

CONFLICT OF INTEREST

~~Incompatible Activities~~

The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(c.f. 9005 – Governance Standards)

Even if ~~there is no a~~ prohibited **conflict of interest does not exist**, ~~or remote interest~~, a Board member shall abstain from voting on personnel matters that uniquely affect **her/her relatives**. ~~a relative of the Board member~~. **However**, a Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which **his/her** relative belongs. "Relative" means an adult who is related to ~~the person~~ **the Board member** by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. *(Education Code 35107)*

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse/**registered domestic partner** unless the individual is widowed or divorced.

Conflict of Interest Code

~~The district's conflict of interest code shall be comprised of the terms of 2CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.~~

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's code reviewing body for approval, in accordance with Government Code 87303 and within the deadline for submission established by the code reviewing body. *(Government Code 87303)*

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code **and submit changes to the code reviewing body, or, in even-numbered years** if no change **is required**, ~~in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body.~~ If a change in the code is necessitated by changed circumstances, the district **Board** shall submit an amended code to the code reviewing body **a written statement to that effect..** *(Government Code 87306.5)*

When a change in the district's conflict of interest code is necessitated by changed circumstances, such as the creation of new designated positions, **changes to the duties assigned to existing positions**, amendments or revisions, the ~~changed~~ **amended** code shall be submitted to the code reviewing body within 90 days **after the changed circumstances necessitating the amendments have become apparent**. *(Government Code 87306)*

When reviewing and preparing conflict of interest codes, the ~~district~~ **Superintendent or designee** shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. *(Government Code 87311)*

~~Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction.~~
(Government Code 81008)

Board members and designated employees shall annually file a Statement of Economic Interest Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. *(Government Code 87302, 87302.6)*

(c.f. 4117.2/4217.2/4317.2 – Resignation)

(c.f. 9222 – Resignation)

Conflict of Interest under the Political Reform Act

~~If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required.~~ *(2 CCR 18700)*

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use her/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a “reasonably foreseeable material financial effect,” which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, her/her immediate family, or any financial interest described in 2 CCR 18700. *(Government Code 87100, 87101, 87103, 2 CCR 18700-18709)*

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of her/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Conflict of Interest under Government Code 1090 - Financial Interest

Board members, ~~and designated employees,~~ **or district consultants** shall not be financially interested in any contract made by the Board ~~or in any contract they make in their capacity as Board members or designated employees~~ **on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning and specifications and solicitations for bids.** If a Board member has such financial interest in a contract made by the Board, the contract is void. (*Government Code 1090*)

A Board member shall not be considered to be financially interested in a contract ~~if his/her interest includes, but is not limited to, any of the following:~~ **in which he/she has only a “remote interest,” as defined in Government Code 1091, if the interest is disclosed during a Board meeting and noted in the official Board minutes.** The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member or district official to enter in the contract. (*Government Code 1091*)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a “noninterest” as defined in Government Code 1091.5 Noninterest includes a board member’s interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member’s election or appointment, or in any other applicable circumstance specified in Government Code 1091.5

- ~~1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty~~
- ~~2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board~~
- ~~3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091~~
- ~~4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment~~
- ~~5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided~~

~~—further that such interest is noted in its official records~~

~~6. That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records~~

~~7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records~~

~~8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm~~

~~In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)~~

~~A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)~~

~~A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.~~

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which her/her private or personal interest may conflict with his/her official duties.

Incompatible Offices and Activities

Board of Trustee members shall not engage in any employment or activity **or hold any office** which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1099, 1126)

Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. *(Government Code 89503)*

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars and periodicals. *(Government Code 82028)*

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except **when:** ~~as described in~~ *(Government Code 89506)*

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and travel is within the United States.
2. The travel is provided by a person or agency specified in Government Code 89506, including a government, governmental agency or authority, bona public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and 2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest Form 700 as required by law.

A gift of travel does not include travel provided by the district for Board members and designated employees. *(Government Code 89506)*

Honoraria

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private ~~gathering, conference, convention, meeting, social event, meal or like gathering, in accordance with law.~~ *(Government Code 89501, 89502)*

The term honorarium does not include: *(Government Code 89501)*

1. Earned income for personal services customarily provided in connection with a bona fide business, trade or profession unless the sole or predominant activity of the business, trade or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the

donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

APPENDIX
DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

It has been determined that persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code 87200:

Board of Trustees
Superintendent
Assistant/Associate Superintendent
Director of Fiscal Services

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
 - (1) Are engaged in the acquisition or disposal of real property within the district
 - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or
 - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying the following positions are designated employees in Category 2:

Principal
Chief Technology Officer
Maintenance and Operations Director
Director of Child Nutrition

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

3. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: *(2 CCR 18701)*

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. *(2 CCR 18701)*

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*
35107 *School district employees*
35230-35240 *Corrupt practices*
35233 *Prohibitions applicable to members of governing boards*
~~35239 *Compensation for board members in districts under 70 ADA*~~
41000-41003 *Moneys received by school districts*
41015 *Investments*

FAMILY CODE

297.5 *Rights, protections and benefits of registered domestic partners*

GOVERNMENT CODE

1090-1098 *Prohibitions applicable to specified officers*
1125-1129 *Incompatible activities*
81000-91015 *Political Reform Act of 1974, especially:*
82011 *Code reviewing body*
82019 *Definition of designated employee*
82028 *Definition of gifts*
82030 *Definition of income*
82030 *Defination of interest in real property*
82034 *Defination of investment*
87100-87103.6 *General prohibitions*
87200-87210 *Disclosure*
87300-87313 *Conflict of interest code*
87500 *Statements of economic interests*
89501-89503 *Honoraria and gifts*
89506 *Ethics; travel*
91000-91014 *Enforcement*

PENAL CODE

85-88 *Bribes*

REVENUE AND TAXATION CODE

203 *Taxable and exempt property - colleges*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission, especially:*
18700-18707 *General prohibitions*
18722-18740 *Disclosure of interests*
18750.1-18756 *Conflict of interest codes*
~~18702.5 *Public identification of a conflict of interest for Section 87200 filers*~~

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16) No. B262850
Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261
Klistoff v. Superior Court (2007) 157 Cal.App.4th 469
Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th. 655
Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 *Ops. Cal. Atty. Gen. 26 (2009)*
92 *Ops. Cal. Atty. Gen. 19 (2009)*
89 *Ops. Cal. Atty. Gen. 217 (2006)*
86 *Ops. Cal. Atty. Gen. 138 (2003)*
85 *Ops. Cal. Atty. Gen. 60 (2002)*
82 *Ops. Cal. Atty. Gen. 83 (1999)*
81 *Ops. Cal. Atty. Gen. 327 (1998)*
80 *Ops. Cal. Atty. Gen. 320 (1997)*
69 *Ops. Cal. Atty. Gen. 255 (1986)*
68 *Ops. Cal. Atty. Gen. 171 (1985)*
65 *Ops. Cal. Atty. Gen. 606 (1982)*
63 *Ops. Cal. Atty. Gen. 868 (1980)*

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict of Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

Bylaw Adopted: ~~10/13/10~~

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California