

## **CONFLICT OF INTEREST**

The Monterey County Board of Education (County Board) desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the Monterey County Office of Education (MCOE) and the public. In accordance with law, County Board members must disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.

### **Incompatible Activities**

A County Board member shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the duties as a member of the County Board. [Government Code 1126] It is incompatible for County Board members to serve on other elected or appointed boards, councils or commissions that have interests which may conflict with the interests of the County Board or MCOE. The determination as to whether an activity or office is incompatible is complex and requires a case-by-case analysis of the particular activities or duties of the office. Consultation with legal counsel is recommended as appropriate.

### **Bylaw Changes**

Upon direction by the Monterey County Board of Supervisors, the County Board shall review its conflict of interest code in even-numbered years. If no change in the code is required, the County Board shall submit to the Board of Supervisors a written statement to that effect by October 1. When the County Board's conflict of interest code is changed, amended or revised, the changed code shall be submitted to the Monterey County Board of Supervisors within 90 days.

When preparing to change its conflict of interest code, the County Board shall provide members of the community adequate notice and a fair opportunity to present their views. [Government Code 87311]

### **Financial Interest**

County Board members shall not be financially interested in any contract made by the County Board or in any contract they make in their capacity as County Board members. [Government Code 1090]

A County 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: [Government Code 1091.5]

1. The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.
2. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty.
3. 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.
4. 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.
5. That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.
6. That of a non-compensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the County Board or to which the County Board has a legal obligation to give particular consideration and provided further that such interest is noted in the County Board's official records.
7. That of a spouse or domestic partner of a County Board member if his/her spouse's or domestic partner's employment or office-holding has existed for at least one year prior to his/her election or appointment.

8. That of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed to the County Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.
9. That of a non-compensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records. For purposes of this paragraph, an officer is "non-compensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.
10. 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 County Board at the time of consideration of the contract, and provided further that such interest is noted in its official records.
11. 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.
12. That of an officer or employee of or a person having less than a 10-percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.

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]

13. That of a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary

to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes

14. That any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

In addition, a County 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 County 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 County Board meeting and noted in the official County Board minutes. The affected County Board member shall not vote or debate on the matter or attempt to influence any other County 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]

### **Financial Interest Statements**

Every County Board member shall file an annual Statement of Economic Interest/Form 700 for the previous calendar year due by March First. Statements of economic interests submitted by County Board members shall be available for public inspection and reproduction. [Government Code 81008]

If a County Board member assumes office between October 1 and December 31, he/she is not required to file an annual statement, but the first annual statement filed will cover the period from assuming office through the following calendar year. [Government Code 87200-87202]

A County Board member who leaves office shall, within 30 days, file a revised statement covering the period of time between the closing date of the last statement and the date of leaving office. [Government Code 87302, 87500]

**Disclosure Categories**

1. Interest in real property located entirely or partly within county boundaries, or within two miles of county boundaries or of any land owned or used by MCOE. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
2. Investments or business positions in or income from sources which:
  - a. Are engaged in the acquisition or disposal of real property within the county.
  - b. 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 County Board and/or MCOE
  - c. Manufacture or sell supplies, books, machinery or equipment of the type used by the County Board and/or MCOE

**Conflict of Interest under the Political Reform Act**

When a conflict exists, the affected County Board member must disclose the interest and disqualify himself/herself from participating in the decision, as specified below.

A County Board member shall not make, participate in making, or in any way use or attempt to use his/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 conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the County Board member's "economic interests," unless the effect is indistinguishable from the effect on the public generally or the County Board member's participation is legally required. [Government Code 87100, 87101, 87103; 2 CCR 18700-18709]

A County Board member makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits MCOE to any course of action, or enters into any contractual agreement on behalf of MCOE. [2 CCR 18702.1]

A County Board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the County Board shall abstain from voting on the matter. He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter. A County Board member with a

disqualifying conflict of interest shall not be present during a closed session meeting of the County Board when the decision is considered and shall not obtain or review a recording or any other nonpublic information regarding the issue. [2 CCR 18702.1]

If the item is on the consent calendar, the County Board member must recuse himself/herself from discussing or voting on that matter, but the member is not required to leave the room during consideration of the consent calendar. [Government Code 87105(3)]

**Conflict of Interest under Government Code 1090**

County Board members or MCOE consultants shall not be financially interested in any contract made by the County Board on behalf of MCOE, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a County Board member has such a financial interest, MCOE is barred from entering into the contract. [Government Code 1090; Klistoff v. Superior Court, (2007) 157 Cal.App. 4th 469]

A County Board member shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code 1091.5. One such noninterest is when a County Board member's spouse/registered domestic partner has been an MCOE employee for at least one year prior to the County Board member's election or appointment. [Government Code 1091.5]

(Note: Family Code 297.5 grants a registered domestic partner the same rights, protections, and benefits as a spouse.)

