

Conflict of Interest Training

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March 11, 2021**

Overview

Ethics versus “Legal Ethics”

Conflicts & Incompatibilities

Perks & Benefits

Fair Procedures

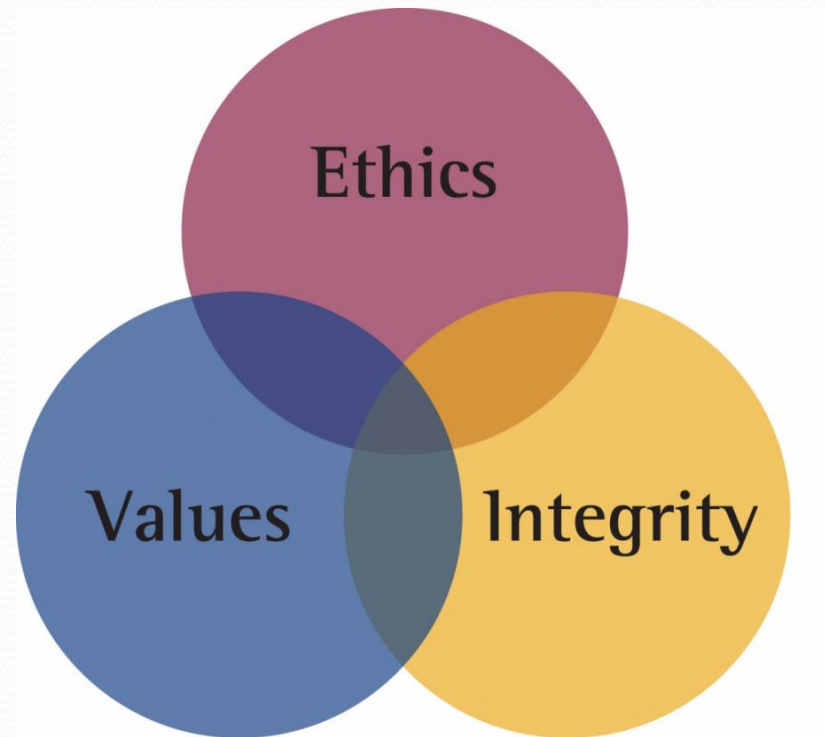
Ethics versus “Legal Ethics”

Ethics

- Morality: good and evil, right and wrong, virtue and vice

Legal Ethics

- The Legislature’s attempt to assure the public that the public’s business is being conducted in an ethical manner.



Guiding Principles

- Conflict of interest laws attempt “to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.” *U.S. vs. Mississippi Valley Generating Company* (1961) 364 U.S. 520, 550.
- “It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties.” *Witt v. Morrow* (1977) 70 Cal.App.3d 820, 823.

Conflicts of Interest

Preventing Economic Conflicts

Political Reform Act
Government Code § 81000 et seq.

Political Reform Act: Basic Requirements

- Disclosure (Form 700)
- Disqualification

Fair Political Practices Commission

- The FPPC investigates alleged violations of the Political Reform Act and imposes penalties when appropriate.
 - Provides written and oral advice to public agencies and officials
- Only good faith reliance on **written advice from the FPPC** on the particular situation at hand provides immunity from criminal or civil prosecutions.

Disclosures of Economic Interest

Statement of Economic Interests
Form 700

Who Must Disclose?

- 87200 Filers
 - Members of Committees, Boards, etc.
 - Certain Consultants
 - Certain Employees
- Designated Employees
 - Per Local Code
- Candidates

What to Disclose?

- By type:
 - Investments
 - Interests in real property, except personal residence
 - Sources of income, including gifts, loans and travel payments
 - Business interests & positions

Disqualification

- A public official shall **not**:
 - Make, participate in making, or in any way attempt to use his or her official position to influence
 - A governmental decision
 - in which he or she knows or has reason to know he or she has a disqualifying financial interest.

