" [FN15] and "noninterests" [FN16] that do not come within section 1090's general prohibition. If a "remote interest" is present, as defined in section 1090, the proposed contract may be made, but only if

(1) the public official or board member in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the individual with the remote interest abstains from any participation in the making of the contract. [FN17] If a "noninterest" is present, as defined in section 1091.5, the contract may be made without the official's abstention, and generally a noninterest does not require disclosure. [FN18] We have found that an examination of these statutory exceptions is useful in determining what would otherwise be viewed by the Legislature as constituting a proscribed "financial interest." [FN19]

*3 In our 2005 opinion, we observed that, although the Legislature deems a parent to have a remote financial interest for purposes of section 1090 "in the earnings of his or her minor child for personal services," [FN20] there is no similar determination that a parent has either a direct or indirect financial interest in the property or earnings of an adult child. [FN21] And we have previously found that the familial relationship between a county supervisor and his adult brother, in that instance an automobile dealer, would not result in a violation of section 1090 if the brother sold automobiles to the county. "Neither brother has any proprietary 'interest' in the financial attainments of the other; neither is entitled to any contribution or support from the other." [FN22]

The situation here is analogous. A parent is not legally compelled to support an adult child absent special circumstances not present here, such as the child's incapacity. [FN23] Conversely, an adult child has no legal duty to support a parent, unless the parent is "in need and unable to support himself or herself by work," [FN24] a circumstance also not present here.

We are informed that the board member's son's corporation will receive the proceeds of the agency's loan. There is no indication that the member will personally profit from this transaction. While the Legislature could have characterized the inherent "interest" that a self-supporting parent may be said to have in the financial attainments of an adult child as one that, by itself, amounts to a prohibited financial interest, it has not done so. Nor have we located any judicial determination that the parent-adult child relationship, in itself, creates a financial conflict of interest in situations of the sort considered here. [FN25] Thus, we conclude that the familial relationship between the board member and her adult son does not invalidate the proposed loan agreement under section 1090.

For similar reasons, we believe that a housing arrangement in which a public official and his or her adult child live together in the same rented apartment does not necessarily give the parent a prohibited financial interest in the contractual dealings of the child for purposes of section 1090. Although by statute a landlord has a "remote interest" in his or her tenant's official contracts and vice versa, [FN26] the same is not the case for individuals who share a rented apartment, and whose legal obligations to one another are different in kind from those owed between landlord and tenant. Thus, we conclude that section 1090 does not preclude the redevelopment agency from entering into the contract at issue due solely to the circumstance that an agency board member and her adult son share living space in a rented apartment.

Having so concluded, however, we caution that if there were other circumstances suggesting that

the member had a financial interest in the proposed contract, those circumstances would need to be analyzed separately to determine whether an impermissible conflict existed. [FN27]

The Political Reform Act

*4 We next consider what effect, if any, the Political Reform Act of 1974 [FN28] has on this question. The Political Reform Act generally prohibits public officials from participating in "governmental decisions" in which they have a financial interest. [FN29] Of potential relevance here, the Political Reform Act requires officials to abstain from participating in such a decision when it will have a material financial effect on a member of his or her "immediate family." [FN30] The term "immediate family" includes only the official's "spouse and dependent children." [FN31] As stated earlier, we are assuming here that the board member's adult son is not her dependent.

No other provision of the Political Reform Act purports to link a public official's personal financial interests to those of an individual (other than the official's spouse and/or dependent children) with whom he or she shares a rented residence. Therefore, we find that the Political Reform Act's prohibitions are not triggered by the circumstance that the board member shares a rented residence with her adult son, whose corporation seeks to contract with the agency.

Common Law Doctrine against Conflicts of Interest

Having found no disqualifying financial interests within the meaning of section 1090 or the Political Reform Act, we now analyze the circumstances under the common law doctrine against conflicts of interest. The common law doctrine "prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." [FN32] While the focus of the statutes analyzed above is on actual or potential financial conflicts, the common law prohibition extends to noneconomic interests as well. [FN33] Thus, we have previously cautioned that, even where no conflict is found according to statutory prohibitions, special situations could still constitute a conflict under the common law doctrine. [FN34] While the common law may be abrogated by express statutory provisions, [FN35] the statutes we have considered thus far do not address the circumstances we have been asked to evaluate, nor are we aware of any other statutes that address those circumstances.

Here, even if the agency board member cannot be said to have a statutory financial interest in her son's contract with the agency within the meaning of section 1090 or the Political Reform Act, it is difficult to imagine that the agency member has *no* private or personal interest in whether her son's business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member's participation in the negotiations and voting upon an agreement that, if executed, would presumably redound to her son's financial benefit. As one court has said with regard to the common law doctrine and the need to strictly enforce it:

*5 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.... [¶].... [¶] Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine

is generally applicable to private agents and trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason.... [FN36]

In our view, the agency board member's status as the private contracting party's parent and co-tenant places her in a position where there may be at least a temptation to act for personal or private reasons rather than with "disinterested skill, zeal, and diligence" in the public interest, thereby presenting a potential conflict. In an earlier opinion, we advised that a common law conflict of interest may "usually be avoided by [the official's] complete abstention from any official action" with respect to the transaction or any attempt to influence it. [FN37] Under these circumstances, we believe that the only way to be sure of avoiding the common law prohibition is for the board member to abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

Accordingly, we conclude that the circumstance that the recipient of a proposed commercial property improvement loan from a city redevelopment agency would be a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment does not, by itself, preclude the agency from entering into an agreement to make that loan. However, to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

Edmund G. Brown JR.
Attorney General

Marc J. Nolan
Deputy Attorney General

[FN1]. In support of this assumption, we have been informed that the agency board member does not claim her son as a dependent for tax purposes.

[FN2]. All further references to the Government Code are by section number only.

[FN3]. 89 Ops.Cal.Atty.Gen. 217, 218 (2006).

[FN4]. Govt. Code § 1090.

[FN5]. Health & Safety Code § 33100; see 88 Ops.Cal.Atty.Gen. 222 (2005).

[FN6]. See 61 Ops.Cal.Atty.Gen. 243, 248-250 (1978)(applying § 1090 to members of a local redevelopment agency).

[FN7]. E.g., Carson Redevelopment Agency v. Padilla, 140 Cal. App. 4th 1323, 1329-1330 (2006).

Public Official's Conflict of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties. Don't take that risk.
- ✓ Personal Finances. The official or official's immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.
- ✓ Contract. A contract that the agency is considering entering into, in which the official or a member of the official's family may have an interest (direct or indirect).
- ✓ Business Investment. An interest in a business that the official or the official's immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ Related Business Entity. An interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:
 - Has a direct or indirect investment worth \$2000 or more; or
 - Is a director, officer, partner, trustee, employee, or manager.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel 1) early and often, 2) when an action by the public agency, 3) may affect (positively or negatively), 4) any of the following:

- ✓ Income. Any source of income of \$500 or more (including promised income) during the prior 12 months for the official or official's spouse/domestic partner.
- ✓ Business Management or Employment. An entity for which the official serves as a director, officer, partner, trustee, employee, or manager.
- ✓ Real Property. A direct or indirect interest in real property of \$2000 or more that the official or official's immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of the decision.
- ✓ Gift Giver. A giver of a gift of \$440 (2013-14 proposed amount) or more to the official in the prior 12 months, including promised gifts.
- ✓ Lender/Guarantor. A source of a loan (including a loan guarantor) to the official.
- ✓ Business Entity Owning Property. A direct or indirect ownership interest in a business entity or trust of the official's that owns real property.
- ✓ Campaign Contributor. A campaign contributor of the official (applies to appointed decision-making bodies only).
- ✓ Other Personal Interests and Biases. The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether officials should act solely in the public's interest. If they might, officials should consider excusing themselves voluntarily from that particular decision-making process.

Decisions May Not Benefit Family

Basic Rules

An important part of a fair process is that everyone, irrespective of their personal relationship to decision-makers, will have the same access to government benefits and approvals.

An outgrowth of this principle is the rule that public officials must disclose their interests and disqualify themselves under the Political Reform Act and other laws (for example Government Code section 1090's prescription against interests in contracts) from participating in decisions that will have the result of their immediate family's expenses, income, assets or liabilities increasing or decreasing.³¹ "Immediate family" includes one's spouse or domestic partner and dependent children.³²

Some jurisdictions have also adopted additional policies to prevent nepotism in hiring, promotions and appointments.

Penalties

The disqualification requirements relating to family members are part of the Political Reform Act. A refusal to disqualify oneself is punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.³³

EFFECT ON AGENCY AND THOSE AFFECTED BY AGENCY'S DECISION

When a disqualified official participates in a decision, it can also void the decision.³⁴ This can have serious consequences for those affected by the decision as well as the public agency.

Personal Loans

Basic Rules

Elected officials and others may not receive a personal loan from any officer, employee, member or consultant of the official's respective agency while in office.¹⁹ There also are limits on elected officials' and others' ability to receive loans from those with contracts with the agency (except for bank or credit card indebtedness made in the regular course of the company's business).²⁰ Personal loans over \$500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).²¹

Penalties

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.²²



Conflicts of Interest When Leaving Office

Government Code § 87406.1. Representation by former district member, officer or employee as agent or attorney before district board; appearance or communication for purpose of influencing regulatory action; prohibition

(a) For purposes of this section, "district" means an air pollution control district or air quality management district and "district board" means the governing body of an air pollution control district or an air quality management district.

(b) No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

(c) Subdivision (b) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another district or an employee or representative of a public agency.

(d) This section applies to members and former members of district hearing boards.

Government Code § 87406.3. Prohibition against specified local officials who held positions with a local government agency from acting as agents or attorneys for others appearing before or communicating with the agency after officials have left office; conditions

(a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

(b) Subdivision (a) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.

(c) Nothing in this section shall preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than subdivision (a).

(d) Notwithstanding Sections 82002 and 82037, the following definitions shall apply for purposes of this section only:

(1) "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

(2) "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

(e) This section shall become operative on July 1, 2006.

Government Code § 87407. Use of official position to influence certain governmental decisions

No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

Leaving Local Governmental Office or Employment: Revolving Door and other Post-Employment Issues for Local Officials

The Political Reform Act places two restrictions on the post-governmental activity of officials who leave local governmental service. These restrictions are a one-year ban applicable to high-level local officials (Section 87406.3) and a one-year ban applicable to officials and employees of air pollution control and air quality management districts (Section 87406.1). A third restriction, the ban on influencing prospective employment, prohibits current local officials from taking part in decisions that directly relate to a prospective employer. (Section 87407.)

Section 87406.3: The Local One-Year Ban

The **local one-year ban** prohibits specified officials, for one year after leaving local government office or employment, from representing any other person, for compensation, by appearing before or communicating with their former agency in an attempt to influence the agency's decisions in an administrative or legislative action, whether quasi-legislative or quasi-judicial, or any action involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406.3; Regulations 18746.2 and 18746.3.)

Note that Section 87406.3(c) does not preclude a local governmental agency from adopting its own ordinance or policy restricting the activities of former agency officials so long as the ordinance or policy is more restrictive than Section 87406.3. Former local agency officials should consult their former agency regarding any locally imposed restrictions.

Are you covered by the one-year ban?

The following officials are subject to the one-year ban of Section 87406.3:

- Local elected officials.
- Chief administrative officers of counties.
- City managers or chief administrative officers of cities.
- General managers or chief administrators of special districts, including general managers or chief administrators of air pollution control districts or air quality management districts. (Section 87406.3; Regulation 18746.3(a).)

Local government agencies include any county, city, or district of any kind including a school district, or any other local or regional subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Section 82041.)

Have you permanently left?

The local one-year ban applies when an official permanently leaves any particular office or employment subject to the ban. (Regulation 18746.3(b)(1).) An official has permanently left an office or employment on the date on which the official is no longer authorized to perform the duties the office or employment and stops performing those duties, even if the official is still receiving compensation for accrued leave credits. (Regulation 18146.4(b).)

Under the local one-year ban, an official has not permanently left an office or employment if the official takes a leave of absence or serves as an intermittent employee. However, an official taking a leave of absence or serving as an intermittent employee is subject to the Act's conflict-of-interest provisions. (Regulation 18746.4(b); also see Commission Fact Sheet, "Can I Vote? Overview of the Conflict of Interest Laws.")

Tom, a city council member, also holds a position on the county's Vector Control Board. At the conclusion of his term on the city council, Tom retains his position on the Vector Control Board. Six months later a developer asks Tom to represent him before the city council. May Tom represent the developer? No, Tom has permanently left the local office, which is covered by the ban, and may not appear before the city council on the developer's behalf.

Are you making an appearance or communication within 12 months of leaving local governmental office or employment?

