


# Ethics and Conflicts of Interest: An Overview of Key Laws & Principles

Chabot Las Positas Community College District | March 16, 2021

Presented by: Laura Schulkind

LCW LIEBERT CASSIDY WHITMORE



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March 16, 2020

## Agenda

- **Basic Values as Touchstones for Ethical Governance**
- **Avoiding Abuse of Power: Key Principles in Review**
  - Laws Relating to Personal Financial Gain
  - Laws Relating to Claiming Perquisites of Office
- **Acting in Service to the Institution & Public: Key Principles in Review**
  - Laws Relating to Transparency
  - Laws Relating to Fair Processes

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## Basic Values

### Duty of Public Officials and Employees

- Engender public confidence in government decisions

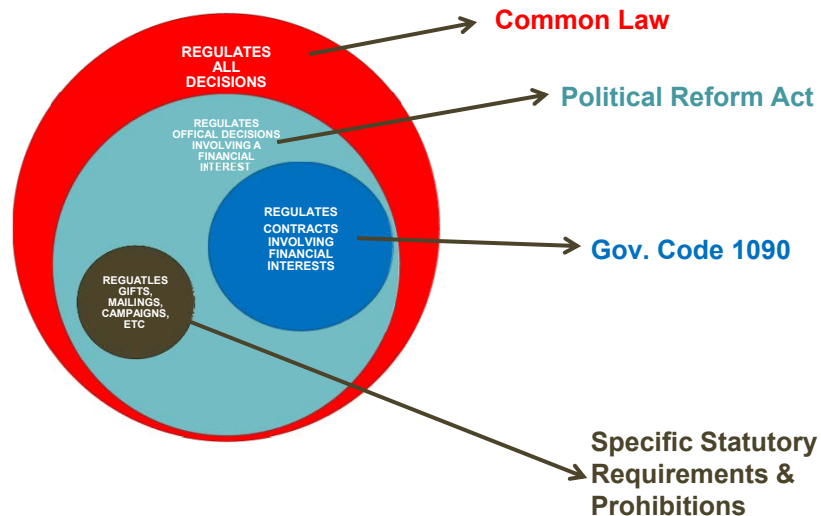
#### How?

- 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

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## Duty of Public Officials and Employees



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## Part One: Laws Relating to Personal Financial Gain

### Government Code §1090 Conflicts

#### General Rule

- A public officer or employee may not make contracts in which he or she is financially interested.

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## Ethics in Practice: The RFP

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 chancellor. The committee will recommend one firm to the board for final approval.

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## Ethics in Practice: The RFP

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?**

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## 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

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## Political Reform Act Conflicts

### General Rule

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

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## Ethics in Practice: Forming the Interview Panel

The District is in the process of forming a first-tier interview panel, with representation from the District's various constituent groups and the community. The board president is furious with the FA president for orchestrating a vote of no confidence against her. She sends the following email to the Chancellor:

*I know we have to include union representation on the panel. Just make sure it ISN'T RONNY. The last thing we need is her negativity.*

**Problems?**

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## Ethics in Practice: Board Interviews

With the assistance of the successful search firm, the interview panel has identified its top 3 chancellor candidates for Board interviews.

Trustee Green (who is up for election) 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?**

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## 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

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## Reference List: Additional Laws Relating to Conflicts & Personal Financial Gain

- **Campaign Contributions:**
  - Government Code § 84308
- **Conflicts of Interest When Leaving Office:**
  - Government Code §§ 87406.3 and 87407
- **Bribery:**
  - Penal Code §§ 7(6) and 68

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## Part 2: Laws Relating to Claiming Perquisites of Office

### Gifts Of Public Funds Prohibited - California Const. Art. XVI, Sec. VI

The District completed it's process and hired new chancellor, Amy Lee. Lee knows she was hired, in part, for her track record increasing participation of women of color in STEM courses of study. She is eager to establish her leadership in this area at her new district. Among other things, she has brought a proposal to the Board that would fund faculty to participate in a "Girls in STEM" project that is going into high schools around the country.

**Problems?**

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## Summary of Operative Legal Principles

### Gifts Of Public Funds--Cal. Const. Art. XVI, Sec. VI

- All expenditures of public funds must have public purpose.
- Test:
  - Does expenditure serve public interest?
    - Ask: Is the Purpose of the Expenditure to Benefit the Public Interest or the Interest of Private Individuals or for Private Purposes?
    - Note: Good intentions not synonymous with public benefit
  - Is the Expenditure Authorized?
    - Public Official Possesses Only Those Powers Conferred by Law

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## Reference List: Additional Laws Relating to the Perquisites of Office

- **Limitations On The Receipt of Gifts:**
  - Government Code §§ 89503, 89506, 2 C.C.R. §18944
- **Receipt of Gifts: Tickets and Passes:**
  - 2 C.C.R. §18944.1
- **Honoraria Ban:**
  - Gov't Code §§89501-89502
- **Mass Mailings:**
  - Gov't Code §89001
- **Prohibition On Free Or Discounted Travel:**
  - California Constitution, Art. XII, SEC. 7

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## Part 3: Government Transparency Laws

### Government Transparency Laws

- Financial Disclosure
- Public Records
- Open Meetings (Brown Act)\*

\*Subject of separate training.

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### Public Records Act Gov't Code, § 6250 et seq.

- **Public record defined:**

*“Any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”*

- Broadly construed to include any kind of record that deals with government processes or business.
- **Note:** Includes public employee/official communications concerning public business on a personal device or account.

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## Part 4: Laws Relating to Fair Processes

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## Common Law Bias Prohibitions

- **Common Law Bias Based on Personal Interest:**  
Public officials may not use their position for personal gain (economic & noneconomic)
- **Common Law Bias or Prejudice Based on Unofficial Source:**  
Decision at a hearing should be based on the record.
- **Common Law Prohibition on Prejudging:**  
Public official should not be committed to an outcome before the hearing. Opinions are okay, but should not approach a hearing with a closed mind.

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## 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

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### Ethics in Practice: It's All About the "Smell Test"

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?**

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### Reference List: Additional Laws Relating to Fair Processes

- Doctrine of Incompatible Offices
  - Government Code § 1099

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### Resources

- The Fair Political Practices Commission  
[www.fppc.ca.gov](http://www.fppc.ca.gov)  
1-866-ASK-FPPC (1-866-275-3772)
- The Attorney General  
[www.ag.ca.gov](http://www.ag.ca.gov)

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### THANK YOU

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