



Conflicts of Interest:

Beyond the Basics

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We will cover current developments in:

- California Political Reform Act
 - Conflict Code review and forms
 - Regulatory changes
- Government Code section 1090
 - Why this doesn't apply to charters
 - Why some think it does
 - Current controversies (e.g., VanZant case)
- Nonprofit corporations law
- Federal procurement regulations
- SB 740 facility funding conflict regulations



Conflicts of Interest

The Political Reform Act

Charter schools *may* be subject to the California Political Reform Act of 1974 (Gov. Code § 81000, *et seq.*) (“CPRA”)

- Requires adoption of conflict code
- Requires annual financial disclosures by designated employees and officials
- Requires disclosure and disqualification from decisions that may affect material financial interests

Conflicts of Interest

The Political Reform Act

- Under CPRA, public officials/ employees may not participate in making, or in any way attempt to use their official position to influence, a governmental decision in which they know or have reason to know they have an economic interest. (Note the CPRA limits participation but not membership.)
- To determine whether a conflict of interest exists under CPRA, five questions must be asked:
 1. Is a public official involved?

Conflicts of Interest

The Political Reform Act

(continued)

2. Does the official have a statutory defined economic interest? (interests of spouse and dependents count; can be indirect interest)
3. Is the official making, participating in making, or using his or her official position to influence, a governmental decision?
4. Is it reasonably foreseeable that the decision could materially affect the official's economic interest?

Conflicts of Interest

The Political Reform Act

(continued)

5. Will the effect of the decision on the public official's economic interest be distinguishable from its effect on the public generally?

- If the answer to all five questions is “yes,” a conflict of interest exists and the conflicted individual must disqualify herself from participation in the decision. (Note non-employee board members have no personal financial interest in the schools' budget or operations. Employee board members disclose and disqualify themselves from participation in decisions that could affect their interests.)

Current issues under Political Reform Act

- Who is the “reviewing” body for charter schools conflict codes?
 - Why LA County is different
- When is an interest in real property disqualifying under new FPPC regulations?
- Must you adopt a “supplemental” conflict policy to address disqualification rules?



Conflicts of Interest

Gov. Code § 1090

“The law does not permit a public officer to place himself in a position in which he might be tempted by his own private interest to disregard the interests of the public”
(40 Ops.Cal.Atty.Gen. 210)

Government Code, § 1090 *may* apply to charter schools

- Charter schools do not fit within § 1090’s definition of local public entities since they do not operate within limited boundaries. Legislative intent and Ed. Code, § 47610’s “megawaiver” also suggest § 1090 should *not* apply. A California Attorney General opinion on the issue is pending.

Conflicts of Interest

Gov. Code § 1090

- Prohibits public officials/ employees from participating in the process by which a contract is developed, negotiated, or executed if the official or employee has a financial interest in the contract.
- These contracts are void and cannot be enforced. (Gov. Code, § 1092.)

Conflicts of Interest

Gov. Code § 1090

- Section 1090 does not define when an official is financially interested in a contract; however, courts have applied the prohibition to include a broad range of interests.
- Sections 1091-1091.6, enumerate certain “remote” and “non-interests” that, once disclosed, do not prevent an officer from participating in the making of a contract.

Current issues under Gov. Code sec. 1090

- Still open question if applicable
- Clearly applies to school district officials when dealing with charter schools (Van Zant case)
- Courts extending to contractors “acting” as public officials



Conflicts of Interest

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Conflicts of Interest

Nonprofit Corporation Law

Corporations Code section 5233 applies to charter schools operating as nonprofit public benefit corporations

- No more than 49% of a board of directors may be interested persons. An *interested person* is a director who provides nondirector services to the nonprofit public benefit corporation and is paid for the services rendered (e.g. employee-director). (Corp. Code § 5227.)

Conflicts of Interest

Nonprofit Corporation Law

- Limitation on self-dealing transactions. “Self-dealing” is where a director has a *personal* material financial interest in a transaction, except:
 - Setting director stipends
 - Benefits received from charitable programs when the director is within the class of persons served
 - When the lesser of 1% of gross receipts of company or \$100,000

Conflicts of Interest

Nonprofit Corporation Law

(continued)

- A self-dealing transaction can be approved if:
 - It benefits the corporation
 - Terms are fair and reasonable
 - A majority of the Board, excluding the “interested” directors approves or ratifies
 - The Board finds no more advantageous deal could have been obtained

(Corp. Code section 5233)



Conflicts of Interest

Nonprofit Corporation Law

- Under nonprofit corporate law, arrangements between corporations with directors in common are not void because common directors are present if:
 - Material facts are fully disclosed/ known AND
 - A majority of the Board approves or ratifies in good faith without counting the votes of common directors OR the contract was just and reasonable at the time of approval

(Corp. Code section 5234)



Conflicts of Interest

Nonprofit Corporation Law

- Corporations Code section 5234 describes directors' fiduciary "duty of loyalty" to the corporation
 - Does the transaction advance and achieve the corporation's charitable purposes?
 - Is the transaction "arms-length" or unfair and inequitable?



Current issues in Nonprofit Corporate Law

- Counting “interested” directors?
- How does an “overlapping” director meet fiduciary duties to each corporation when “parent/subsidiary” or “sister” companies?
- Documenting loans or transfers between corporations and corporate purposes.
- Are related corporations subject to liability for other corporations’ actions?



Federal procurement regulations

- Example is Federal Nutrition Program:
- **7 CFR § 3019.42 Codes of conduct.**

The recipient shall maintain written standards of conduct . . . No employee ..shall participate in the . . . administration of a contract. . . if a real or apparent conflict of interest would be involved. . .



Federal procurement regulations

- Nearly identical regulations apply to many federal programs
- Conflict rules are broader than state law in some instances
- Affirmative duty to adopt rules, or be subject to audit or sanctions



SB 740 Facility Funding Conflicts, too

- Regulations designed to allow “related party” lease arrangements
- But not with private persons or for-profit entities which are related to the charter school

4 Cal Code Regs 10170.14

Q&A



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