The one-year ban applies to appearances and communications made within 12 months of permanently leaving local office or employment. An appearance or communication includes all of the following:

- Conversing by telephone or in person.
- Corresponding with in writing or by electronic communication.
- Attending a meeting.
- Delivering or sending any communication. (Regulation 18746.2.)

Betty resigns from her city council member position and accepts a job with Acme Real Estate. Within the year, the city council proposes new flood protection requirements, which Acme does not believe are necessary. On behalf of Acme, Betty calls her friend, Council Member Jones, and informs Council Member Jones that Acme staunchly opposes the new flood protection requirements. Betty has made an appearance or communication prohibited under the one-year ban.

The local one-year ban does not apply to assisting or advising clients or employers who might appear before or communicate with the official's former agency so long as the former official is not identified in connection with the appearance or communication.

Are you being compensated?

An appearance or communication is prohibited only if the former official is compensated, or promised compensation. (Regulation 18746.3(b)(3).) "Compensation" is broadly defined to include "remuneration or payment of any kind." (Souza Advice Letter, No. A-06-114.) "Payment" is defined to mean a "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) Note, however, that a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.

Jackson, a former county supervisor, is currently working as a volunteer for the Spotted Owl Foundation. Hoping to prevent a controversial development project, the Foundation has asked Jackson to appear before the board of supervisors. May Jackson appear before the board if the Foundation pays for his airfare to the meeting? The one-year ban does not bar Jackson from appearing because payments for necessary travel in connection with voluntary services are not considered compensation.

Are you representing another person?

The local one-year ban applies if the former official makes an appearance or communication in representation of another person. Appearances or communications in representation of any of the following are not prohibited:

- Another local government agency or any other public agency. (Regulation 18746.3(c).)
- The former official's personal interests as defined in Regulation 18702.4(b)(1), unless the appearance or communication is made in a quasi-judicial proceeding in which the official participated while serving as a local government employee or officer. (Regulation 18746.3(b)(4).)

Kevin leaves his council member position on January 1 and accepts an engineering position with the county water district on January 15. On February 1, the city council proposes new flood protection requirements, and Kevin appears at the council's meeting on behalf of the water district to argue that the requirements are not adequate. Has Kevin violated the one-year ban? No, Kevin has not made a prohibited appearance or communication because Kevin is representing another public agency.

Are you making an appearance or communication for the purpose of influencing?

An appearance or communication is for the purpose of influencing if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.

The local one-year ban prohibits an appearance or communication if it is made for the purpose of influencing any of the following:

- An administrative action, including any action relating to any rule, regulation, or regulatory proceeding including a ratemaking proceeding, whether quasi-legislative or quasi-judicial. (Section 87406.3(d)(1); Regulation 18746.3(b)(5)(A).)
 - Quasi-legislative proceedings include those proceedings involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises. (Regulation 18746.3(b)(5)(B).)
 - Quasi-judicial proceedings include those proceedings that determine the rights of specific parties, or apply existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. (Regulation 18746.3(b)(5)(C).)
- A legislative action, including any action relating to the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity. (Section 87406.3(d)(2); Regulation 18746.3(b)(5)(D).)
- Any action involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

The following conduct is not prohibited because it does not involve an attempt to influence a decision:

- Formal participation in a panel or conference for educational purposes or to disseminate research.
- Attendance at general informational meetings, seminars, or similar events.
- Making requests for information about any matter of public record.
- Communications with the press. (Regulation 18746.2.)

Is the appearance before or communication made to your former agency employer?

An official subject to the local one-year ban may not appear before or communicate with any officer or employee of either of the following:

- The local agency, or any committee, subcommittee, or present member of the local agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. (Regulation 18746.3(b)(6)(A).)
- Any local agency that is subject to the direction and control of the agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. This is known as the "pyramid concept." If a former official's local agency controls the budget, personnel, and other operations of another agency, the official is prohibited from appearing before or communicating with both agencies. (Regulation 18746.3(b)(6)(B).)

Section 87406.1: One-Year Ban for Air Pollution Control and Air Quality Management Districts

The *one-year ban for air pollution control and air quality management districts* prohibits former district board members, officers, and certain employees from representing any other person by appearing before or communicating with, their former district in an attempt to influence any regulatory action for a one-year period. A former district employee is subject to this ban if the former employee made or

participated in making decisions while employed by the district that may have foreseeably had a material financial effect on any financial interest. For purposes of Section 87406.1, "regulatory action" has been interpreted to include any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding before the district. (Wood Advice Letter, No. A-95-167.)

Former general managers and chief administrative officers of air pollution control and air quality management districts are subject to both Section 87406.1, the one-year ban for air pollution control and air quality management districts, and Section 87406.3, the one-year ban for local officials. Since the one-year ban of Section 87406.3 fully encompasses the one-year ban of 87406.1, a former general manager or chief administrative officer of an air pollution control or air quality management district who complies with Section 87406.3 and Regulation 18746.3 as detailed above has fully complied with Section 87406.1. Board members, officers, or employees of these districts, who are subject only to Section 87406.1, with questions relating to their obligations under this section should seek further Commission assistance.

Influencing Prospective Employment

The **ban on influencing prospective employment** prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (Section 87407; Regulation 18747.) In short, this law expands the Act's conflict-of-interest rules and related disqualification obligations to situations where a decision will have a reasonably foreseeable material financial effect on the prospective employer even though the official does not yet have an economic interest in the employer.

Are you covered by this law?

The ban applies to *all* "public officials" including every member, officer, employee, or consultant of a local governmental agency. (See Section 82048.)

What activities trigger this prohibition?

The ban is triggered by negotiating or having an arrangement regarding prospective employment. While submitting a résumé or an application to a prospective employer does not trigger the ban, the following contacts will trigger the ban:

- An interview with an employer or his or her agent.
- Discussing an offer of employment with an employer or his or her agent.
- Accepting an offer of employment.

Brenda, a city council member and engineer by trade, is interested in finding a more lucrative position in the private sector and submits her résumé to several large construction companies including Company X. Company X will be appearing before the city council for approval of its bid for work on a city project. May Brenda participate in the city council decision? Yes, Brenda has only submitted a résumé, which is not enough to disqualify Brenda from participating in the decision.

After receiving Brenda's résumé but prior to the city council meeting, Company X calls Brenda to discuss job openings. Brenda is unsure whether she wants to work for this particular company so she schedules a lunch appointment with company managers to discuss the position. May Brenda participate in the city council decision? No, Brenda is interviewing with Company X and, therefore, negotiating prospective employment. Brenda may not participate in any governmental decision directly related to Company X.

When does a decision "directly relate" to a prospective employer?

Under the ban on influencing prospective employment, an official may not make, participate in making or influence decisions that "directly relate" to a prospective employer. A decision "directly relates" to a prospective employer if:

- The employer, either directly or by an agent, has initiated a proceeding in which a decision will be made by filing an application, claim, appeal, or similar request.

- The employer, either directly or by an agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the subject person.
- The employer will be financially affected by the decision, as defined in the Commission's conflict-of-interest regulations. (Regulations 18705.1 and 18705.3.) Officials should consult the conflict-of-interest regulations to determine the dollar threshold of the financial effect on the prospective employer that will trigger the official's disqualification from a decision.

How do you determine the financial effect on the prospective employer?

An official must try to obtain information regarding the financial effect of a decision from the prospective employer. An official must make a good faith determination of the potential financial effect of the decision on the prospective employer.

Do any exceptions apply?

The ban on influencing prospective employment does not apply if:

- The prospective employer is a state, local, or federal governmental agency.
- The official is legally required to make or participate in the making of the governmental decision.
- The governmental decision will affect the prospective employer in substantially the same manner as it will affect a "significant segment" of the public generally.

CA FPPC Adv. A-07-144, 2007 WL 2852390 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission
*1 PHOEBE K. HELM

FPPC File No. **A-07-144**

September 27, 2007

Phoebe K. Helm
Interim Superintendent/President
Hartnell College
156 Homestead Avenue
Salinas, CA 93901-1628

Re: Your Request for Advice

Dear Ms. Helm:

This letter is in response to your request for advice on behalf of Hartnell College Board of Trustee Aaron Johnson, regarding the post-employment provisions of the Political Reform Act (the "Act").
[FN1]

This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A), enclosed.) In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Section 1090.

QUESTION

May Aaron Johnson, a member of the Hartnell College Board of Trustees (the "Board") who plans to resign from his position, appear before or communicate with the Board after he resigns in order to solicit business for his law firm?

CONCLUSION

The Act's one-year ban prohibits a local official from making an appearance before or communication with his or her former agency, for compensation, to influence any legislative or administrative action, or a discretionary act including entering into a legal services agreement.

Therefore, Mr. Johnson may not for a period of one year after leaving the Board, represent for compensation any other person (including a business entity) by communicating or appearing before the Board for the purpose of influencing any contract.

However, this prohibition would not apply if Mr. Johnson makes an appearance or communication before the Board solely to represent his personal interests as defined in Regulation 18702.4(b)(1), nor would it prevent another member of the law firm from appearing as long as Mr. Johnson's name is not used in the appearance. (See discussion below.)

Limitations on the Receipt of Gifts

Government Code § 86203. Unlawful gifts by lobbyist or lobbying firm

It shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than ten dollars (\$10) in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

Government Code § 89503. Gifts from single source within calendar year; value; scope of prohibition

(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).

(b)(1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

(e) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(g) The limitations in this section are in addition to the limitations on gifts in Section 86203.

Government Code § 89506. Travel payments, advances and reimbursements

(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.

(c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.

(d) For purposes of this section, a gift of travel does not include any of the following:

(1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.

(2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.

(3) Travel that is reasonably necessary in connection with a bona fide business, trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(4) Travel that is excluded from the definition of a gift by any other provision of this title.

(e) This section does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence permitted or limited by Section 170.9 of the Code of Civil Procedure.

California Fair Political Practices Commission

Frequently Asked Questions:

Gift Disclosure

The FAQs listed below are selected from questions people frequently ask the FPPC. All effort has been made to provide helpful, easy to understand answers to common gift questions. Please note that this fact sheet cannot address all the unique variables and circumstances related to gift disclosure. Individuals are encouraged to contact the FPPC with specific facts by email. In addition, individuals may submit their questions in a letter to the FPPC's Legal Division in order to receive a written answer.

Revised rules relating to gifts became effective January 1, 2012. The answers below incorporate the recent revisions.

012-13 ① Q. What is the gift limit for 2011-2012?

A. ~~\$420~~ ^{\$440}: The 2011-2012 gift limit remains at \$420. This means that gifts from a single, reportable source may not exceed \$420 in a calendar year. For officials and employees who file Statements of Economic Interests (Form 700) under an agency's conflict-of-interest code ("designated employees"), this limit applies only if the official or employee would be required to report income or gifts from that source on the Form 700, as outlined in the "disclosure category" portion of the agency's conflict-of-interest code.

State Lobbyist & Lobbying Firm Limit:

\$10: State agency officials, including legislators, legislative staff and state commission members, may not accept gifts aggregating more than **\$10 in a calendar month** from a single lobbyist or lobbying firm if the lobbyist or firm is registered to lobby or should be registered to lobby the official's or employee's agency.

2. Q. I am an analyst for an agency and must complete Form 700. How do I know if I must disclose a gift that I received?

A. Each local and state agency must have a conflict-of-interest code. That document identifies your position and the types of donors that you must report. Because different agencies have different responsibilities, an analyst for one agency will have different reporting than an analyst working for another agency.

③ Q. During the year, an official received several gifts of meals from the same reportable source. Each meal was approximately \$35. Is the source reportable?

A. Yes. Gifts from the same reportable source are aggregated, and the official must disclose the source when the total value of all meals exceeds \$50 or more.

4. Q. How does an individual return a gift so that it is not reportable?

A. Unused gifts that are returned to the donor or reimbursed within 30 days of receipt are not reportable. The recipient may also donate the unused item to a charity or governmental agency within 30 days of receipt or acceptance as long as the donation is not claimed as a tax deduction.

