

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 should disclose any conflict of interest and, as necessary, shall abstain from participating in any decisions or discussions that may lead to decisions that could affect or be affected by those interests as prohibited by Government Code (GC) Sections 1090 et seq., and GC Sections 87100 et seq.

The County Board may consult legal counsel whenever an actual or potential conflict of interest arises. However, it is the individual responsibility of each member of the County Board to comply with all statutes and regulations applicable to conflicts of interest and may not rely on legal advice in the event of any violation.

The County Board should adopt a resolution that specifies the terms of its conflict of interest code, designates any consultant positions required to complete conflict of interest reporting, and establishes disclosure categories required for each position. The conflict of interest code must be approved by the appropriate code reviewing body. Upon request by the code reviewing body, the County Board will review the conflict of interest code and submit any changes to the code reviewing body.

When a change in the conflict of interest code is necessitated due to changed circumstances, such as the hiring of a new consultant in a position that is not already designated in the conflict of interest code or a change to an existing consultant's scope of work in a manner that changes the consultant's position to a designated position, the amended code is required to be submitted to the code reviewing body within 90 days. [GC 87306]

When reviewing and preparing the conflict of interest code, the County Board shall provide members of the community, the Monterey County Superintendent of Schools (County Superintendent), MCOE staff, and consultants of the County Board adequate notice and a fair opportunity to present their views. [GC 87311]

Within thirty (30) days of assuming office and annually thereafter at the time specified in MCOE's conflict of interest code, County Board members should file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the conflict of interest code. A County Board member who leaves office shall, within 30 days, file a revised statement covering the period between the closing date of the last required statement and the date of leaving office. [GC 87302, 87302.6]

Conflict of Interest under the Political Reform Act (PRA)

The California Fair Political Practices Commission (FPPC) has adopted an eight-step analysis, set forth in GC Sections 87100 through and including 87500 and Title 2 of the California Code of Regulations (CCR) Sections 18700 through and including 18755, and opinions issued by the FPPC, to determine whether a conflict of interest exists under the PRA. When such a conflict exists, it is the responsibility of the County Board member to disclose the interest and abstain from participating in the decision in any manner whatsoever.

A County Board member should not make, participate in making, or in any way use or attempt to use the member's official position to influence a governmental decision in which the member knows or has reason to know that the member 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. [GC 87100, 87101, 87103; 2 CCR 18700-18709]

A County Board member is involved in making a governmental decision when, acting within the authority of the member's office or position, the member votes on a matter, appoints a person, obligates or commits the County Board to any course of action, or votes to enter into or approves any contractual agreement on behalf of the County Board. County Board members participate in a governmental decision if they provide information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. County Board members who use their official position to attempt to influence a decision if they contact or appear before any official at MCOE for the purpose of affecting a decision or contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the County Board members act or purport to act within their authority or on behalf of MCOE in making the contact. [2 CCR 18704].

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 is required to abstain from voting on the matter.

The County Board member must provide an oral or written disclosure when there is a conflict of interest and publicly identify either orally in or writing each type of financial interest held that is involved in the decision and gives rise to the disqualifying conflict of interest (i.e. investment, business position, interest in real property, personal financial effect or the receipt or promise of income or gifts). The County Board member must

provide the following details as to each financial interest:

- (1) if an investment, the name of the business entity in which each investment is held;
- (2) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;
- (3) if real property, the address or another indication of the location of the property, unless the property is the County Board member's principal or personal residence, in which case identification that the property is a residence;
- (4) if income or gifts, the identification of the source; and,
- (5) if personal financial effect, the identification of the expense, liability, asset or income affected.

