Board Ethics and Conflicts of Interest

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Agenda

• Basic Values as Touchstones for Ethical Decisions
• Avoiding Abuse of Power
  – Laws Relating to Personal Financial Gain
  – Laws Relating to Claiming Perquisites of Office
• Acting in Service to the Institution & Public
  – Laws Relating to Transparency
  – Laws Relating to Fair Processes
Duty of Public Officials and Employees

- Engender public confidence in government decisions

*How?*

- Promote transparency in government actions
- Make government accessible to members of the public
- Apply rules equally and without bias
- Make decisions based on merit, not personal interests
- Provide same level of service to all
- Treat public with respect, dignity and courtesy
Duty of Public Officials and Employees

- **Common Law**
- **Political Reform Act**
- **Gov. Code 1090**

REGULATES ALL DECISIONS

REGULATES OFFICIAL DECISIONS INVOLVING A FINANCIAL INTEREST

REGULATES CONTRACTS INVOLVING FINANCIAL INTERESTS

REGULATES GIFTS, MAILINGS, CAMPAIGNS, ETC
Part One: Laws Relating to Personal Financial Gain
Duty of Public Officials and Employees

• To be personally disinterested in contracts, financial matters or hearing processes in which you are officially responsible

• Avoid even the *appearance or possibility of a conflict*
General Rule
• A public officer or employee may not make contracts in which he or she is financially interested.

Penalties
• Civil & Criminal
  – P. v. Honig
  – Thomson v. Call
1. Is person an officer or employee?
2. Is there a contract?
3. Did the person “make” the contract?
4. Do they have a financial interest?
5. Is it a statutory “non-interest”?
6. Is it a statutory “remote interest”? 
7. Does the “rule of necessity” apply?
Effect of 1090 Conflict

• Insufficient for interested party to abstain from voting
• Insufficient if contract is fair, just and equitable
  – Or even if more advantageous than another contract
• No “good faith” defense
• Contract is void
ABC District is looking to hire a new chancellor. To that end, it has issued an RFP for search firms. Applicants that make it to the first screening will be interviewed by an ad hoc committee of 2 board members and the retiring superintendent. The committee will recommend one firm to the board for final approval.
1. Trustee Jones is on the ad hoc committee. Her live-in boyfriend is a headhunter for a firm that submits a proposal. Jones is sure she can remain objective and says nothing when her BF’s firm gets an interview. Problems?

2. What if the BF’s firm is recommended to the Board, may it contract with the firm? Should it?

3. At the meeting, board member Smith provides “full disclosure” that his wife is the firm’s vice president and that he is officially “bowing out” of the process. Does this cure the conflict? May the board delegate the contracting function to cure the conflict?
Summary of Operative Legal Principles

**Government Code § 1090:**
- No public officer may make a contract in which he/she is financially interested.
- Even if contract is fair, just, equitable or more advantageous
- No “good faith” defense
- Contract is void and unenforceable
- Insufficient for interested party to abstain
- *Appearance* of financial conflict prohibited

**Common Law Prohibition:**
- Public officials may not use their position for private benefit—both economic and non-economic
- Public officials must act with undivided loyalty
- Public officials must act with the appearance of fairness
General Rule

- No public official may:
  - make/participate/use position to influence decision
  - if knows/should know of disqualifying conflict of interest
Effect of Conflict

• Member of board, council, or commission must:
  – Publicly declare the specific interest
  – Leave the room / refrain from participating

• Employees / Officials – No clear requirements

• No good faith defense!

• Penalties: primarily FPPC fines
Ethics in Practice: Forming the Interview Panel

The District has identified its top 3 chancellor candidates for interviews.

1. The board president is furious with the FA president for orchestrating a vote of no confidence against her. She insists that the president be excluded from the process. Problems?

2. Trustee Green is outraged that the candidates are all Caucasian men. In open session he expresses his disappointment, criticizes the process, and recounts his long history of equal rights efforts. Problems?
Summary of Operative Legal Principles

Political Reform Act

• No public official may:
  – make/participate/use position to influence a decision
  – if knows/should know of disqualifying financial conflict of interest

• Board member must:
  – Publicly identify the financial interest after announcement of agenda item
  – Leave the room / refrain from participating

Common Law Prohibition:

• Public officials may not use their position for private benefit – both economic and non-economic
• Public officials must act with undivided loyalty
• Public officials must act with the appearance of fairness
Conflicts of Interest and Campaign Contributions – Government Code § 84308

• Elected/appointed officer may not receive/solicit campaign contributions:
  – more than $250
  – from parties/other financially interested persons
  – during proceeding involving a license, permit, or other entitlement for use and for three (3) months after

• May not make/participate in making/influence decision
Conflicts of Interest When Leaving Office - Government Code §§ 87406.3 and 87407

• Before leaving: Public official may not make/participate in making/influence government decisions directly relating to any persons with whom public official is negotiating or involved with regarding future employment

• After leaving: Elected official/city manager/chief administrative officer may not be compensated to act as agent/attorney/representative of another person for purposes of influencing former agency regarding legislative action/permit, license, grant, or contract proceeding/sale or purchase of goods or property for one year after leaving
Bribery - Penal Code §§ 7(6) and 68