5. Q. Co-workers exchange gifts of similar value on birthdays. Are these items reportable?

California Fair Political Practices Commission
Frequently Asked Questions:
Gift Disclosure

- A. No. Such gift exchanges with individuals, other than lobbyists, on birthdays, holidays, or similar occasions, are not reportable or subject to gift limits. The gifts exchanged must be similar in value.
6. Q. If an official receives a gift from a reportable source who lives outside of the official's jurisdiction, is the gift still reportable?
- A. Yes. There are no jurisdictional boundaries for gifts. For example, it is not uncommon for out-of-state companies to bid on California contracts. Thus, the location of the donor is not relevant, but it is relevant whether that donor is a source of the type that is attempting to influence an agency decision.
7. Q. Must an official report gifts received from an individual whom the official is dating?
- A. No. Gifts of a personal nature exchanged because the individuals are in an established, bona fide dating relationship are not reportable or subject to gift limits. However, the official remains subject to the conflict-of-interest rules and some matters may require recusal from voting.
8. Q. In March, a vendor that provides goods to an agency had its contract renewed by the city council. Within 12 months, the vendor offered entertainment tickets to the spouse of one of the city council members. Does the city council member report the tickets as gifts?
- A. Maybe. A gift to an official's spouse is a gift to the official when there is no established working, social, or similar relationship between the donor/vendor and the spouse or there is evidence to suggest the donor had a purpose to influence the official; such as appearing before the official's agency within the previous 12 months.
9. Q. An agency received two free tickets to a sporting event from a local vendor. The agency had discretion to determine who in the agency received the tickets. Each ticket was valued at \$40. If the Director of Transportation used the tickets, how does he/she report them?
- A. The tickets are reportable in the amount of \$80 on the Director's Form 700 if the vendor is the type of source covered under the Director's disclosure category in the agency's conflict-of-interest code. However, in some circumstances, the Director is not required to report the tickets on his/her Form 700. This occurs if the tickets are claimed as taxable income or if the tickets meet a public purpose identified in the agency's published ticket policy. In either case, the agency must complete the FPPC Form 802 and forward the form to the FPPC for posting on its website. If a Form 802 is completed the director does not disclose the tickets on his/her Form 700.
10. Q. Are frequent flyer miles reportable?
- A. No. Free tickets received under an airline's frequent flyer program that are available to all members of the public are not required to be disclosed.
11. Q. An agency received a large box of chocolates as a holiday gift from a local merchant. It was addressed to the agency and not to a particular employee. Is there a reporting requirement?

California Fair Political Practices Commission
Frequently Asked Questions:
Gift Disclosure

- A. Generally, the receipt of food and beverages is considered a gift. However, in this instance, the gift would only be reportable by an employee if (1) the vendor was a reportable source on the individual's Form 700 and (2) the employee consumed candy valued at \$50 or more.
12. Q. Is an interest-free loan made available by a depository institution to each state employee, including a member or employee of the Legislature who is a customer with direct deposit at the institution, for the purpose of covering the amount of salary or wages earned by the employee, but unpaid due to the delay of passage of the state budget, a gift or income under the Act?
- A. So long as the interest-free loan is available on equal terms to all state employees with direct deposit at the depository institution, the loan is neither a gift nor income under the Act, and is not reportable on the employee's Form 700.
13. Q. Do prizes received by participating employees in an agency's charity campaign drawing constitute gifts under the Act, subject to the Act's limits and reporting requirements, if they were donated to the agency by an outside source?
- A. Yes. The prizes are gifts, if donated by an outside source. This is not considered a bona fide competition because the raffle is only open to officials.
14. Q. Does a ticket to a campaign fundraising event that was provided to an official directly from the campaign committee constitute a reportable gift?
- A. No. The committee or candidate may provide two tickets per event to an official and the tickets shall be deemed to have no value. Additional tickets do have value and are subject to reporting rules.
15. Q. Is a ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the public agency reportable on the official's Form 700?
- A. No. However, the agency must complete FPPC Form 802 and forward to the FPPC. The form will identify the official's name and explain the ceremonial function.
16. Q. Would a non-profit organization be the source of gifts conferred on officials when the non-profit organization pays for officials to travel nationally and internationally on trips related to climate policy? This trip is funded by donations from corporations and businesses with matters before state elected officials and state agencies.
- A. Generally, the reportable source of the gifts to officials would be the sponsors who donated money to the non-profit organization. Thus, the benefit of the gift received by the official would be pro-rated among the donors. Each reportable donor would be subject to the \$420 gift limit and identified on the official's Form 700. Contact the FPPC for specific guidance.
17. Q. May an official accept travel, lodging and subsistence from a foreign sister city while representing the official's home city?

- A. Travel and related lodging and subsistence paid by a foreign government, and not a foreign company, that is reasonably related to a legislative or governmental purpose are not subject to the gift limit. However, the payments must be disclosed on a Form 700. While in the foreign country, any personal excursions not paid for by the official must also be disclosed and are subject to the gift limit. If private entities make payments to the foreign government to cover the travel expenses, the gift limit will apply and travel payments will likely be prohibited. Please contact the FPPC for more information.
18. Q. An analyst for a state or local agency participates on a panel addressing new federal standards related to the agency's regulatory authority. If the analyst's travel payments are paid by the federal agency, must the official report the payment of the Form 700? Transportation and related lodging and subsistence were limited to the day immediately preceding, the day of, and the day immediately following the speech.
- A. The travel payments are not reportable or subject to any limits so long as:
(1) A non-governmental source did not actually reimburse or fund the travel expenses. In that case, the gift of travel is not from the federal agency and may be reportable. Individuals should inquire as to the source of all travel payments. (2) The analyst is not also an elected state or local official or serving in a position covered by Government Code Section 87200. In that case, the travel payment is reportable.
19. Q. A state legislator and a planning commissioner were guest speakers at an association's event. Travel expenses were paid by the association and the event was held in California. Is this reportable?
- A. The payment is reportable, but not subject to the gift limits. In general, payments for speeches are not limited, but are reportable. The rules require that the speech be reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and the travel payment must be limited to actual transportation and related lodging and subsistence the day immediately preceding, the day of, and the day immediately following the speech.

CA FPPC Adv. A-07-042, 2007 WL 973989 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission
*1 AMY NORTHAM

FPPC File No. **A-07-042**

March 29, 2007

Amy Northam
Legal Analyst
Legal Services Dept.
San Juan Unified School District
P.O. Box 477
Carmichael, California 95608

RE: Your Request for Advice

Dear Ms. Northam:

This letter is in response to your request for advice on behalf of San Juan Unified School District Superintendent Steven W. Enoch, regarding the gift provisions of the Political Reform Act (the "Act").
[FN1]

QUESTION

May San Juan Unified School District Superintendent Enoch accept a payment for travel from a software vendor in order to discuss the vendor's contract with the school district?

CONCLUSION

No, unless the payment for travel does not exceed the gift limits of the Act.

FACTS

The school district has an existing contract with a software vendor who is headquartered in Virginia. This software controls the district's student information, a vital and essential component of district operations. Significant complications have arisen with this vendor and their software. The superintendent and the vendor wish to meet face-to-face to discuss the issues. It is more cost effective for the vendor to arrange and pay for the superintendent (just one person) to travel to the vendor's headquarters than for the vendor to travel to the school district offices. As such, the vendor has requested to pay for travel expenses for Superintendent Enoch. The school district's contract with the vendor does not address travel expenses. You wish to know if the vendor may pay for the superintendent's travel to Virginia.

In addition, during our telephone conversation of March 8, 2007, you stated that the superintendent is a designated employee of the school district, and the vendor is a private, for-profit entity, and it is not an educational institution. You also stated that your district's conflict of interest code would require the superintendent to report gifts from this vendor.

ANALYSIS

Gifts, Generally

The Act imposes different obligations on public officials regarding the receipt of gifts.

1. Gift Reporting. When an agency's conflict of interest code requires a designated employee to report gifts from specified persons on the official's statement of economic interests, gifts from each person must be reported when they amount to \$50 or more during the applicable reporting period. (Sections 87302(b) and 87207(a)(1).)

2. Gift Limit. Section 89503 imposes a gift limit on designated employees of state and local government agencies. (Section 89503(c).) Specifically, section 89503(c) provides that no designated employee of a state or local government agency may accept gifts from any single source in any calendar year in excess of the gift limit if the official is required to report the receipt of gifts from that source on his or her statement of economic interests. The current gift limit is \$390. (Regulation 18940.2.)

3. Conflicts of Interest. When an official receives gifts aggregating \$390 more from the same source within the 12 months prior to when the official participates in a governmental decision that has a financial impact on that source, the official may have a conflict of interest under the Act. (Sections 87100 and 87103(e).)

***2** Because Superintendent Enoch is a designated employee of the San Juan Unified School District, a local government agency, and gifts from the software vendor are reportable on Superintendent Enoch's statement of economic interests, the above provisions apply to him.

Gifts of Travel

In general, a public official's travel paid for by a source whose gifts are reportable on the official's statement of economic interests is subject to gift limits and reportable on the statement of economic interests.

Section 82028(a) defines a "gift" as:

"[A]ny payment *that confers a personal benefit on the recipient*, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status...." (Emphasis added.) [FN2]

You stated in your letter and during our telephone conversation of March 8, 2007, that the software vendor, a private, for-profit entity, has offered to pay for the superintendent's flight to Virginia, where the vendor is located. The purpose of the trip is for the superintendent and the vendor to "meet face-to-face." This travel is a personal benefit to the superintendent and his services in the meeting with the vendor are rendered on behalf of the district and not as legal consideration to the vendor. Therefore, unless an exception applies, the value of the travel is a gift to the superintendent and subject to the reporting requirements, gift limits and conflict of interest provisions set forth above.

Section 89506 provides that payments, advances, or reimbursements for travel, (including actual transportation and related lodging and subsistence) that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or International policy, are *not prohibited or limited if* either of the following apply:

"(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

"(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution...a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue

Code...."

Neither the stated purpose of the trip, nor the donor offering to pay for the trip meets the above factors in Section 89506. Therefore, under the facts you have provided, the vendor's payment for airline transportation and any other travel costs, including meals and accommodations, would be deemed a gift to the superintendent, subject to the reporting and gift limits of the Act.

Gifts to an Agency

*3 In some instances, such a payment may be considered a gift to an agency. Where it is clear that the payment would otherwise be a gift to one or more public officials, the agency involved may resort to Regulation 18944.2. Compliance with that regulation will result in characterization of the gift as one to the agency.

Regulation 18944.2, in pertinent part, states a gift may be deemed a gift to a public agency, and not a gift to a public official, *if all* of the following requirements are met:

"(1) The agency receives and controls the payment.

"(2) The payment is used for official agency business.

"(3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.

"(4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation...."

You stated that the software vendor has offered to pay for the superintendent's flight to Virginia. If the donor is limiting the use of the payment to a single specified employee, all the requirements of Regulation 18944.2 are not satisfied. Thus, the payment for the superintendent's flight cannot be deemed a gift to the school district unless the payment is not limited to his use. Otherwise, it is a gift to the superintendent, subject to gift limits and the reporting and conflict of interest provisions of the Act. [FN3]

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By: Emelyn Rodriguez
Counsel
Legal Division

FN1. Government Code sections 81000-91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

FN2. The emphasized language, "that confers a personal benefit on the recipient," was added to section 82028(a) by the Legislature in 1997. (Stats. 1997, ch. 450 (S.B. 124), 2, eff. Sept. 24, 1997.) In the Yee Advice Letter, No. A-98-197 (copy enclosed), we advised that a payment may confer a personal benefit to an official even where it facilitates the conduct of governmental business.

FN3. The current gift limit is \$390 from a single source in a single calendar year. (Regulation 18940.2, enclosed.) To the extent an official receives a gift(s) that exceeds the gift limit, or the official prefers not to disclose, regulation 18943 provides that an official may reimburse the donor for the value of a gift. If the reimbursement is made within 30 days of receipt, the official has not received a gift. Alternatively, an official may,

within 30 days, reimburse the donor the amount that exceeds the gift limit or that brings the value of the gift below the \$50 reporting threshold. Gifts of \$50 or more must be reported on an official's statement of economic interests.

CA FPPC Adv. A-07-042, 2007 WL 973989 (Cal.Fair.Pol.Prac.Com.)

END OF DOCUMENT

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works

California Fair Political Practices Commission

Tickets to Non-Profit and Political Fundraising Events

This fact sheet is created to help public officials determine whether a ticket or invitation to a non profit's fundraising event is subject to gift limits and reporting. In response to public input, Regulation 18946.4 was recently revised to help simplify the rules and make them easier to apply. The rules continue to ensure that public officials are not unduly influenced by persons that appear before the official's agency.

Tickets to 501(c)(3) and Political Fundraisers

The regulation allows 501(c)(3) organizations and political committees to provide two tickets for a fundraising event to an official that are deemed to have no value and which are not reportable by the official or the person accompanying the official. Additional tickets, or tickets provided by another person, are reportable and subject to the gift limit and valued at the non-deductible portion of admission (the part that is not the donation). If there is no ticket, or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro-rata share of the food, catering services, entertainment, and any other item or benefit provided to those attending the event (such as a gift basket).

Before the amendments, an official could only receive one no-value ticket and the cumulative value of the non-deductible portion was subject to the gift limit.