A County Board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest" in the contract as specified in Government Code 1091 and if the remote interest is disclosed during a County Board meeting and noted in the official County Board minutes. The affected County Board member shall not vote or debate on the matter or attempt to influence any other County Board member to enter into the contract. [Government Code 1091]

County Board members who willfully fail to disclose a remote interest in a contract may be subject to a fine or imprisonment. [Government Code 1097]

Even if there is no prohibited or remote interest, a County Board member shall abstain from voting on matters that uniquely affect a relative of the County Board member. "Relative" means an adult who is related to the person 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 unless the individual is widowed or divorced.

**Rule of Necessity or Legally Required Participation**

On a case-by-case basis and upon advice of legal counsel, a County Board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies. [Government Code 87101 and 2 CCR 18708]

**Gifts**

The gift limitation is currently \$440. [2 CCR 18730]. This amount is adjusted in odd-numbered years by the Fair Political Practices Commission (FPPC). However, this limit may not be applicable to gifts from every source. For those County Board members who file a Form 700 based on the disclosure categories specified in MCOE's conflict of interest code pursuant to Government Code 87302, the gift limit is only applicable to those individuals and entities that are disclosed on the Form 700. Exceptions exist within the Government Code's definitions of gifts, income, interest in real property, and investment. [Government Code 82028, 82030, 82033, and 82034]

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

**Exceptions to Definition of Gift**

The following are not subject to any gift limit are not required to be disclosed on a statement of economic interest:

1. Gifts which you return to the donor (unused) or for which you reimburse the donor within 30 days of receipt.
2. Gifts which you donate (unused) to a charitable organization or a government agency within 30 days of receipt without claiming a deduction for tax purposes.
3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he/she is acting as an agent or intermediary for another person who is the true source of the gift.
4. Gifts of hospitality or occasional lodging which you receive in an individual's home when the individual or a member of his/her family is present.

5. Gifts of approximately equal value exchanged between you and another individual on special days or occasions.
6. Informational material provided to you to assist in the performance of your official duties; also included is free admission to informational meetings.
7. A bequest or inheritance.
8. Campaign contributions, including rebates or discounts received in connection with campaign activities.
9. Personalized plaques and trophies with an individual value of less than \$250.
10. Tickets to attend fund-raisers for campaign committees or other candidates, and tickets to fund-raisers for legal non-profit organizations.
11. Transportation within California, free admission, food and similar non-cash nominal benefits provided to you for an event at which you give a speech, participate in a panel or provide a similar service.
12. Passes or tickets which provide access to facilities, goods, services, or other benefits that you do not use and do not give to another person.
13. Gifts provided directly to members of your family unless you receive direct benefit from the gift or you exercise discretion and control over the use or disposition of the gift. [Government Code 89503, 89506]

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation except travel provided by MCOE for County Board members for official government purposes. [Government Code 89506]

### **Honoraria**

County Board members 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, in accordance with law. [Government Code 89501, 89502]

The term honorarium does not include:

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. [Government Code 89501]
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to MCOE for donation into the general fund and is not claimed as a deduction from income for tax purposes.[Government Code 89501]
3. An honorarium payment which is delivered directly to a bona fide charitable, educational, civic, religious or similar tax exempt organization, providing the donation is not a condition for your service, you do not claim a tax credit, you are not identified to receiving organization in connection with the donation and the

donation has no foreseeable financial effect on you or your family. [Government Code 89501]

**Periodic Review Requirement**

State law (AB 1234) requires that local officials who receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles every two years. The requirement applies not only to the governing body of a local agency, but also commissions, committees, boards, or other local agency bodies, whether permanent or temporary, decision-making or advisory.

*Legal Reference:*

EDUCATION CODE

1006	<i>Qualifications for holding office</i>
35107(c)	<i>Definition of "relative"</i>
35230-35240	<i>Corrupt practices; especially:</i>
35233	<i>Prohibitions applicable to members of governing boards</i>

FAMILY CODE

297.5	<i>Rights, protections, and benefits of registered domestic partners</i>
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GOVERNMENT CODE

1090-1098	<i>Prohibitions applicable to specified officers</i>
1125-1129	<i>Incompatible activities</i>
81000-91015	<i>Political Reform Act of 1974, especially:</i>
82011	<i>Code reviewing body</i>
82019	<i>Definition of designated employee</i>
82028	<i>Definition of gifts</i>
82030	<i>Definition of income</i>
87100-87103.6	<i>General prohibitions</i>
87105	<i>Following identification of conflict of interest</i>
87200-87210	<i>Disclosure</i>
87300-87313	<i>Conflict of interest code</i>
87500	<i>Statements of economic interests</i>
89501-89503	<i>Honoraria and gifts</i>
91000-91014	<i>Enforcement</i>

PENAL CODE

85-88	<i>Bribes</i>
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CODE OF REGULATIONS, TITLE 2

18110-18997	<i>Regulations of the Fair Political Practices Commission, especially:</i>
18702.5	<i>Public identification of a conflict of interest for Section 87200 filers</i>

HEALTH AND SAFETY CODE

Division 24	<i>Sections 34100 &amp; 34200</i>
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PUBLIC RESOURCES CODE

Section 5902

COURT DECISIONS

*Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th. 655*

*Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511*

*Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469*

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)*

Adopted: 09/07/05

Revised: 9/21/11; 09/04/13