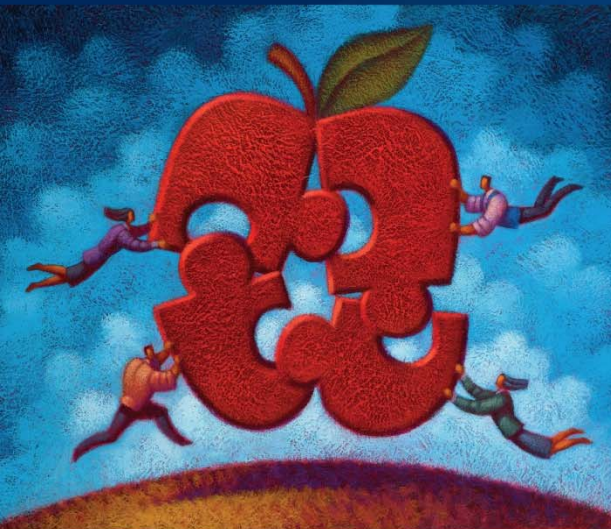


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Complying with California Conflict of Interest Laws

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What is a Conflict?



A conflict of interest arises when an individual who has a private financial interest in the outcome of a contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.

Discussion of Applicable Conflicts of Interest Statutes



- Political Reform Act (PRA)
- Government Code Section 1090
- Corporations Code Section 5233
(anti-self dealing transactions)

Political Reform Act



Political Reform Act or PRA
(Gov. Code Section 87100, et seq.)
Established in 1974.

The Fair Political Practices
Commission (FPPC) enforces
compliance with the Political Reform
Act.

General Compliance Under the PRA – 3 Steps



1. Identify and avoid participating in, making or attempting to influence decisions where there is a personal, material, financial conflict of interest.
2. Adopt and have approved a PRA-compliant Conflict of Interest Code.
3. Public Officials file annual Statements of Economic Interests (Form 700).

Identifying and Avoiding Conflicts of Interest



Does the decision involve:

1. A public official (a board member, officer or key employee)?
2. Making, participating in making, influencing, or attempting to influence a governmental decision?
3. Does the public official have a qualifying financial interest?
4. Is the financial interest directly/indirectly involved in governmental decision?

Identifying Conflicts of Interest (cont.)



If an official can answer “yes” to all questions, under the PRA he/she must:

1. Disclose the conflict on the record
2. Leave room during discussion and vote and comply with anti-self dealing provisions in bylaws
3. Abstain from voting*
4. Also recommend consulting with atty before any action

*Note distinctions between PRA and Government Code 1090

Conflict of Interest Code



- The PRA requires adoption of a Conflict of Interest Code.
- The Code must identify a list of positions that involve the making or participation in making of decisions financial decision (“designated employees”).
- Must be approved by the appropriate “code reviewing body” to be effective.

Conflict of Interest Code & Form 700 Filings



All officers, board members, and employees who are “designated employees” must file a Statement of Economic Interests (Form 700) (Gov. Code Section 87302)

Form 700: Basics



- Must be submitted with original signatures (faxes/e-mails not accepted)
- Document signed under penalty of perjury
- Becomes a public document once filed, and must be made available to the public upon request
- NEW LAW in 2013: Some filing officers have the legal right to force you to file electronically (LA County, Santa Clara County, Ventura County, and Orange County). Others likely to be approved soon after they gain FPCC approval for their electronic filing system.

Elements of Government Code Section 1090



- A public official +
- A public contract (for sale or purchase) +
- A financial interest =

An absolute prohibition on the entire Board entering into the contract even if it is with the best vendor or at the best price (includes employees of organization)

Difference Between the Political Reform Act and Government Code Section 1090



- Political Reform Act: Disclosure and recusal avoids a violation. (Assuming the Board of Directors still consists of a quorum, it may then proceed to take action.)
- Government Code Section 1090: Disclosure and recusal does NOT avoid a violation; would effectively prohibit paid employees from serving on Board.

Government Code Section 1090



- Section 1090 provides, in part, “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...”

Government Code Section 1090



- Under section 1090, the term “made” is not used in the narrow and technical contract sense, but is defined in the broadest sense to encompass actions including preliminary discussions, negotiations, compromises, reasoning, planning, and solicitation for bids and applications.

Government Code Section 1090



- In other words, section 1090 is broadly construed to include many of the preliminary steps in the contractual process, such as rendering advice to the public officers responsible for entering into the contract. (*City Council v. McKinley* (1978) 80 Cal.App.3d 204, 212-213)

What are the Penalties & Remedies for Violating the Conflicts of Interest Statutes?



- Political Reform Act (Government Code Section 87100 et seq.):
 1. Administrative Sanctions (e.g., fines per violation, cease and desist orders, orders to file reports).
 2. Civil Penalties (e.g., injunctions, damages and attorney's fees).
- More common: Charter authorizer could use alleged violations to start revocation proceedings.

What are the Penalties & Remedies for Violating the Conflicts of Interest Statutes? (cont.)



Government Code Section 1090:

1. Criminal penalties (e.g., fine of up to \$1,000 or imprisonment in state prison).
2. Permanent disqualification from holding any office in California.
3. Additionally, any contract made in violation of Government Code Section 1090 is void.

Corporations Code Provisions Against Self-Dealing



- Applies to directors (“board members”) only.
- Higher standard for approval – will satisfy PRA*.
- Director shall not have material financial interest in any contract or transaction, unless:
 - Fully disclosed/noted in minutes;
 - Transaction approved by directors without interested directors involvement (should leave room);
 - School could not obtain a better agreement with reasonable effort; and
 - The transaction is in the best interest of the school and is fair and reasonable at the time (all findings should be in resolution form).

*Still must be analyzed if 1090 applies.

Recent Developments



- Orange County District Attorney prosecution of charter school board member, and Los Angeles District Attorney prosecution of former charter school administrators
- Recent FPPC fines and regulations
- CTA Initiatives pending
- AB 913 and SB 1317

**QUESTIONS AND
RESPONSES**

**THANKS FOR
ATTENDING TODAY!**



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