• Anything of value/advantage (present or prospective) or any promise to give anything
• Asked, given, or accepted,
• Corrupt intent to influence, unlawfully, the person to whom it is given in his or her action, vote, or opinion, in any public or official capacity.
Part 2: Laws Relating to Claiming Perquisites of Office
Limitations On The Receipt of Gifts - Government Code §§ 89503, 89506

- Gift defined:
  - Any payment/benefit
  - To official
  - Confers personal benefit
  - Without consideration
  - Includes rebates/discounts not offered to public
Limitations On The Receipt Of Gifts – Government Code §§ 89503, 89506

• Acceptance & Reporting Requirements
  – Applies to elected officials, candidates and designated employees
  – May not accept any gift(s) from one source worth more than $420 in a single calendar year
  – Disqualified from participating in decisions involving source of gift(s) of $420 or more in previous 12-month period
  – Gifts aggregating $50 or more must be reported on Form 700
  – Cannot cure through donation
Recent Changes

• Return or Donation of Gift within 30 days
  – Must be to a charity to which official has no connection

• Family Members
  – Clarifies family members from whom Official does not have to report gifts

• Home Hospitality
  – No longer unlimited
  – Must have a relationship unrelated to office
Recent Changes:

• Reciprocal Exchanges
  – Reporting only required amount received exceeds amount provided

• Ceremonial Role
  – Ceremony must be focus for period of time

• Bona Fide Competition

• Wedding Attendance
Recent Changes:

• Bereavement Offerings
• Acts of Neighborliness
• Bona Fide Dating Relationship
• Acts of Human Compassion
• Best Friends Forever
  – Where Gift Not Related to Office
• Unrelated Gifts
  – Not Related to Office
Recent Changes:

- **Tickets and Passes**
  - Now Excludes Tickets to District Functions
  - Such as Sporting Events, Plays, etc.

- **Group Gifts**
  - Now Only if Over $50 per Person

- **Valuation of Wedding Gifts**
  - Now Half to Each Spouse
• “Honoraria” defined:
  – Payment for any speech given, article published, or attendance at conference, meal, or event
  – Exceptions reportable as income/gifts:
    ▪ Hired to write book, play or screenplay
    ▪ Travel, food, lodging in connection with speech or conference
    ▪ Earned income from bona fide, independent profession
  – Exceptions NOT reportable as income/gifts:
    ▪ Charitable or tax exempt non-profit contribution that neither references nor passes through public official
    ▪ Received from family member
Misuse Of Public Funds – Government Code § 8314, Penal Code § 424

- Government Code § 8314 - Prohibits local official/employee from using (or permitting others to use) public resources for campaign/ personal purpose/ unauthorized purposes
- Penal Code § 424 - Makes it a felony
Gifts Of Public Funds Prohibited - California Const. Art. XVI, Sec. VI

- All expenditures of public funds must have public purpose.
- Test: Does expenditure serve public interest?
  - Good intentions not synonymous with public benefit
Mass Mailings - Government Code § 89001

• Mass mailing means over 200 substantially similar pieces of mail sent in one calendar month

• Items prepared or mailed at public expense generally may not:
  – Feature an elected officer affiliated with the agency which produces or sends the mailing
  – Include the name, office, photograph, or other reference to an elected officer if the item is prepared in coordination with the elected officer
• Public officers may not receive free or discounted travel from transportation companies, whether for personal or business travel

• Violation of the prohibition results in immediate forfeiture of office
Part 3: Government Transparency Laws
GOVERNMENT TRANSPARENCY LAWS

• Financial Disclosure
• Open Meetings (Brown Act)
• Public Records
Economic Interest Disclosure - Government Code § 87200

• Covered officials:
  – Chief Administrative Officers
  – Board members
  – Public officials who manage public investments
  – Candidates for any of these offices at any election
  – Other officials designated by local agency conflict of interest codes
Economic Interest Disclosure - Government Code § 87200

- Filed upon taking office/leaving office/annual basis
- Requires disclosure of personal financial interests
- Alerts you to conflicts
- Informs the public about potential conflicts
Part 4: Laws Relating to Fair Processes
Common Law Bias Prohibitions

- Public officials cannot use their position for private benefit
- Due process in administrative hearings demands an appearance of fairness
- Opinions are OK, but should not approach a hearing with a closed mind
Due Process Requirements

- Notice of intended action
- Opportunity to prepare
- Opportunity to be heard
- Fair and impartial hearing
- Requirements of due process are flexible depending upon the interests at stake
Nepotism

- The Fair Employment and Housing Act prohibits discrimination based on marital status, but allows employers to reasonably regulate, for reasons of "supervision, safety, security, or morale" spouses working in the same department, division or facility.

- Public official should not participate in decisions directly affecting family members.
1. Trustee Jones drops in to chat with the successful, brand new chancellor. He casually mentions his daughter is applying for a position in I.T. and that she is “top notch”. **Problems?**

2. When his daughter does not get an interview, he is surprised and calls the Vice Chancellor of H.R. to discuss the selection criteria. **Problems?**

3. The Board President learns of this and has a one-on-one with Trustee Jones who insists he has done nothing improper because being a board member doesn’t mean he stops being a father. **What are the President’s options?**
Resources

• The Fair Political Practices Commission
  www.fppc.ca.gov
  1-866-ASK-FPPC (1-866-275-3772)

• The Attorney General
  www.ag.ca.gov