

The Political Reform Act of 1974

Conflicts of Interest

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Overview

- **1974 Initiative**
 - Covers both Campaign Finance and Conflicts of Interest
 - Created the Fair Political Practices Commission
- **Lofty Purposes and Goals**
- **Very Complex and Technical Regulations**
 - Very Fact Specific, so Seek Advice
- **What is Government Code section 1090**



Purposes

- The Act is designed to assure that:
 - State and local government ***serve all citizens equally***, without regard to status or wealth;
 - Public officials ***perform their duties impartially, without bias*** due to personal financial interests or the interests of financial supporters;
 - Public officials ***disclose income and assets*** that could be affected by official actions and disqualify themselves when they have conflicts of interest



Methodology

- **Disclose:** Form 700 Statement of Economic Interests
- **Disqualify:** Conflict of Interest Rules



Seek Advice



1-866-ASK-FPPC
(1-866-275-3772)
Monday through
Thursday
9:00am - 11:30am
advice@fppc.ca.gov

(805) 564-5326



The Basic Rule

A public official at any level of state or local government has a prohibited conflict of interest and ***may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision*** when he or she knows or has reason to know he or she has a ***disqualifying financial interest***. (Cal. Code Regs. tit. 2, § 18700(a) amended 4/25/13.)



The Rest of the Basic Rule

A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Cal. Code Regs. tit. 2, § 18700(a); as amended 4/25/13.)



Immediate Family Means . . .



Spouse and
Dependent Children
(Gov. Code, §82029.)



Conflicts of Interest are Based Upon Financial Interests

- Follow the Money
- The absence of actual bias doesn't matter -- "Appearance of Impropriety"
- Negative financial impacts count too.
- Public official's responsibility is two-fold:
 - Identify when his or her financial interests may be affected
 - Seek advice from FPPC or City Attorney
 - But only FPPC advice can provide immunity from administrative fines



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Five Kinds of Financial Interests to Consider

- Investments
- Real Property
- Sources of Income
- Sources of Gifts
- Personal Financial Effects



Investments



An interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management. (Section 8710 Regulation 18703.1(a)); Section 8710 Regulation 18703.1(b).)

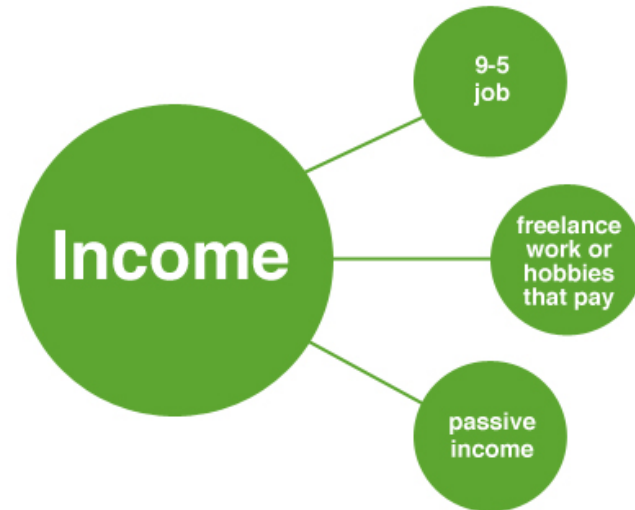


Real Property

An interest in real property in which he or she has a direct or indirect interest of **\$2,000 or more** (Section 87103(b); Regulation 18703.2.)



Source of Income



An interest in any source of income, including promised income that aggregates to \$500 or more within 12 months prior to the decision (Section 87103 Regulation 18703.3)



Source of Gifts



An interest in any source of gifts to him or her if the gifts aggregate to \$440 or more within 12 months prior to the **decision** (Section 87103(e); Regulation 18703.4.)

- Report \$50 or More



Personal Financial Effects Rule

A public official has an interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. (Section 87103; Regulation 18703.5.)



Financial Impacts Must be “Material”

- Detailed Materiality Regulations are Broken Down by each Financial Interest Category
- **General Rule:** The financial effect of a governmental decision is material *if the decision will have a significant effect on the official or a member of the official's immediate family*, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official. (Cal. Code Regs. tit. 2, § 18705.)



Materiality Highlights: Investments

- For Investments:
 - If the decision directly involves the investment, then disqualify.
 - If the decision indirectly impacts an investment, then the magnitude of the impact matters, so ***seek advice!***
- ***This is a gross generalization – seek advice!!!***



Materiality Highlights: Real Property

- For Real Property:
 - Decision involves taxes, assessments, fees, public improvements, zoning or general plan, or any other property within 500 feet of your property.
- ***This is a gross generalization – seek advice!!!***



Materiality Highlights: Sources of Income

- For Sources of Income:
 - If the source of income is directly involved, then disqualify.
 - If indirectly involved, then the magnitude of the impact matters, so ***seek advice!***
- ***This is a gross generalization – seek advice!!!***



Materiality Highlights: Personal Financial Effects

- For Personal Financial Effects:
 - A reasonably foreseeable financial effect on a public official's or his or her immediate family's personal finances is material if it is at least \$250 in any 12-month period.
 - Reminder -- “Immediate Family” is Spouse and Dependent Children



Sole Practitioner Exception

- Sole Practitioner Design or Architectural Review Committee Member
- Appointed to Fill a Designated Design Professional Role
- May Prepare Drawings or Submissions and Appear Before His or Her Committee to Represent Clients (Source of Income)



Sole Practitioner Exception

- “This provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.”



FPPC Penalties

- Fines of up to \$5000 per violation.
- Since 1975, the Enforcement Division has prosecuted more than 2,400 cases and the Commission has imposed more than \$20 million dollars in fines based on enforcement actions.

Ouch!



Government Code Section 1090

Members of the Legislature, state, county, district, judicial district, and city officers or employees ***shall not be financially interested in any contract*** made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.



Hard to Understand and Apply

- Dates back to 1851.
- The bad news is that 1090 has harsh penalties and applies broadly to many situations involving consultants and others who seem very remotely connected to the public official.
- The good news is that the FPPC now has jurisdiction to give 1090 advice. (AB 1090 [Fong] c. 650, 2013.)



Section 1090 Remedies & Penalties

- Contract is void – Official loses everything and agency keeps everything (Gov. Code, §1092.)
- Felony punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison
- Forever disqualified from holding any office in this state. (Gov. Code, §1097.)



Did I Say to Seek Advice?



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