Non-Profit Organization Fundraiser (other than a 501(c)(3))

Valuation General Rule:

The reportable value of a single ticket provided by a non-profit organization holding the fundraiser is the non-deductible portion of admission (the part that is not the donation).

If there is no ticket, or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro-rata share of the food, catering services, entertainment and any other item or benefit provided to those attending the event. The value of the ticket or admission is reportable and subject to the gift limit. The valuation method for these events was not changed in 2012.

Drop-in Exception:

If an official and guest accompanying the official "drops in" at an event and does not consume any meal or stay for the entertainment and consumes only minimal appetizers and drinks, there is no reportable gift unless the official received some other specific item of value at the event. Note: the exception only applies to drop-ins, and cannot be used for attending an entire event where only appetizers and drinks are served.

- **State Officials (written notice rule):** When an event is hosted by a lobbyist, lobbying firm or lobbyist employer the state official must provide the host, in

writing, notification that he/she did not stay for the event and thus may value the gift under the "drop-in" rule described above. If a written notification is not provided, the reportable value is the pro-rata share of the food, catering service, entertainment, and any additional item provided to all attendees at the event.

Frequently Asked Questions

1. Q. An official receives a fundraiser ticket from a 501(c)(3) charitable organization. The face value (price) of the ticket is \$500, and the ticket states that the tax deductible portion is \$350. If the official accepts the ticket, what must be reported?
 - A. The ticket is a gift, but it has no value to report on the Statement of Economic Interests (Form 700) so long as it's used for the official's own attendance at the fundraiser. In addition, the official may receive a second ticket for his or her guest attending the event, without a reporting obligation. The second ticket is not reportable by the guest either.
2. Q. What if someone, such as a business associate, purchases a table at a non-profit fundraiser and offers an official a seat at the table?
 - A. If another person or entity provides a ticket it is a gift and subject to the gift limit. The value is the non-deductible portion on the ticket. If there is no declared face value, then the value is the pro-rata share of the food, catering service, entertainment, and any additional item provided to all attendees at the event. The "no value" exception only applies if the official receives tickets for his or her own use and only from the 501(c)(3) organization directly.
3. Q. An agency employee who holds a position designated in the conflict-of-interest code is given a fundraiser ticket from an organization or entity not of the type listed in the agency's code. Is the agency employee required to report the value?
 - A. No. A ticket or any other gift may be accepted under these circumstances without limit or reporting obligations. Note: agencies must ensure the conflict-of-interest code adequately addresses potential conflicts of interests.
4. Q. A 501(c)(3) organization provides a ticket to an official for its fundraising event. The organization seats the official at a table purchased by a business entity. Does the official have to report the ticket?
 - A. No. So long as the ticket is provided directly by the 501(c)(3) organization to the official, the event is not reportable.

5. Q. An official receives a ticket to attend a political fundraiser held in Washington D.C. from a federal committee. Is the official required to disclose the ticket as a gift, and is it subject to the gift limit?
- A. No. The value of the ticket is not a gift so long the official personally uses the ticket.
6. Q. A political party committee is holding a political fundraiser at a golf course and a round of golf is included. If the committee provides an elected official a ticket, is the ticket reportable?
- A. No. As long as the official uses the ticket for his or her own use. If someone other than the political party provides a ticket, the full cost of the ticket is a gift.
7. Q. If a business entity offers an official a ticket, or a seat at a table that was purchased for a political fundraiser, what is the value?
- A. The value is the face value of the ticket price to the event. If there is no ticket, the value is the official's pro-rata share of the cost to purchase a table. If a premium or sponsorship table was purchased, the value is the pro-rata share of the food, catering services, entertainment, and any additional benefits provided to attendees. An official does not need to value additional benefits provided only to the person or entity that purchased the table, such as program advertisements, so long as it does not result in a personal benefit to the official.
8. Q. If an official attends a fundraising event that serves only appetizers and drinks, is it considered a "drop-in" no matter how long the official stays or how many appetizers or drinks are consumed?
- A. The focus of the food and beverages "drop-in" exception is on the nature of the particular official's attendance and consumption, not on the event as a whole. For example, if an official attends an event that serves only appetizers and drinks but stays for more than a few minutes and consumes more than "de minimis" appetizers and drinks, the "drop-in" exception does not apply. This is determined on a case-by-case basis.
9. Q. A 501(c)(4) organization is holding a fundraiser at a professional sporting event. Tickets to this sporting event are sold out and it appears that tickets are only available at a substantially higher price than the stated non-deductible value of the ticket provided by the organization. If an official attends the event, what is the value of the gift?
- A. The official may value the event at the non-deductible amount stated on the ticket.

10.Q. An official receives a ticket to a fundraiser, and if accepted, the ticket will result in a reportable gift or a gift over the current gift limit. What are the options?

- A. The official may reimburse the entity or organization that provided the ticket for the amount over the gift limit (or pay down the value to under the \$50 gift reporting threshold if the official does not want to disclose the ticket). Reimbursement must occur within 30 days of receipt of the ticket. A candidate or elected official may use campaign funds to make the reimbursement if there is a political, legislative, or governmental purpose for the payment. A ticket that is not used and not given to another person is not considered a gift to the official.

For further clarification, or to help determine whether a gift is reportable and subject to limits, please email your questions to: advice@fppc.ca.gov.

Statutory and Regulatory Authority

Government Code Sections: 82028, 86201, 86203, 87103, 87207, 87302, 89501-89506
Regulations: 18640, 18946, 18946.4

California's Basic Gift Rules

The goal underlying California's gift rules is to prevent either the perception or the reality that gifts influence public officials' actions. This is because public agency actions should always promote the *public's* interests, as opposed to narrow personal or political interests.

As a result, California public officials must:

- **Report gifts worth \$50 or more on their Statement of Economic Interests.**⁴ Gifts from a single source must be added up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of a series of gestures from a single gift-giver reaches \$50 or more.
- **Not receive gifts that exceed \$440 from a single source per calendar year.**⁵ This limit can be exceeded by accepting a single large gesture or a series of gestures over the course of a calendar year from the same gift-giver that total more than \$440 (2013-2014 amount).⁶
- **Remember that having accepted gifts may keep a public official from participating in the decision-making process.** If a public official accepts gestures with a value of more than \$440 from a single gift-giver in the 12 months preceding the official's involvement in a decision affecting that gift-giver, the official may be disqualified from influencing and/or participating in that decision-making process.⁷

The regulations do provide a number of exceptions to the receipt and reporting requirements, including:

- Gifts from family members (as defined in the Fair Political Practices Commission regulations, which also were amended), as long as the family member is not acting as an intermediary for someone else who is the true source of the gift;
- Gifts exchanged with friends on special occasions (for example, birthdays and holidays) as long as the gifts are of approximately equal value; and
- Within certain parameters, the practice of taking turns paying for the cost of attending social events and activities as long as the practice results in each party over time paying for his or her share of the costs (note that this is new).

Even so, public officials are well-advised to look beyond what the law allows in any situation involving a nice gesture. This includes considering how residents will view a public official's actions.

For more details on these rules, see www.ca-ilg.org/GiftCenter (soon to launch).

Gifts Subject to Special Rules

FPPC Regulations are available at <http://www.fppc.ca.gov/index.php?id=496>

Certain kinds of gestures either are exempt from California's gift rules or are subject to special treatment.

Gestures that May Not Be Subject to Gift Disclosure, Limits and Disqualification Rules (Exceptions)

Informational material, 2 Cal. Code of Regs. §§ 18942(a)(1), 18942.1

Gifts paid for, returned, or donated unused, 2 Cal. Code of Regs. § 18942(a)(2)

Gifts from family, 2 Cal. Code of Regs. § 18942(a)(3)

Campaign contributions, 2 Cal. Code of Regs. § 18942(a)(4)

Inheritances, 2 Cal. Code of Regs. § 18942(a)(5)

Personalized plaques or trophies, 2 Cal. Code of Regs. § 18942(a)(6)

Home hospitality, 2 Cal. Code of Regs. §§ 18942(a)(7), 18942.1

Reciprocal exchanges, 2 Cal. Code of Regs. § 18942(a)(8)

Leave credits, 2 Cal. Code of Regs. § 18942(a)(9)

Disaster relief payments, 2 Cal. Code of Regs. § 18942(a)(10)

Campaign activities, 2 Cal. Code of Regs. § 18942(a)(11)

Tickets for a ceremonial role, 2 Cal. Code of Regs. §§ 18942(a)(12), 18942.1

Prizes in bona fide competitions, 2 Cal. Code of Regs. § 18942(a)(13)

Wedding guest benefits, 2 Cal. Code of Regs. § 18942(a)(14), (b),

Bereavement offerings, 2 Cal. Code of Regs. § 18942(a)(15)

Acts of neighborliness, 2 Cal. Code of Regs. § 18942(a)(16)

Acts of compassion, 2 Cal. Code of Regs. § 18942(a)(17)(B)



Gifts Subject to Special Rules

Page 2

Gestures received in the context of certain relationships:

- Existing personal or business relationship, 2 Cal. Code of Regs. § 18942(a)(18)
- Long term relationships, 2 Cal. Code of Regs. § 18942(a)(17)(C)
- Bona fide dating relationships, 2 Cal. Code of Regs. § 18942(a)(17)(A)

Special Rules for Certain Sources of Gifts

Agency gifts, 2 Cal. Code of Regs. § 18944

Agency provided tickets or passes, 2 Cal. Code of Regs. § 18944.1

Agency raffles or gift exchanges, 2 Cal. Code of Regs. § 18944.2

Gifts from public agencies to agency officials, 2 Cal. Code of Regs. § 18944.3

Group gifts, 2 Cal. Code of Regs. § 18945.2

Gifts Subject to Special Valuation Rules

Tickets and passes, 2 Cal. Code of Regs. § 18946.1

Nonprofit or political fundraisers, 2 Cal. Code of Regs. § 18946.4

Invitation only events, 2 Cal. Code of Regs. § 18946.2

Wedding gifts, 2 Cal. Code of Regs. § 18946.3

Air transportation, 2 Cal. Code of Regs. § 18946.5

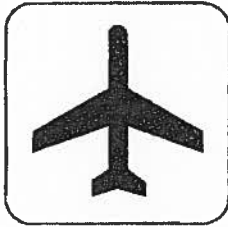
Special Rules Relating to Special Gift Recipients

Gifts to family members, 2 Cal. Code of Regs. § 18943

Type of Gift Subject to Special Rules

Travel, 2 Cal. Code of Regs. § 18950-18950.4 (under review by FPPC)

For more information, see www.ca-ilg.org/GiftCenter



Gifts of Travel Expenses

Basic Rules

Travel Passes from Transportation Companies. With respect to travel provided by transportation companies, state law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.²⁰¹ This prohibition applies to all personal or business travel, whether intrastate, interstate or foreign. The prohibition applies to both elected and appointed public officers but not to employees.²⁰²

The Attorney General has opined the prohibition applies when the free or discounted travel was provided due to the person's holding of public office, but the prohibition does not apply if the official received the free or discounted travel as any other general member of the public would have.²⁰³ For example, the prohibition applied when an airline gave a first-class upgrade to a group of 20 VIPs traveling together and one of those VIPs was a mayor. Further, the mayor could not escape the prohibition by paying for the value of the upgrade after-the-fact when he learned of the prohibition.²⁰⁴

Travel Expenses from Non-Transportation Companies. Gifts of travel expenses (for example, airfare, lodging, meals and entertainment) from non-transportation companies are generally subject to the gift rules and must be reported on one's Statement of Economic Interests as such.

Exceptions to Rules

Travel Expenses from Non-Transportation Companies. Receipt of the following types of travel expenses are not subject to the maximum limitations on the receipt of gifts:

- **Travel Expenses Paid by One's Own Public Agency as Part of One's Public Service.**²⁰⁵
- **Giving a Speech in California.** Reimbursement for transportation within California directly in connection with an event at which one gives a speech or participates in a panel or seminar.²⁰⁶ These travel expenses are not reportable as gifts or income on one's Statement of Economic Interests.
- **Giving a Speech Elsewhere in the Country.** Reimbursement for travel within the United States which is:
 - Related to a legislative or governmental purpose or to an issue of state, national or international public policy, and
 - Occurs in connection with an event at which one gives a speech or participates in a panel or seminar.²⁰⁷

Note reimbursement for lodging or meals is limited to the day immediately before, the day of, and the day immediately following the speech, panel or seminar.²⁰⁸ Necessary lodging and subsistence provided directly in connection with the speech are not reportable on one's Statement of Economic Interests.²⁰⁹ Transportation costs outside California (that are related to a legislative or governmental purpose) are reportable but not subject to limits.²¹⁰

■ **Other "Nominal" Benefits for Giving a Speech.** Free admission, refreshments or similar non-cash nominal benefits one receives while attending an event at which one delivers a speech or participates in a panel or seminar is similarly exempt during the event, regardless of whether the event is inside or outside of California.²¹¹ These travel expenses are not reportable as gifts or income on one's Statement of Economic Interests.

■ **Other Government-Related Trips.** Reimbursement for travel within the United States which is

- Related to a public policy purpose; and
- Is paid for by a governmental, educational or charitable organization.²¹²

Note payment for these kinds of expenses, while not considered gifts, may be reportable as income on one's

Statement of Economic Interests. For example, the Fair Political Practices Commission has ruled provision of meals and travel expenses in conjunction with an official's service to a nonprofit local agency association is reportable as income on one's Statement of Economic Interests.²¹³

■ **Bona Fide Business Trips.**

Reimbursement for travel that is reasonably necessary in connection with a bona fide business purpose and that satisfies the criteria for deduction as a business expense for income tax purposes.²¹⁴ For reporting purposes, these travel expenses are considered a part of salary and are reported as income on one's Statement of Economic Interests.²¹⁵

Travel Passes from Transportation Companies. The prohibition against accepting free travel from transportation companies did not apply when:

- The elected official received a first-class airline upgrade because he was going on his honeymoon, and the upgrade was given to all honeymooners.²¹⁶
- An elected official received free airline travel because he was the spouse of a flight attendant.²¹⁷
- An elected official exchanged frequent-flier miles for an airline ticket because the earning of frequent-flier miles is done without regard to the person's status as an officeholder.²¹⁸

Gifts to an Agency

General Reporting Requirements

A payment or provision of a good or service that benefits a public official is considered an agency gift if all the following requirements are met:²¹⁹

1. Agency Controls Use of Payment.

The agency head (or designee) determines and controls the agency's use of the payment. The donor may specify a purpose for the payment but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, must select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.²²⁰

2. Official Agency Business. The payment must be used for official agency business.²²¹

3. Agency Reports the Gift. The agency must disclose the gift using FPPC form 801 within thirty days after payment, including a description of the gift, the date received, the amount, the name and address of the donor, and the agency's use of the payment.²²² If a gift to an agency is made up of donated funds raised for the purpose of making a gift to an

agency, the names and amounts given by the underlying donors of the funds must be disclosed.²²³

Elected officials and employees subject to gift limits and reporting requirements cannot use gifts provided to the agency for travel, including transportation, lodging and meals.²²⁴

Compliance with these rules can be made easier if the agency adopts an official policy as to how it will accept, monitor and report gifts to the agency. The adopted policy should designate who is the "agency head" for purposes of determining and controlling the use of gifts.

Tickets Given to an Agency

Special rules apply if a public agency receives tickets or passes from outside entities. The threshold question is who should use the tickets. As with any use of public resources, the question turns on the agency's analysis of what identifiable, worthy public purposes might be served in how the tickets are used. For example:

- The agency might re-gift the passes by giving them to a community group or others. For example, the

The public is aware those with business before an agency will attempt to curry favor with decision-makers and these efforts may interfere with a public official's responsibility to make decisions solely based on the public's interests.

Police Athletic League might be able to enhance its program supporting physical activity, teamwork and sportsmanship if the tickets are to a sporting event involving teams that can help underscore these themes.

- If the agency has an “Employee of the Month” program designed to recognize superior performance and good ethics, a worthwhile public purpose might be to use the tickets to recognize such performance.
- If there are employees’ whose responsibilities require them to be at the event, then having them attend satisfies a public purpose. Note that the responsibilities must be in writing.

The key task is for the public agency to identify underlying, worthwhile public purposes for the use of any gifts of tickets in a policy that is posted on the agency’s website.²²⁵ The Fair Political Practices Commission rules explain what the policy must contain.

If such use involves public officials otherwise subject to the gift limit and reporting requirements, the tickets are not subject to the limit and reporting requirements if:

- The agency decides who should use the ticket or pass consistent with its adopted policy; and
- The gift giver plays no role in the decision on who should use the ticket.²²⁶

No matter who uses the tickets, the agency must disclose publicly on its website (using FPPC Form 802, available at [www.fppc.ca.gov/forms/802\(0209\).pdf](http://www.fppc.ca.gov/forms/802(0209).pdf)), how it used the tickets (or the FPPC’s website, if the agency doesn’t have a website).²²⁷



Penalties

Travel Passes from Transportation Companies. The penalty for violating the prohibition against accepting travel passes from transportation companies is severe—an immediate forfeiture of office.²²⁸

All Other Gift-Related Rules. The other restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.²³⁶

RESOURCES FOR FURTHER INFORMATION

For more information, the Fair Political Practices Commission has produced "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans" and "Travel Guide for California Officials and Candidates," each of which is available online at www.fppc.ca.gov. Because of the complexity of these requirements, officials should seek legal advice when faced with all but the most basic gift, travel and honoraria issues. Two sources of such advice are the Fair Political Practices Commission and agency counsel.

POLITICAL REFORM ACT PENALTIES

Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.²²⁹ A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.²³⁰ Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties²³¹ or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.²³² Jail time is also a possibility.²³³

Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.²²⁴

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.²³⁵

Exceptions to Rules

There are a number of exceptions to the gift limit. Officials need not disclose:

- Gifts returned (unused) to the donor, or where the donor has been reimbursed within thirty days of receiving the gift.¹⁷⁵
- Gifts donated (unused) to a nonprofit organization or a government agency within thirty days of receipt without claiming a tax deduction.¹⁷⁶
- Gifts from a spouse, domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse/domestic partner of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.¹⁷⁷
- Gifts of hospitality or occasional lodging in an individual's home when the host is present.¹⁷⁸
- Gifts of approximately equal value exchanged between an official and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions.¹⁷⁹
- Informational material provided to assist in the performance of official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.¹⁸⁰
- A bequest or inheritance.¹⁸¹
- Campaign contributions.¹⁸²
- Personalized plaques and trophies valued at less than \$250.¹⁸³
- Tickets to nonprofit (501(c)(3))¹⁸⁴ or political¹⁸⁵ fundraisers under certain circumstances: see discussion on page 28.
- Free admission, refreshments and similar non-cash benefits provided for an event where an official gives a speech, participates in a panel or seminar, or provides a similar service. Transportation within California, lodging, and food provided directly in connection with the speech are also exempt.¹⁸⁶ See discussion on pages 29–30.
- Passes or tickets to provide admission or access to facilities, goods, services or other benefits (either on a one-time or repeated basis) that are not used or not given to another person.¹⁸⁷

- Gifts provided directly to family members unless the official uses the gift, receives a personal benefit from the gift, or exercises discretion or control over its use, and there are no factors indicating that the donor intended to make a gift to the public official.¹⁸⁸
- Gifts provided to a government agency.¹⁸⁹ See discussion on pages 31–32 about specifics, including the agency's obligation to report.
- Food, shelter, or similar assistance received in connection with a disaster relief program.¹⁹⁰

RESOURCES FOR FURTHER INFORMATION

For more information, see the Everyday Ethics for Local Officials column "Receiving Gifts as a Public Official" (see www.ca-ilg.org/gifts).

What to Do about Unwanted Gifts?

Some local officials and agencies have adopted and publicize a "no gift" policy to discourage gifts. For example, they place a sign on their office doors explaining that, while they appreciate the thought, their policy is to not accept gifts.

If an official receives an unwanted gift, the official may within 30 days of receiving the gift:¹⁹¹

1. Return the gift unused;
2. Deliver the gift unused, within 30 days, to a nonprofit organization without claiming the gift as a tax deduction (the nonprofit must be exempt from taxation under section 501(c)(3) of the Internal Revenue Code);
3. Donate the gift, unused, within 30 days, to a state, local or federal government agency; or
4. Reimburse the gift-giver for the fair market value of the gift.

Government Code § 1098. Confidential information; use or disclosure for pecuniary gain; misdemeanor; application

(a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.

(b) As used in this section:

(1) "Confidential information" means information to which all of the following apply:

(A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.

(B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.

(C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.

(2) For purposes of paragraph (1):

(A) "Interest in real property" has the definition prescribed by Section 82033.

(B) "Investment" has the definition prescribed by Section 82034.

(C) "Material financial effect" has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.

(3) "Pecuniary gain" does not include salary or other similar compensation from the officer's or the employee's agency.

(c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543.

(d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature.

Government Code § 1099. Simultaneous occupation of incompatible public offices; effect; enforcement of prohibition; exceptions

(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

- (1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
 - (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
 - (3) Public policy considerations make it improper for one person to hold both offices.
- (b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.
- (c) This section does not apply to a position of employment, including a civil service position.
- (d) This section shall not apply to a governmental body that has only advisory powers.
- (e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.
- (f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.

Government Code § 1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.

Holding Multiple Public Offices

There is such a thing as too much public service; the law limits the degree to which public officials can hold multiple offices. The reason is that, when one assumes a public office, one takes on responsibility to the constituents of that agency to put their interests first. When one occupies multiple offices in multiple agencies, that job becomes more complicated, both legally and ethically. Potential legal issues include:

- Political Reform Act issues when the official is in the position of making decisions that affect the official's economic interests. This issue is covered in *Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws*;

- Section 1090 issues when the official's position is such that the official has an interest in a contract in which the agency is involved. This issue is also covered in

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws; and

- Incompatibility of office issues (for example, membership on the city council and serving on the board of another local agency) when the official's offices are such that the official may be subjected to conflicting loyalties.⁸⁶

The dual-office holding problem differs from a conflict of interest that involves a potential clash between one's private interest and one's public duties. Incompatibility of offices normally refers to the "public-public" situation where no personal conflict of interest is involved. Instead there is a potential clash between one's responsibility to two sets of constituents.



Honoraria Ban

Government Code § 89502. Honoraria prohibitions; scope

(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

(b)(1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) No member of a state board or commission and no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

Exceptions to No-Honoraria Rules

Some gestures in connection with speaking or writing engagements are allowed. These include:

- **Payments Voluntarily Made to Charitable and Similar Organizations.** An organization may recognize a public official's speech, article or meeting attendance by making a direct contribution to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization.⁴⁷ A public official may not make such donations a condition for the speech, article or meeting attendance. In addition, the official may not claim the donation as a deduction for income tax purposes. Nor may the donation have a reasonably foreseeable financial effect on the public official or on any member of the official's immediate family. The official may not be identified to the nonprofit organization in connection with the donation.
- **Payments Deposited in Local Agency General Fund.** An honorarium may be paid to the local agency's general fund, without being claimed by an official as a deduction from income for income tax purposes.⁴⁸
- **Income from Bona Fide Occupation.** An official may be paid income for personal services if the services are provided in connection with a bona fide business, trade, or profession (such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting) and the services are routinely provided in connection with the trade, business or profession.⁴⁹ This exception does not apply, however, when the main activity of the business or profession is making speeches.
- **Some Payments in Connection with a Speech or Panel Discussion.** An official may accept certain gestures when the official gives a speech, participates in a panel or seminar, or provides a similar service. These are exempt from the honoraria ban and are not considered "gifts" by the Political Reform Act. These include free admission to the event, refreshments and similar non-cash nominal benefits received at the event, necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, and transportation (within California) to the event.⁵⁰

The Right to Fair and Unbiased Decision-Makers

Basic Rules

Although California statutes largely determine when public officials must disqualify themselves from participating in decisions, common law (judge-made law) and some constitutional principles still require a public official to exercise his or her powers free from personal bias—including biases that have nothing to do with financial gain or losses.

Under the common law doctrine, an elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interests.⁴

Local officials are much less constrained when the body is acting in a legislative, as opposed to quasi-judicial capacity.

In addition, constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a “quasi-judicial” capacity. Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions, and licenses. Quasi-judicial proceedings tend to involve the application of generally adopted standards to specific situations, much as a judge applies the law to a particular set of facts.

The kinds of impermissible bias⁵ include:

- **Personal Interest in the Decision’s Outcome.** For example, one court found a council member was biased and should not participate in a decision on a proposed addition to a home in his neighborhood when the addition would block the council member’s view of the ocean from the council member’s apartment.⁶

■ **Personal Bias.**

- **People.** An example would be a strong animosity about a permit applicant based on conduct that occurred outside the hearing. Conversely, a strong personal loyalty toward a party could bias an official as well.⁷
- **Belief/Ideology.** An example would be a strong ideological reaction to a proposed Planned Parenthood clinic or community center for a particular ethnic or religious group.

- **Factual Bias.** An example is information an official might receive outside the public hearing that causes the official to have a closed mind to any factual information that may be presented in a hearing. This is a variation of the “*ex parte* communications” doctrine, which suggests that, in quasi-judicial matters, all communications to decision-makers about the merits (or demerits) of an issue should occur in the context of the noticed hearing (as opposed to private meetings with either side of an issue, for example).⁸

When an official sits in a quasi-judicial capacity, that official’s personal interest or involvement, either in a decision’s outcome or with any participants, can create a risk that the agency’s decision will be set aside by a court if the decision is challenged. Typically, having the official disqualify himself or herself removes the risk.⁹

Decision-makers are also well advised to step aside on participation in a quasi-judicial matter when the decision-maker has pre-judged the matter. Attributes of having “pre-judged the matter” include having a closed mind or a preconceived and unalterable view of the proper outcome without regard to the evidence.¹⁰

This rule does not preclude holding opinions, philosophies or strong feelings about issues or specific projects; it also does not proscribe expression of views about matters of importance in the community, particularly during an election campaign.¹¹ Also, local officials are much less constrained when the body is acting in a legislative, as opposed to quasi-judicial capacity.

**RESOURCES FOR
FURTHER INFORMATION**

For more information, see the Everyday Ethics for Local Officials column on bias (see www.ca-ilg.org/bias).

See also *An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions* (see www.ca-ilg.org/ounce) Chapter 7.

Mass Mailing Restrictions

Government Code § 89001. Newsletter or mass mailing

No newsletter or other mass mailing shall be sent at public expense.

2 CA ADC § 18901. Mass Mailings Sent at Public Expense.

(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:

(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3)(A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

(b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by section 89001:

(1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.

(2) A press release sent to members of the media.

(3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

(4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

(5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.

(9)(A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

(10) An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) The following definitions shall govern the interpretation of this regulation:

(1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.

(2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

1. The items are identical, except for changes necessary to identify the recipient and his or her address.

2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.

3. Both of the following apply to the items mailed:

a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

b. Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." Such informational materials may not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.

(4) "Unsolicited request" is defined as follows:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

SB COUNTY: College district agrees to \$2,000 fine

BY JIM MILLER

STAFF WRITER

jmiller@pe.com

Published: 04 November 2011

12:25 PM

The San Bernardino Community College District has agreed to pay \$2,000 as punishment for sending a newsletter that violated state political reform laws.

The Fair Political Practices Commission is scheduled to consider the \$2,000 fine when it meets next Thursday.

In mid-March, the college district spent \$24,025 to send a Spring 2011 newsletter to 202,000 households in San Bernardino and Riverside counties, according to the FPPC.

The newsletter, however, violated state rules on taxpayer-funded mass mail because its front page featured the names and photographs of the district's seven-member Board of Trustees and there also was a letter and photograph from the board president.

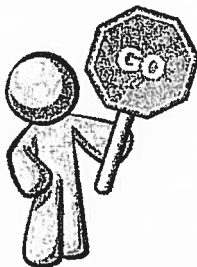
Ballot Measure Activities & Public Resources: Rules of the Road

As important as ballot measures are to policymaking in California, public agencies and officials face important restrictions and requirements relating to ballot measure activities.

The basic rule is that *public resources may not be used for ballot measure campaign activities*. Public resources may be used, however, for informational activities.

This pamphlet summarizes some of the key applications of these principles. The law, however, is not always clear. Check with agency counsel for guidance on how these rules apply in any specific situation.

The stakes are high. Missteps in this area are punishable as both criminal and civil offenses.



Public agency resources may be used to:

- Place a measure on the ballot.
- Prepare an objective and fact-based analysis on the effect of a ballot measure on the agency and those the agency serves.
- Distribute that analysis through regular agency communications channels (for example, through the agency's website and in regularly scheduled agency newsletters).
- Adopt a position on the measure, as long as that position is taken at an open meeting where all voices have the opportunity to be heard.
- Respond to inquiries about the ballot measure and the agency's views on the measure.

Any agency communications about ballot measures should not contain inflammatory language or argumentative rhetoric.

In addition, public employees and elected officials may engage in the following activities on their own time using their own resources:

- Work on ballot measure campaigns or attend campaign-related events on personal time (for example, evenings, weekends and lunch hours)
- Make campaign contributions to ballot measures, using one's own money or campaign funds (while observing campaign reporting rules).
- Send and receive campaign related emails using one's personal (non-agency) computer and email address.



Public officials should not:

- Engage in campaign activities on while on agency time or using agency resources.
- Use agency resources (including office equipment, supplies, staff time, vehicles or public funds) to engage in advocacy-related activities, including producing campaign-type materials or performing campaign tasks.
- Use public funds to pay for campaign-related expenses (for example, television or radio advertising, bumper stickers, and signs) or make campaign contributions.
- Use agency computers or email addresses for campaign communication activities.
- Use agency communication channels to distribute campaign materials (for example, internal mail systems, agency bulletin boards, or the agency's email or intranet systems).
- Post links to campaign websites on the agency's website.
- Give preference to campaign-related requests to use agency facilities

Best Practices:

- Make sure everyone in the agency who might be in a position to engage in the above activities is aware of these legal restrictions.
- Use a tag that makes clear that restrictions against using public resources for campaign materials have been observed (for example: "Not produced or distributed with public resources").

SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Margaret M. Merchat

Attorneys
Carl D. Corbin
Marko H. Fong
Kristina T. Jansen
Nancy L. Klein
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

~~~~~  
Susanne K. Reed  
(1947 - 2010)

A Joint Powers Authority serving school and  
college districts throughout the state

Reply to:  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@scsocal.org](mailto:santarosa@scsocal.org)

Of Counsel  
Robert J. Henry  
Janna L. Lambert  
Virginia A. Riegel

## LEGAL UPDATE

September 21, 2012

To: Superintendents/Presidents, Member Community College Districts  
From: Patrick C. Wilson, Senior Associate General Counsel *PCW*  
Subject: FAQ Regarding Political Activities by College Districts and  
District Employees  
Memo No. 13-2012(CC)

---

Set forth below are frequently asked questions regarding political activities by Districts and their employees.

**Question:** Can District funds be used to urge support for or defeat of an upcoming ballot measure?

No.

Education Code section 7054(a) provides that:

*"No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district."*

These provisions also apply to County Offices of Education. Education Code section 7051.

**Question:** Can a District use District money to send an informational letter to the public regarding a ballot measure?

Yes.

Education Code section 7054(b) provides:

"Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

- (1) The informational activities are otherwise authorized by the Constitution or laws of this state.
- (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure." (Emphasis added.)

An impartial presentation of the facts will necessarily include all consequences, good and bad, of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences as may be foreseen. *Citizens to Protect Public Funds v. Board of Education* (1953) 98 A.2d 673

**Question:** What are some examples of "informational" materials that have been found to be illegal?

"Frequently, the line between unauthorized campaign expenditures and authorized informational activities is not so clear. In such cases, the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case." *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 25.

- In one case, the trustees of the Madera Union High School District spent public funds to place a full-page advertisement in a general circulation newspaper one day before a school board election. The advertisement did not expressly advocate voters to "Vote Yes" on the bond issue, but stated in large letters, "A CLASSROOM EMERGENCY EXISTS NOW AT MADERA UNION HIGH SCHOOL," and listed a number of reasons why additional funds were needed by the school district. The Attorney General concluded that, in light of the "style, tenor and timing" of the advertisement, it was unlawful for the district to have expended public funds for the advertisement. 35 Opinion of the AG 112 (1960).

- In another case, school district money was spent for printing, artist's work and postage to circulate an 18-page booklet entitled 'Read the Facts Behind the School Building Program.' All but one page of the booklet depicted in graphic form such facts as the growth of the grade school population, the inadequacies of existing facilities, the proposed additions, with architectural sketches, to two schools, the aggregate and annual costs, principal and interest, of the immediate

program and the effect upon taxes of such cost. However, there also appeared on the cover and on two of the pages 'Vote Yes,' and 'Vote Yes-December 2, and an entire page that included:

"What Will Happen if You Don't Vote Yes?

Double Sessions!!!

This will automatically cheat your child of 1/3 of his education (4 hours instead of 6).

Yearly school changing and hour long bus rides will continue for many children.

Morning Session (8:30-12:30) Children will leave home 1/2 hour earlier.

Afternoon Session (12:30-4:30) Children will return home 1 1/2 hours later (many after dark).

Children in some families would be attending different sessions (depending upon grade).

Transportation costs will increase (could double) with 2 sets of bus routes per day.

Temporary room rentals will continue.

Double use of equipment will necessitate more rapid replacement.

Note: Operating expenses will continue to rise as the enrollment increases (more teachers, more supplies and equipment for children. This Will Be So Whether We Build Or Not.)"

The court found that most of the booklet under attack, in 17 of its 18 pages, fairly presented the facts as to need and the advantages and disadvantages of the program, including the tax effect of its cost, and if it had stopped there, the district expenditure would have been permissible.

Yet the school board was not content simply to present the facts. The exhortation 'Vote Yes' was repeated on three pages, and the dire consequences of the failure so to do were over-dramatized. In that manner, the court found the board made use of public funds to advocate one side only of the controversial question. "The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint." *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills* (1953) 98 A.2d 673, 674.

**Question:** Can a governing board express its *opinion* regarding a ballot measure?

Yes.

In *Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, the court considered whether it was proper for the school district board of trustees to announce at a public meeting, which was televised, its opposition to a proposed "choice in education" ballot initiative. In finding that the board's conduct was legal, the court noted that speakers in favor of the initiative were afforded an opportunity to speak at that board meeting in accordance with the Brown Act. The fact that no one chose to speak in favor of the initiative at the meeting did not bar the board from expressing its view on the initiative. *Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, 429. See also *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.

Note: the Board may express its opinion in a resolution, but it should refrain from telling voters how to vote.

Districts must be cautious regarding how to disseminate the Board's opinion since section 7054 does not permit District funds to be spent to further political advocacy. However, the Board resolution could be posted on the District website in the same manner as other District resolutions.

**Question: Can Districts spend public money to evaluate whether it is appropriate to propose a ballot initiative?**

Yes.

Because districts are authorized to place certain measures on the ballot, they may spend public money to evaluate whether to do so.

For example, the Attorney General has found that it is permissible for a community college district to spend district funds to hire a consultant for the purpose of evaluating the likelihood of the electorate's approval of a bond measure. The express power to place a bond measure on the ballot when the district board finds it advisable to do so implies that the board has the power to make reasonable expenditures for the purpose of gathering information in order to exercise its discretion in an informed manner. 2005 WL 815728. The district may also submit a partisan ballot argument in favor of a bond measure.

However, not all pre-campaign public expenditures are permissible. For example, a district board may not spend district funds on activities that form the basis for an eventual campaign to obtain approval of a bond measure and district resources may not be used to recruit or organize supporters for a campaign or raise funds for the campaign. *League of Women Voters* 203 Cal.App.3d at 558 [expenditures made in anticipation of supporting a measure once it is on the ballot come within reporting requirements of Political Reform Act of 1974]; *In re Fontana* (1976) 2 FPPC Ops. 25 [expenditures made in support of a proposal become reportable after the proposal becomes a ballot measure].)

**Question: Can a District spend public money to lobby the Legislature?**

Yes.

While public agency lobbying efforts undeniably involve the use of public funds to promote causes which some members of the public may not support, one of the primary functions of elected and appointed executive officials is to devise legislative proposals to attempt to implement the current administration's policies. Since the legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by statute, in no way

undermines or distorts the legislative process. By contrast, the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leaves to the 'free election' of the people does present a serious threat to the integrity of the electoral process. *Stanson v. Mott* (1976) 17 Cal.3d at 218.

**Question: Can District employees engage in political activities during off duty time?**

Yes.

Political activities are allowed during off duty time so long as District resources are not used. No political activities are allowed during work time.

Teachers have the right to discuss with fellow teachers issues of public concern (such as cutbacks to educational funding) in faculty rooms and lunchrooms during duty-free periods.

*Los Angeles Teachers Union, Local 1021, Am. Federation of Teachers v. Los Angeles City Bd. of Ed.* (1969) 71 Cal.2d 551, 560. *Adcock v. Board of Education* (1973) 10 Cal.3d 60, 65.

Education Code section 7056 provides:

“(a) Nothing in this article prevents an officer or employee of a local agency from soliciting or receiving political funds or contributions to promote the support or defeat a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the local agency. *These activities are prohibited during working hours.* In addition, entry into buildings and grounds under the control of a local agency for such purposes *during working hours* is also prohibited.

(b) Nothing in this section shall be construed to prohibit any recognized employee organization or its officers, agents, and representatives from soliciting or receiving political funds or contributions from employee members to promote the support or defeat of any ballot measure on school district property or community college district property *during nonworking time*. As used in this subdivision, “nonworking time” means time outside an employee's working hours, whether before or after school or during the employee's luncheon period or other scheduled work intermittency during the school day.”<sup>1</sup>

---

<sup>1</sup> Contributions of money, materials, and time to a political campaign are subject to the Political Reform Act, and donors and recipients must comply with certain reporting requirements.

Education Code section 7055 provides:

"The governing body of each local agency may establish rules and regulations on the following:

(a) Officers and employees engaging in political activity *during working hours*.

(b) Political activities on the premises of the local agency."

**Question: Can a District regulate the wearing of political buttons by employees or other political expression by employees while on duty?**

Yes.

A District can restrict political activities that occur during instructional activities, but not during non-instructional time, such as a lunch break.

In *California Teachers Association v. Governing Board* (1998) 45 Cal.App.4<sup>th</sup> 1383, the court held that under Education Code section 7055, a school district could prohibit its employees from wearing political buttons during "instructional activities." This case considers the interplay between section 7055's grant of authority to regulate employee political activity and constitutional free speech guarantees. The court concluded that these constitutional rights should be read to limit regulation of political advocacy under section 7055 to instructional settings: "Under the California Constitution, as well as the First Amendment, school authorities retain the power to dissociate themselves from political controversy by prohibiting their employees from engaging in political advocacy in instructional settings." The court also expressly held that "as applied to non instructional settings [the] district's regulation is unconstitutional but that in instructional settings it may be enforced." See also 77 Ops.Cal.Atty.Gen 56 (1994).

**Question: Can a school district prohibit teachers from wearing political buttons while attending Back to School Night, where teachers meet only with parents?**

No.

"The event does not involve an instructional setting for pupils of the district. Rather, the parents are in attendance to show support for their children's educational activities. In this setting, it need not be feared that 'young and impressionable minds' will be unduly influenced by teachers wearing political buttons or that the parents will believe that the teachers' political buttons reflect the view of the district's government board or other school officials." 84 Ops.Cal.Atty.Gen. 106 (2001).



**Question: Can an employee be prohibited from displaying a large campaign sign on her private car in the District lot?**

Yes.

The two-by-eight foot sign indicated which school board candidates the union endorsed and was intended to influence voters in the upcoming election. The district's request that the sign be removed or the vehicle parked off school property was challenged as an unfair labor practice and ultimately addressed by the California Public Employment Relations Board. Under the circumstances of the case, PERB found the school's actions were allowable under section 7055. 24 PERC P 31053.

**Question: Can teachers wear union buttons while in the classroom?**

Yes.

The Public Employment Relations Board has held that school districts cannot prohibit teachers from wearing union buttons in the classroom absent "special circumstances." One such circumstance might be "distraction," but PERB found that the district in that case failed to establish distraction as a special circumstance justifying its ban on union buttons. In addition, the Board rejected the employer's contention that the buttons at issue could be considered "political activity" within the meaning of Education Code section 7055. 29 PERC P 40 (2004).

**Question: Should a District prohibit the use of District mailboxes to distribute partisan materials?**

Yes.

Pursuant to Education Code section 7054, a District must prohibit the use of campus mailboxes for distribution of materials urging the support or defeat of any ballot measure or candidate.

In 2001 the Public Employment Relations Board concluded that such a prohibition "on the use of the inter-site mail system--and photocopying services, falls squarely within, *and is in fact mandated by*, the plain words of Section 7054." *American Federation of Teacher, California Federation of Teachers, Local 1931 v. San Diego Community College District* (2001) 26 Pub. Empl. Rep. ¶33014.

In *San Leandro Teachers Association v. Governing Board* (2009) 46 Cal. 4<sup>th</sup> 822, the California Supreme Court reached a similar result when it upheld a school district's prohibition of the use of internal faculty mailboxes by the teacher's union as a means of distributing partisan political information to its members. Finding that this use violated section 7054, the court held that the internal teacher mailbox system is not a public forum and therefore the district was not required to allow such use by the teacher's union.

The court indicated that the teacher's union could use the mailbox system to disseminate non-partisan information.

**Question: Can incumbents send partisan e-mails from or to District e-mail addresses?**

No.

Candidates who have District e-mail accounts should not use those accounts to send partisan materials.

Candidates may use their private email accounts to send emails to District employees via District email accounts that are available to the general public. We suggest that this occur as part of a "mass mailing." [See below.]

**Question: May a candidate for the Board send letters to District employees seeking support?**

School board candidates should not initiate contact with District employees in an attempt to enlist their support for the campaign; these actions cause undue pressure on the employee to engage in the political activity.

However, the candidate may send "mass mailings" that target a significant segment of the public even if some of those contacted are District employees. Mailing lists should be obtained from a public source, not from the District.

**Question: What else should candidates avoid?**

Persons who hold office, or who are seeking election to office, may not threaten adverse consequences to District employees if they fail to support them, or promise advantages or benefits to District employees who do support them. Education Code section 7053. Government Code section 3204.

Current district officers or employees may not solicit political contributions from other district officers or employees unless "the solicitation is part of a solicitation made to a significant segment of the public . . ." It does not matter whether the solicitation is direct or indirect. Government Code section 3205. An example of indirect solicitation would be supplying favored candidates with nonpublic employee lists that may then be used for the solicitation of support.

**Question: May the District fund a "mass mailing" that features an elected official?**

No.

The Political Reform Act of 1974 was intended to abolish practices that unfairly favor incumbents. Government Code section 81002(e). One means of preventing unfair advantage for

an incumbent is the prohibition on use of public funds for mass mailings that "feature" the elected official. Thus, "no newsletter or other mass mailing shall be sent at public expense." Government Code section 89001. A "mass mailing" consists of "over two hundred substantially similar pieces of mail" when the items feature an elected official and have not been solicited. Government Code section 82041.5; Cal Code Regs., Title 2, §18901.

The "mass mailing" restrictions are designed to prohibit "elected officials from using public moneys to perpetuate themselves in public office." *Watson v. Fair Political Practices Commission* (1990) 217 Cal.App.3d 1059, 1074-75. Section 18901 defines "mass mailings" in terms of the numbers of copies of an unsolicited mailed items, whether the items "feature" elected officers of the entity that produces or sends the mailing, and whether the mailing was prepared or sent in cooperation, consultation, coordination or concert with the elected officer. An elected officer is "featured" when:

"the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color." Cal. Code Regs., Title 2, §18901(c)(2).

**Question: May a candidate obtain from the District the home addresses of District employees to send them campaign material?**

No.

A candidate for the Board may not access employee home addresses from the District. They are not public records.

**Question: May a candidate initiate contact with parents or boosters to enlist support?**

Yes.

A candidate for office has the right to meet with members of the general public to enlist support. The "general public" includes parents and boosters.

**Question: May a candidate address an employee group on site?**

Candidates or proponents are allowed to do this only at the invitation of the employee group and only during reasonable non-working hours.

**Question: May a candidate attend District events such as back to school night to enlist support?**

This is allowed with certain restrictions and should be accompanied by an approved Use of School Facilities permit. The main restriction is that the presence may not interfere or disrupt in anyway with the school event itself. Typically a candidate or proponent is provided a table in a

lobby area to display campaign materials and to discuss campaign issues only if approached by an interested party. Candidates or proponents shall not initiate interactions with staff or participants attending the school event. Such attendance would be open to all candidates.

**Question: May a candidate meet with a District official during school hours?**

Yes, so long as the meeting is not disruptive, so long as the subject matter is limited to discussing school business (i.e. non-partisan), and so long as the school official is available to meet with other candidates as well.

**Question: If a District employee makes a political contribution, is that reportable?**

Contributions to a political campaign may be subject to reporting requirements of the Political Reform Act. There are extensive regulations on this subject available on the Fair Political Practices Commission website.

**Question: May the District seek contributions from vendors to support a ballot measure?**

While a private vendor has a right to make political contributions consistent with legal requirements, the District must be careful to avoid the appearance of "pay to play" or a quid pro quo when seeking a contribution from a vendor to the District.

**Question: May a District Foundation use privately raised funds to support a ballot campaign?**

Yes, so long as no District funds, personnel or equipment are used in that effort, and so long as the funds utilized are not restricted by the donor to preclude such a use. Certain contributions may be reportable under the Political Reform Act. However, if the Foundation is a non-profit corporation, there are significant legal restrictions in the corporation's ability to engage in political activity.

**Question: May a booster group use District facilities to help sponsor a campaign in support of a school bond measure?**

Yes, with conditions.

Organizations separate from the school district itself, such as employee, student or parent organizations, may hold events and disseminate information on school grounds that advocate for or against a measure providing they receive approval to use school facilities for such purposes through the "Civic Center Act."<sup>2</sup> Groups or individuals with opposing viewpoints have the same right to use school facilities under the Civic Center Act. "The First Amendment precludes the government from making public facilities available to only favored political viewpoints; once a

---

<sup>2</sup> Education Code §38130, §82537.

Legal Update Memo 13-2012(CC)  
September 21, 2012  
Page 11

public forum is opened, equal access must be provided to all competing factions.” *Stanson v. Mott* (1976) 17 Cal.3d at 219.

# Use of Campaign Funds

## Basic Rule

In general, money raised to support a person's election to office may only be used for political, legislative, or governmental purposes. It's not okay to spend these monies in a way that confers a personal benefit on the candidate.<sup>237</sup> Any expenditure that confers a substantial personal benefit on an individual must be directly related to a political, legislative, or governmental purpose.<sup>238</sup>

## Penalties

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>239</sup>



### POLITICAL REFORM ACT PENALTIES

#### Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.<sup>240</sup> A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.<sup>241</sup> Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties<sup>242</sup> or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.<sup>243</sup> Jail time is also a possibility.<sup>244</sup>

#### Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.<sup>245</sup>

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.<sup>246</sup>

# Campaign Contribution Disclosure

## Basic Rules

California has an extensive framework for transparency with respect to campaign contributions.<sup>60</sup> The basic theory is that the public has a right to know who gives money and other forms of support to candidates for public office; another is that the prospect of public disclosure will discourage improper influences.<sup>61</sup>

These transparency requirements apply not only to candidates, but also to groups which organize to participate in the election process (known as "committees" under the Political Reform Act).<sup>62</sup> Transparency requirements also apply to those who make large contributions to influence elections.<sup>63</sup> Those who participate in campaigns to pass or defeat ballot measures are also subject to these requirements.<sup>64</sup>

In addition, certain kinds of local officials face state law restrictions on campaign contributions from people with business pending before the agency. These restrictions are discussed in *Understanding the Basics of Public Service Ethics: Fair Process Laws and Merit-Based Decision-Making* at pages 15–19.

Restrictions on how campaign funds may be spent (only for political, governmental and charitable purposes) are discussed in *Understanding the Basics of Public Service Ethics: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws* at page 35.



# Charitable Fundraising Disclosure

## Basic Rules

The disclosure laws are not limited to an official's personal economic interests. There are extensive disclosure requirements relating to an official's campaign fundraising activities, of course.<sup>35</sup>

However, a sometimes overlooked disclosure obligation relates to an official's charitable fundraising activities. The theory is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

Why? The public perceives that donors may contribute to elected officials' favorite causes out of a desire to have a "connection" with them.

What if this "connection" means that the donor expects special preferences in his or her dealings with the official? Or the donor expects his or her calls to be returned more promptly. Perhaps this individual expects to get a meeting with the official when others cannot. What if the donor's expectation is that his support of the official's favorite cause

will make the official more favorably disposed toward his pending project, bid or franchise renewal? Worse, what if the donor fears that if he or she does not give, there will be negative consequences?

These are all issues to which a public official needs to be extraordinarily sensitive. The notion that one has to "pay to play" in government is very damaging to the public's faith in the fairness of the decision-making process. Such faith is vital to an agency's ability to address the issues of the day.

The disclosure requirement is triggered when:

- A person or business donates \$5,000 or more (in a calendar year);
- The donation will be used for a legislative, governmental or charitable purpose; and
- The donation will be made in "cooperation, consultation, coordination, or concert" with an elected official.





# Campaign Support from Agency Staff

## Basic Rules

California law has a strong tradition of separating the electoral process from decisions relating to public employment. There are a number of laws designed to insulate public employees from having to participate in the campaign activities of candidates for their agency's governing board.

State law forbids candidates and officials from conditioning employment decisions on support of a person's candidacy.<sup>80</sup> Compensation decisions may not be tied to political support either.<sup>81</sup> Soliciting campaign funds from agency officers or employees is also unlawful.<sup>82</sup> (The exception is if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.<sup>83</sup>)

## Penalties

No penalties are specified in the code sections creating these prohibitions. Presumably violations would fall into the catchall penalty for misconduct in office, which is loss of office.<sup>84</sup> Note too members of the International City/County Management Association and the City Attorneys Department of the League of California Cities place a high value on these positions' independence from the political process. As a result, both organizations encourage their members not to make campaign contributions to local officials.<sup>85</sup>



### **Conflicts of Interest and Campaign Contributions**

Government Code § 84308. Contributions prohibited from persons with pending applications for licenses, permits or other entitlements; amount; disclosure by all parties; construction

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any 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 who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a

contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

# **PROPOSED CONFLICT OF INTEREST POLICY AND PROCEDURE**

Governing Board Special Meeting  
February 20, 2013

## **CONFLICT OF INTEREST**

In accordance with Board Policy 1020, the procedures listed below should be followed by Governing Board members and designated District staff in complying with the District's conflict of interest policy.

### **Location and Time of Filing of Disclosure Statements**

Governing Board members and the District employees designated in Exhibit A hereto shall file their financial disclosure statements (e.g., Form 700) with the Vice Chancellor, Administrative Services, in accordance with Exhibit B. The disclosure statements will be available for public inspection and reproduction upon request. (GC 81008) These statements will be retained in the office of the Vice Chancellor, Administrative Services.

### **Disclosure of Conflicts**

If a Governing Board member or designated District employee has a disqualifying financial interest regarding a decision or proposal, as described in GC 87103, this fact shall be disclosed and made part of the Governing Board's official minutes at the first meeting following the discovery of the conflict of interest.

In the case of an employee, this announcement shall be made in writing and submitted to the Governing Board.

A Governing Board member, upon identifying a conflict of interest, or a potential conflict of interest, shall do all of the following prior to consideration of the matter:

- publicly identify the financial interest in detail sufficient to be understood by the public;
- recuse himself or herself from discussing and voting on the matter; and
- leave the room until after the discussion, vote, and any other disposition of the matter is concluded unless the matter is placed on the agenda reserved for uncontested matters. A Governing Board member may, however, discuss the issue as it affects his/her personal interest during the time the general public speaks on the issue.

### **Governing Board Declaration**

At the commencement of each term, each Governing Board member shall submit to the District a signed declaration, set forth in Exhibit C hereto, which acknowledges compliance with this Code

**CONTRA COSTA COMMUNITY COLLEGE DISTRICT  
DESIGNATED POSITIONS/DISCLOSURE CATEGORIES**

| <b>Designated Position</b>                                 | <b>Assigned Disclosure Category</b> |
|------------------------------------------------------------|-------------------------------------|
| Governing Board Member                                     | 1                                   |
| Chancellor                                                 | 1                                   |
| President                                                  | 1                                   |
| Vice Chancellor, Administrative Services                   | 1                                   |
| Vice Chancellor, Education and Technology                  | 1                                   |
| Vice Chancellor, Human Resources/Chief Negotiator          | 1                                   |
| Chief Facilities Planner                                   | 1                                   |
| Vice President                                             | 1                                   |
| Academic/Student Services Manager                          | 2                                   |
| Assistant Comptroller                                      | 2                                   |
| Associate Chancellor                                       | 2                                   |
| Athletic Director                                          | 2                                   |
| Bond Budget Controls Manager                               | 2                                   |
| Buildings and Grounds Manager                              | 2                                   |
| Capital Projects Manager                                   | 2                                   |
| Central Services Manager                                   | 2                                   |
| Chief Accountant                                           | 2                                   |
| College Bookstore Manager                                  | 2                                   |
| Comptroller/Assistant Chief Financial Officer              | 2                                   |
| Contract Manager                                           | 2                                   |
| Custodial Manager                                          | 2                                   |
| Dean                                                       | 2                                   |
| Director of Administrative Information Systems             | 2                                   |
| Director of Admissions and Records                         | 2                                   |
| Director of Admissions, Records and Relations with Schools | 2                                   |
| Director of Business Services                              | 2                                   |
| Director of Communications and Community Relations         | 2                                   |
| Director of Construction Operations                        | 2                                   |

| <b>Designated Position</b>                     | <b>Assigned Disclosure Category</b> |
|------------------------------------------------|-------------------------------------|
| Director of Construction Program Controls      | 2                                   |
| Director of District Finance Services          | 2                                   |
| Director of District Research                  | 2                                   |
| Director of Early Childhood Laboratory School  | 2                                   |
| Director of Facilities and Construction        | 2                                   |
| Director of Facilities Services                | 2                                   |
| Director of Facilities Support                 | 2                                   |
| Director of Financial Aid                      | 2                                   |
| Director of Fiscal Services                    | 2                                   |
| Director of Human Resources                    | 2                                   |
| Director of Information Technology             | 2                                   |
| Director of Instructional Support              | 2                                   |
| Director of Internal Audit Services            | 2                                   |
| Director of International Education            | 2                                   |
| Director of Library Services                   | 2                                   |
| Director of Marketing and Communication        | 2                                   |
| Director of Marketing and Media Design         | 2                                   |
| Director of Payroll Services                   | 2                                   |
| Director of Public Safety and Related Programs | 2                                   |
| Director of Purchasing and Contract Services   | 1                                   |
| Director of Special Programs and Services      | 2                                   |
| Director of Student Programs and Services      | 2                                   |
| Director of Student Services                   | 2                                   |
| Executive Dean                                 | 2                                   |
| Facilities Project Manager                     | 2                                   |
| Fiscal Services Manager                        | 2                                   |
| Food Services Manager                          | 2                                   |
| Foundation Director                            | 2                                   |
| Human Resources Operations Manager             | 2                                   |
| Human Resources Support Services Manager       | 2                                   |

| <b>Designated Position</b>               | <b>Assigned Disclosure Category</b> |
|------------------------------------------|-------------------------------------|
| Information Security Officer             | 2                                   |
| Manager of Accounting Services           | 2                                   |
| Manager of Disability Support Services   | 2                                   |
| Network Technology Manager               | 2                                   |
| Program Manager                          | 2                                   |
| Satellite Business Services Manager      | 2                                   |
| Senior Academic/Student Services Manager | 2                                   |
| Senior Dean                              | 2                                   |
| Senior Foundation Director               | 2                                   |
| Special Assistant to the Chancellor      | 2                                   |
| Special Project Manager                  | 2                                   |
| Technology Applications Manager          | 2                                   |
| Technology Systems Manager               | 2                                   |
| Consultant                               | *See Exhibit B                      |



**DISCLOSURE CATEGORIES**

**Designated Positions in Category 1 shall disclose:**

All interests in real property which is located in whole or in part within the boundaries of the District, as well as investments and business positions in business entities and sources of income, including gifts, loans, and travel payments, from persons or entities that provide, or who are likely to provide, goods or services to the District, or who seek or who are likely to seek any contract or other entitlement from the District

**Designated Positions in Category 2 shall disclose:**

All investments, business positions in business entities and sources of income, including gifts, loans and travel payments, from persons or entities that manufacture, sell or provide, or who are likely to provide, work, services, materials, commodities, supplies, books, machinery, vehicles, or equipment utilized by the department for which the designated position has discretionary authority.

**Consultants**

Consultants shall be included in the list of designated employees and shall disclose pursuant to Category 1 subject to the following limitation:

The Chancellor, or designee, may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of disclosure requirements. The Chancellor or designee's determination is a public record and shall be retained for public inspection.

**CONTRA COSTA COMMUNITY COLLEGE DISTRICT  
CONFLICT OF INTEREST DECLARATION**

I declare that as a member of the Governing Board or designated Contra Costa Community College District (CCCCD) manager, I am aware of the legal requirements imposed on me to disclose business and professional relationships that could affect decision-making and to abstain from participating in any matter when I have a disqualifying conflict of interest. By the following, I declare that:

- I will disclose whether I am related by blood or marriage to any member of the Governing Board, or to an employee of the CCCCCD;
- I will disclose any contract, agreement, or business arrangement that I, or any member of my immediate family (persons related by blood, marriage or legal procedure, including parents, children, spouses, siblings, first cousins, and in-laws of any of the aforementioned, uncles, aunts, nieces, nephews, grandparents and grandchildren), may have with the CCCCCD, either directly or indirectly through a corporation, partnership, or other business entity;
- I will disclose whether any person who has a business relationship with, or a financial interest in, any business that I own, operate, or manage, also has a contract, agreement, or business arrangement with the CCCCCD;
- I have read the Conflict of Interest policy established by the Governing Board, and I understand that, in the public's view, a conflict of interest may exist if I, or any member of my immediate family, does business with, or proposes to do business with, any entity that does business with the CCCCCD;
- I understand that a conflict of interest, or the appearance of a conflict of interest, may exist if anyone with a family, business, or professional relationship with me does business or proposes to do business with the CCCCCD; and
- I understand that any of these potential conflicts shall be fully disclosed in writing to the Governing Board as soon as the potential conflict is discovered.

By my signature, I agree to comply with the District's Conflict of Interest policy.

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **CONFLICT OF INTEREST**

The Contra Costa Community College District (District) is committed to avoiding conflicts of interest by Governing Board members and designated District staff. To that end, the District hereby adopts this Conflict of Interest policy.

### **Adoption of Fair Political Practices Commission Regulation 18730**

The Political Reform Act, codified at Government Code (GC) section 81000, et seq., requires local government agencies to adopt and promulgate a conflict of interest code. The Fair Political Practices Commission (FPPC) has adopted a regulation (2 California Code of Regulations 18730) which contains the terms of a FPPC-approved conflict of interest code. The terms of Regulation 18730 and any amendments to it are hereby incorporated by this reference into this policy.

### **Filing of Disclosure Statements**

Financial disclosure statements (e.g., Form 700) shall be filed by Governing Board members and designated District employees upon assumption of office, on an annual basis thereafter, and upon leaving office in accordance with Regulation 18730 Section. 5.

### **Disqualifying Financial Conflicts**

No Governing Board member or designated District employee shall make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which s/he knows or has reason to know that s/he has a disqualifying conflict of interest. (GC 87100, Regulation 18730 Section. 9)

### **Limits on Receipt of Gifts**

Governing Board members and designated District employees shall not accept from any single source in any calendar year any gifts valued in excess of the prevailing gift limitation specified by law. (GC 89503, Regulation 18730 Section. 8.1)

The FPPC has found that the above limitation on receipt of gifts does not apply to certain types of gifts; these exceptions are specified by regulation on the FPPC website.

### **No Receipt of Honoraria**

Governing Board members and designated District employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering. (GC 89501, 89502, Regulation 18730 Section. 8)

The term "honorarium" does not include any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the District for donation to the general fund without being claimed as a deduction for income tax purposes.

### **Limits on Loans to Public Officials**

This policy limits the types of loans that may be received by public officials. These limits are set forth in Regulation 18730 Section 8.2.

### **No Financial Interest in Contracts**

No District official shall be financially interested in any contract made by the Governing Board. (GC 1090)

(over)

A Governing Board member shall not be considered to have a financial interest in a contract if the interest is limited to those interests defined as "remote" pursuant to GC 1091, or is limited to those interests defined by GC 1091.5.

A Governing Board member who has a "remote" interest in any contract considered by the Governing Board shall disclose that interest during a Governing Board meeting and have the disclosure noted in the official Governing Board minutes at the first meeting following the discovery of the conflict. The abstaining Governing Board member shall not vote or debate or otherwise participate or attempt to influence any other Governing Board member regarding the matter.

**No Incompatible Activities or Office**

Governing Board members and District employees shall not engage in any employment or activity that is inconsistent with, incompatible with, in conflict with, or inimical to their duties as Governing Board members or as an officer of the District. A Governing Board member shall not simultaneously hold two public offices that are incompatible. (GC 1099, 1126)

**Limits on Appearances before the Board**

Elected officials and the Chancellor shall not, for a period of one year after leaving his/her position, act as an agent or attorney for, or otherwise represent for compensation, any person appearing before the Governing Board. (GC 87406.3)

**Assistance from FPPC and Counsel**

The FPPC provides advice regarding the Political Reform Act requirements. Officials with questions are encouraged to consult with the FPPC. Contact information is located on the FPPC website.

In addition, in accordance with applicable Board policies, Governing Board members are encouraged to seek counsel from the District's legal advisor in any instance where a question arises regarding a potential conflict of interest.

**No Employment Allowed**

An employee of the District may not be sworn in as an elected or appointed member of the Governing Board unless and until he/she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office. This provision does not apply to an individual who is usually employed in an occupation other than teaching and who also is, at the time of election to the Governing Board, employed part time by the District to teach no more than one course per semester or quarter in the subject matter of that individual's occupation (Education Code Section 72103(b)).

**Violations**

Violations of the conflict of interest rules, including this policy, may subject the violator to civil and/or criminal penalties.

Government Code 1090, 1091, 1091.5, 1099, 1126, 81000, et seq., 81008, 87100, 87103, 87406.3, 89501, 89502, 89503

2 California Code of Regulations 18730 and 18730 Sections 5, 8, 8.1, 8.2, 9