Additional Disqualification

- A public official has a **disqualifying financial interest** if:
 - the governmental decision will have a reasonably foreseeable material financial effect,
 - distinguishable from the effect on the public generally,
 - directly on the official, or his or her immediate family, or on any of the official's financial interests

Financial Interests

- Business entities
 - Direct or indirect investment worth at least \$2,000
 - Management position
- Real property ownership or lease
 - Direct or indirect interest worth at least \$2,000
- Sources of Income
 - Over \$500 within 12 months
- Sources of Gifts
 - Over \$500 within 12 months
- Personal finances of official and his/her immediate family

4- Step Test

- **Step 1:** Is the financial effect **reasonably foreseeable**?
- **Step 2:** Is it **material**?
- **Step 3:** Is the effect on the official the same as on the “**public generally**”?
- **Step 4:** When is the official “**making, participating in making, or using his or her position to influence**” the governmental decision from which the financial effects result?

Step 1: Reasonably Foreseeable?

- Subject of a governmental decision?
 - Presumed reasonably foreseeable
- If the financial effect can be recognized as a realistic possibility – reasonably foreseeable
- Not reasonably foreseeable:
 - Hypothetical or theoretical
 - Cannot be expected absent extraordinary circumstances not subject to the public official's control

Step 2: Material?

- Material – Having real importance or consequences
- **NOT** material if effect is nominal, inconsequential or insignificant

Step 3: Public Generally?

- A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that:
 - a significant segment of the public is affected and
 - the effect on his or her financial interest is not unique compared to the effect on the significant segment.

Step 4: Making, Participating in Making, Influencing

- **Making**
 - Voting
 - Appointing
 - Obligating or committing agency to any course of action
 - Entering into contract
- **Participating in Making**
 - Providing information, opinion, recommendation
 - Negotiating or advising
- **Influencing** (for the purpose of affecting a decision)
 - Appearances on behalf of agency
 - Contacts with staff

Legally Required Participation

- Applies only when “no reasonable alternative is available”
- Not for convenience
- Not for a tie

Segmentation

- If the decision creating the conflict of interest can be segmented from other decisions, the public official can participate in the other decisions
 - The decisions cannot be inextricably interrelated
- Examples: General Plan or Budget Decisions

Recusal

- Publicly identify each type of financial interest that is involved in the decision that gives rise to the disqualifying conflict of interest
- Recuse and **Leave the Room!**

Penalties

- Violation of **Any** Provision of the Political Reform Act
 - Administrative fine
 - Civil
 - Criminal
 - Inability to run for public office

Preventing Contractual Conflicts

Government Code Section 1090

Government Code Section 1090

Basic Prohibitions

- Officer or employee may not make or participate in making a contract in official capacity if financially interested
- Board **cannot** make a contract in which one of its members is financially interested

Elements

- Public Official
- Financial Interest
- Participation
- Contract
 - Includes purchases, etc.
- Contract must be finalized

Exceptions

- Remote Interest” Exceptions (Sec. 1091)
 - Special statutory definitions
 - Disqualification required

Penalties – Section 1090

- Contract is void
- Disgorgement of all monies received by the official
- Permanent bar from holding office
- Misdemeanor
- Civil or administrative penalties

FPPC

- The FPPC now provides advice for, and enforcement of, Government Code section 1090 issues.
- Request for advice is forwarded to the Attorney General and local District Attorney

Common Law Doctrine

“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.”

Noble v. City of Palo Alto

Note: Includes non-financial interests

Incompatible Offices

Government Code § 1099

- Three Required Elements
 - Public Officer
 - Holding 2 public offices simultaneously
 - Conflicting or overlapping functions

Questions?

There's more materials in your packet regarding limits on gifts, loans, taking money for speeches (honoraria) and campaign contributions. The FPPC has very complicated and detailed information about such limitations and we encourage you to visit their website to review that information at:

California Fair Political Practices Commission
[Local Gift Fact Sheet](#)

Thank you for your attention and public service!