Conflict of Interest

Los Angeles Community College District
Office of General Counsel
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Sources of Conflict of Interest
Rules and Laws

- Common Law Rules – Court decisions
- Conflict of Interest Laws
  - Government Code
- Political Reform Act of 1974
Common Law Conflict of Interest

- Public officers are trustees of the public wealth; they may not exploit their official position for their private benefits.

- When public officials are influenced by considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them.

- It is therefore the general policy of this state that public officers shall not have a personal interest in any contract made in their official capacity.

- Decisions in which a public officer has a personal interest is void as against public policy and because the interest of the officer interferes with the unfettered discharge of his duty to the public.

  ◦ *Terry v. Bender* (1956) 143 Cal.App.2d 198, 206
Conflict of Interest Laws

- Members of the Legislature, state, county, district, and city, 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
Violation of Section 1090

- Every officer or person prohibited by the laws of this state from making or being interested in contracts 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.
- Government Code Section 1097

- People v. Rizzo (2010), case pending
Conflicting Employment

- 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.

- A local agency may adopt rules and may determine those outside activities which, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees.
  - Government Code Section 1126
Conflicting Employment

An employee's outside employment, activity, or enterprise may be prohibited if it involves:

- The use of government time, facilities, equipment or supplies.
- The use of a government issued badge, uniform, prestige, or influence.
- Receipt or acceptance of any money or other consideration for the performance of an act which the employee would be required or expected to render as a part of his or her duties as a local agency officer or employee.
- The performance of an act which may later be subject to the control, inspection, review, audit, or enforcement by the agency.
- Time demands that would render performance of duties as a local agency officer or employee less efficient.

- Government Code Section 1126
District Board Rules Barring Incompatible Activities

- **No Private Instruction for Compensation**
  - No District employee may use District facilities to provide private instruction or other professional services for compensation.
  - An instructor employed by the District is prohibited from offering private instruction or other services for compensation (1) to a student enrolled at the college to which said instructor is assigned; (2) during any summer vacation period to a student or a former student who was a member of one of the instructor's classes during the previous Spring Semester.

- **Board Rule 9700**
District Board Rules Barring Incompatible Activities

• No Financial Transactions with Students
  ◦ Faculty members are prohibited from engaging directly with students in their classes in the sale or rental of required or recommended materials or activities charges.
  ◦ Books and classroom materials
    • Sold using a voucher system through the College’s bookstore or business office.
    • Board Rule 9700
Political Reform Act of 1974

- Campaign Disclosure
- Lobbying
- Conflict of Interest
  - Governmental Decisions
- Fair Political Practices Commission
  - Conflict of Interest Codes – Form 700
- Ethics In Government Act of 1990
Conflict of Interest - Governmental Decisions

- 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 87100
Who are Public Officials?

- Public Officials
  - Members, Officers, Employees or Consultants of a State or Local Agency
    - Government Code Section 1090
    - Government Code Section 87100
    - Government Code Section 82048
When do I have a Financial Interest in a Decision?

- A public Official has a financial interest in a decision if the decision will have a material financial effect on:
  - The official or a member of his or her immediate family.
  - Any business entity in which the public official has an investment of $2,000 or more.
  - Any source of income of $500 or more received within prior year.

- Government Code Section 87103
When do I have a Financial Interest in a Decision?

- A public Official has a financial interest in a decision if the decision will have a material financial effect on:
  - Any business entity in which the public official is a director, officer, partner, employee, or hold a management position.
  - Any real property in which the public official has an interest worth $2,000 or more.

- Government Code Section 87103
- People v. Beilke (2012) 1012 Lexis 3453
When do I have a Financial Interest in a Decision?

A public Official has a financial interest in a decision if the decision will have a material financial effect on:

- Any donor of a gift(s) worth $250 or more provided to, or promised, to the public official within the 12 months prior to the time when the decision is made.

  - Government Code Section 87103
  - FPPC v. Artiga (2012) FPPC No. 11/113
Conflict of Interest with Potential Employer

- 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.
  - Government Code Section 87407
Violation of Conflict of Interest Laws

- Any person who knowingly or willfully violates a conflict of interest statute is guilty of a misdemeanor.

- Subject to a fine of up $10,000 or three times the amount the person failed to report or unlawfully contributed, expended, gave or received
  - Government Code Section 91000
Conflict of Interest Code

- Every agency of the State shall adopt and promulgate a Conflict of Interest Code
  - Disclosure Categories
  - Designated Positions

- File financial disclosure statement
  - Government Code Section 87300
  - Government Code Section 87302
District’s Conflict of Interest Code

- Disclosure Categories
  - District Administrative Regulation C-5

- Designated Position
  - District Administrative Regulation C-6

- Report financial interests based on Position and Categories assigned
Ethics in Government Act of 1990

- Gifts
- Gifts of Travel
- Honoraria
- Campaign Funds
  - Elected Officers
  - Positions Designated in the Conflict of Interest Code
    - Government Code Section 89500, et seq.
Gifts Prohibited

- No 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 $250 if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

  ◦ *Government Code Section 87503(c)*
What is a Gift?

A Gift is:

- Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.
- 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.
Did the Gift come from a Source that I am Required to Report?

- Disclosure Categories 1, 2 and 3
  - All interests in real estate in the jurisdiction
  - All investments and business positions
  - All income and business positions

- Disclosure Category 4
  - All business positions, investments in, income, gifts, and loans from a business that does business with the District

- “Income” includes gifts and gifts of food and beverages
  - Government Code Section 82030
Gifts of Travel Prohibited

- **Travel include:**
  - Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence

- **Payments for Travel are Gifts**
  - Prohibited
  - Subject to the Gift Limit
    - *Government Code Section 89506(b)*
    - *FPPC v. Artiga (2012)* FPPC No. 11/113
Gifts of Travel Permitted

- Payments for travel, lodging and subsistence are allowed if:
  - The travel paid by the District.
    - *Government Code Section 89506(d)(2)*
Gifts of Travel Permitted

- Payments for travel, lodging and subsistence are allowed if the travel is:
  - Related to a governmental purpose, or to an issue of state, national, or international public policy;
  - The travel is in connection with a speech given by the designated employee;
  - The lodging and subsistence expenses are limited one day before and after the speech;
  - The travel is within the United States.

- Government Code Section 89506(a) & (c)

- Must Report on Form 700
Gifts of Travel Permitted

Payments for travel, lodging and subsistence are allowed if the travel is:

- Related to a governmental purpose, or to an issue of state, national, or international public policy;
- Provided by a governmental agency, a foreign government, a public or private educational institution, a nonprofit organization (Section 501(c)(3))
  - Government Code Section 89506(a) & (c)

- Must Report on Form 700
Honoraria

- Honorarium is:
  - Any payment made for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.
  - Government Code Section 89501
Honoraria Prohibited

- No designated employee of a state or local government agency shall accept an honorarium from any source if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.
  - Government Code Section 89502(c)
Violation of Conflict of Interest Laws

- Any person who knowingly or willfully violates a conflict of interest statute is guilty of a misdemeanor.

- Subject to a fine of up $10,000 or three times the amount the person failed to report or unlawfully gave or received
  - Government Code Section 91000
Violation of Conflict of Interest Laws

- By Designated Employees
  - Form 700 is filed under Penalty of Perjury
  - Failure to Disclose or Under Disclosing
    - Felony in Violation of Penal Code Section 118
    - Perjury is punishable by imprisonment for two, three or four years.
      - Penal Code Section 126
    - People v. Beilke (2012) 1012 Lexis 3453
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Questions