

Conflict of Interest

BP 2710

Reference: Government Code § 1090, et seq.; 1126; 87200, et seq.;
Title 2, § 18730 et seq.

1. A board member shall not engage in any employment or activity that is inconsistent with, incompatible with, in conflict with, or inimical to his or her duties as an officer of the district. A board member shall not simultaneously hold two public offices that are incompatible. (Government Code § 1126) (Attachment A)
2. District employees must resign their current position prior to being sworn in as elected or appointed members of the same District's governing board.
3. A board member shall not be considered to have a financial interest in a contract if his or her interest is limited to those interests defined as remote under Government Code § 1091 or is limited to interests defined by Government Code § 1091.5.
4. Board members shall not have a financial interest in any contract made by the Board or in any contract they make in their capacity as board members.
5. A board member who has a remote interest in any contract considered by the Board shall disclose his or her interest during a board meeting and have the disclosure noted in the official board minutes. That board member shall not vote or debate on the matter or attempt to influence any other board member to enter into the contract.
6. Upon leaving the board, former members shall not, for a period of one year act as an attorney, agent, or otherwise represent for compensation others appearing before the board.
7. In compliance with law and regulation, the Superintendent/President shall establish administrative procedures to provide for disclosure of assets or income of board members:
 - a. when those assets or income originate from a source which is included in a decision made by the board, and;
 - b. the board member would have to exclude him/herself from the decision making process because the resulting decision could effect their financial interests.
8. Board members shall file statements of economic interest with the filing officer as prescribed in administrative procedure.
9. Board members are encouraged to seek counsel from the District's legal advisor in every case where any question of conflict of interest arises.

See Administrative Procedure AP 2710.

Government Code § 1126

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it:

(1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or;

(2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or;

(3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed or;

(4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.

Approved/Adopted: October 3, 2007

Conflict of Interest

AP 2710

Reference: Government Code § 87105, 87200-87210; Title 2, § 18700 et seq. and as listed below.

1. Incompatible Activities (Government Code § 1126, 1099). Board members shall not engage in any employment or activity that is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the District. Pursuant to Government Code section 1099 and established precedent, a person may not simultaneously hold two public offices if there is any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either office exercises a supervisory, auditing, or removal power over the other. (Gov. Code, § 1099, subd. (a); see People ex rel. Chapman v. Rapsey, supra, 16 Cal.2d 636; 81 Ops.Cal.Atty.Gen., supra, at p. 345.)¹

a. A board member shall not simultaneously hold two public offices that are incompatible.

b. When two offices are incompatible, a board member shall be deemed to have forfeited the first office upon acceding to the second.

2. Financial Interest (Government Code § 1090 et seq.). Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as members of the Board or as designated employees.

a. A board member shall not be considered to be financially interested in a contract if his or her interest meets the definitions contained in applicable law (Government Code § 1091.5).

b. A board member shall not be deemed to be financially interested in a contract if he or 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 member of the Board 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 or her minor child.

3. No Employment Allowed (Education Code § 72103(b)). An employee of the District may not be sworn in as an elected or appointed member of the governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office. This provision does not apply to an individual who is usually employed in an occupation other than

¹ Opinion No. 05-1113 of February 8, 2007 EDMUND G. BROWN JR. Attorney General; GREGORY L. GONOT Deputy Attorney General

teaching and who also is, at the time of election to the board, employed part time by the District to teach no more than one course per semester or quarter in the subject matter of that individual's occupation (Education Code § 72103(b)).

4. Financial Interest in a Decision (Government Code § 87100 et seq.)

If a board member or designated employee determines that he or she has a financial interest in a decision, as described in Government Code § 87103, this determination shall be disclosed and made part of the Board's official minutes. In the case of a designated employee, this announcement shall be made in writing and submitted to the Board. A board member, upon identifying a conflict of interest, or a potential conflict of interest, shall do all of the following prior to consideration of the matter.

- a. Publicly identify the financial interest in detail sufficient to be understood by the public;
- b. Excuse him or herself from discussing and voting on the matter;
- c. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded unless the matter is placed on the agenda reserved for uncontested matters. A board member may, however, discuss the issue during the time the general public speaks on the issue.

5. Gifts (Government Code § 89503). Board members and any employees who manage public investments shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law.

a. Designated employees shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law (\$390.00)² if the employee would be required to report the receipt of income or gifts from that source on his/her statement of economic interests.

b. The above 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. Gifts of travel and related lodging and subsistence shall be subject to the above limitations except as described in Government Code § 89506.

c. A gift of travel does not include travel provided by the District for board members and designated employees.

d. Board members and any employees who manage public investments shall not accept any honorarium, which is defined as any payment made in consideration for any

² Title 2 Section 18730.8.1 No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$390 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

speech given, article published, or attendance at any public or private gathering (Government Code § 89501 and 89502).

e. Designated employees shall not accept any honorarium that is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. 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.

2) Any honorarium that 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 tax purposes.

6. Representation (Government Code § 87406.3). Elected officials shall not, for a period of one-year after leaving their position, act as an agent or attorney for, or otherwise represent for compensation, any person appearing before that local government agency.

7. Filing Statements. Designated employees and officials shall file statements with the San Luis Obispo County Community College District (SLOCCCD) Superintendent who will appropriately record and file them, and make them available for public inspection. (Gov. Code § 81008) Employees and officials should contact the SLOCCCD/Cuesta College Superintendent/President’s office for assistance or information regarding disclosure statements. A list of designated positions and disclosure categories is contained in the District’s Conflict of Interest Code.

Approved/Adopted: October 3, 2007