The County Board members with a conflict of interest must recuse themselves and leave the room after the identification required above. They will not be counted towards achieving the required quorum while the item is being discussed. County Board members with a disqualifying conflict of interest shall not be present during a closed session meeting of the County Board when the decision is considered, discussed and/or decided by the County Board and shall not obtain or review a recording or any other nonpublic information regarding the issue. However, in advance of the closed session the member shall make an oral disclosure in the public session which may be limited to a declaration that recusal on the item in closed session is because of a conflict of interest under GC Section 87100. [GC 87200]

Because Family Code 297.5 grants a registered domestic partner the same rights, protections, and benefits as a spouse under state law, analysis of a conflict of interest with regards to a County Board member's spouse is also applicable to a registered domestic partner.

Conflict of Interest under GC 1090 - Financial Interest in a Contract

County Board members should not be financially interested in any contract made by the County Board and shall not be included in the development, preliminary discussions, negotiations, compromises, planning, reasoning, specifications and/or solicitations for bids for such contracts. If a County Board member has a prohibited financial interest in a contract that is considered by the County Board, the County Board is barred from entering into the contract even if the member discloses his/her interest and abstains from participation. [See GC 1090; *Klistoff v. Superior Court*, (2007) 157 Cal.App. 4th 469] The Attorney General has opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that, unlike

the PRA, the prohibitions in GC 1090 cannot be resolved by having the financially interested County Board member abstain from participating in the matter.

However, there are two categories of exceptions to the restrictions found in GC 1090. First, if a financial interest meets the definition of a "noninterest" as specified in GC 1091.5, then the restrictions in GC 1090 do not apply and the County Board can enter into the contract. Secondly, if a County Board member's interest is deemed a "remote interest" pursuant GC 1091, then the County Board can enter into the contract if certain conditions are satisfied, as specified below.

Pursuant to GC 1091.5, certain financial interests are defined as "noninterests," meaning a conflict of interest does not exist and the County Board can enter into the contract. A County Board member may not be considered financially interested in a contract if the member has only a "remote interest" in the contract as specified in GC 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 will not vote or debate on the matter or attempt to influence any other County Board member's vote. [GC 1091]

To avoid the appearance of impropriety, County Board members may decide not to participate in any discussion or action involving contracts where the member's interest is a "noninterest" as described in GC Section 1091.5.

Common Law Doctrine Against Conflict of Interest

A County Board member should abstain from any official action in which the member has a private or personal interest that may conflict with the member's official duties. The County Board should consult legal counsel whenever an actual or potential conflict of interest arises.

County Board members must abstain from voting on personnel matters that uniquely affect relatives. Relative means an adult who is related to the County Board member by blood, affinity, or adoptive relationship within the third degree.

A relationship within the third degree includes an individual's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse/registered domestic partner 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 conflict of interest may be allowed to participate in the making of the decision if the

rule of necessity or legally required participation applies.

Incompatible Offices and Activities

County Board members may not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the County Board member's duties as an officer of the MCOE. [GC 1099, 1126]

Gifts

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

The limitation on gifts does 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. [GC 89503]

Gifts of travel and related lodging and subsistence are subject to the current gift limitation except as described in GC 89506.

A gift of travel does not include travel provided by the County Board for its members. [GC 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. [GC 89501, 89502]

The term honorarium does not include: [GC 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 [GC 89501]
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the MCOE for donation into the general fund without being claimed as a deduction from income for tax purposes. [GC 89501]

Attachments: Appendix A: Designated Positions

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*
35107 *School employees*
35107(c) *Definition of "relative"*
35230-35240 *Corrupt practices; especially:*
35233 *Prohibitions applicable to members of governing boards*
41000-41003 *Money received by schools*
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:*
82003 *Agency definition*
82011 *Code reviewing body*
82019 *Definition of designated employee*
82028 *Definition of gifts*
82030 *Definition of income*
82033 *Definition of interest in real property*
82034 *Definition in investments*
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*

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)

Adopted: 09/07/05

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APPENDIX A: Designated Positions

Designated Positions

Members of the Monterey County Board of Education
Consultants¹ to the Monterey County Board of Education

¹ For purposes of this Code, "consultant" has the same meaning as set forth in 2 Cal. Code of Regs. Section 18700.3(a), as follows:

"Consultant" means an individual who, pursuant to a contract with a state or local government agency: