
FRESNO COUNTY BOARD OF EDUCATION**Board Bylaws****CONFLICT OF INTEREST**

The County Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the county office of education and the public. In accordance with law, County Board members shall disclose any conflict of interest and, as necessary, shall abstain from participating in any decisions or discussions that could affect or be effected by those interests, especially, as prohibited by Government Code section 1090, those interests related to contracts. The County Board shall consult with legal counsel whenever an actual or potential conflict of interest arises.

Conflict of Interest Code

The County Board shall adopt a conflict of interest code that shall be comprised of the terms of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission. The conflict of interest code must be approved by the county board of supervisors.

Upon request by the county board of supervisors, the County Board shall review its conflict of interest code in even-numbered years. If no change in the conflict of interest code is required, the County Board shall submit to the county board of supervisors, by October 1, a written statement to that effect. If a change in the conflict of interest code is necessitated by changed circumstances, the County Board shall submit an amended conflict of interest code to the county board of supervisors. (Government Code 87306.5.)

When a change in the County Board's conflict of interest code is necessitated by changed circumstances, amendments, or revisions, the amended conflict of interest code shall be submitted to the county board of supervisors within 90 days after the changed circumstances necessitating the amendment to the conflict of interest code. (Government Code 87306.)

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

County Board members shall annually file a Statement of Economic Interest/Form 700 in accordance with disclosure categories specified in the conflict of interest code. A County Board member who leaves office shall, within 30 days of leaving office, file a revised statement covering the period between the closing date of the last required statement and the date of leaving office. (Government Code 87302, 87302.6.) Statements of Economic Interests/Form 700 submitted by County Board members pursuant to the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008.)

Conflict of Interest under the Political Reform Act

A County Board member shall not make, participate in making, or in any way use or attempt to use the official position to influence a governmental decision in which the County Board member knows or has reason to know that there is 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

FRESNO COUNTY BOARD OF EDUCATION

participation is legally required. (Government Code 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 office or position, votes on a matter, appoints a person, obligates or commits the County Board to any course of action, or votes to enter into or approve any contractual agreement on behalf of the County Board. (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 shall abstain from voting on the matter. Although the County Board member may remain on the dais, if the County Board member chooses to stay the County Board member's 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 18700.)

Conflict of Interest from Campaign Contributions

To avoid improper influence over the County Board's decision-making involving the issuance of a license, permit, or other entitlements for use, including a contract, County Board members shall comply with Government Code 84308, including the following: (Government Code 84308)

1. A County Board member is prohibited from accepting, soliciting, or directing a contribution of more than \$250 from any party or participant to a proceeding involving a license, permit, or other entitlement for use, including a contract, or from that person's agent, while the proceeding is pending before the County Board and for 12 months following the date a final decision is rendered in the proceeding, if the County Board member knows or has reason to know that the party or participant has a financial interest in the County Board's decision.
2. Any County Board member who received a contribution of more than \$250 from a party or participant in the preceding 12 months shall disclose that fact on the record of the proceeding prior to the County Board rendering a decision in the proceeding. If the County Board member willfully or knowingly received the contribution and knows or has reason to know that the participant has a financial interest in the County Board's decision, the County Board member shall not make, participate in making, or in any way attempt to use the official position to influence the County Board's decision.
3. A County Board member who receives a contribution that would otherwise require disqualification as described in Item #2 above may participate in the proceeding if the contribution is returned within 30 days from the time the County Board member knows or should have known about the contribution and the proceeding.
4. A County Board member who unknowingly accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date of the County Board's final decision on the proceeding may cure the violation by returning the

FRESNO COUNTY BOARD OF EDUCATION

contribution, or the portion exceeding \$250, within 14 days of accepting, soliciting, or directing the contribution, provided the County Board member did not knowingly or willfully accept, solicit, or, direct the prohibited contribution. The County Board member shall maintain records of curing the violation.

The provisions in Government Code 84308 as specified above do not apply to labor contracts, competitively bid contracts, and personal employment contracts. (Government Code 84308)

Conflict of Interest under Government Code 1090 - Financial Interest in a Contract

County Board members shall 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, and specifications and solicitations for bids for such contracts. If a County Board member has such a financial interest, the County Board 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 the interest is any of the following (Government Code 1091.5):

1. The ownership of less than 3 percent of the shares of a corporation for profit contracting with the County Board, if the total income to him/her from the corporation's dividends, including the value of stock dividends, does not exceed five (5) percent of County Board member's total annual income, and any other payments made to the County Board member by the corporation do not exceed 5 percent of the County Board member's total annual income.
2. That of an officer being reimbursed for actual and necessary expenses incurred in the performance of an official duty.
3. That of a recipient of public services generally provided by the County Board, on the same terms and conditions as if the County Board member were not a member of the County Board.
4. That of a landlord or tenant of a party contracting with the County Board if the 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.

However, the County Board member shall be deemed to have a remote interest within the meaning of, and subject to, the provisions of Government Code 1091 if the subject matter of the contract between the County Board and the contracting party is the particular property in which the County Board member has an interest as landlord or tenant.

5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the County Board at the time of the first consideration of

FRESNO COUNTY BOARD OF EDUCATION

- the contract, and provided further that such interest is noted in the County Board's 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 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 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 County Board member.
 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 the County Board member has not received and will not receive remuneration, consideration, or a commission as a result of the contract and if the County Board member has an ownership interest of less than ten (10) percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm.
 9. 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.
 10. That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.
 11. That of an officer or employee or, 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, depositor, debtor, or creditor.
 12. That of (A) 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 and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of the paragraph, "agreement" includes

FRESNO COUNTY BOARD OF EDUCATION

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.

13. That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:
 - a. The loan product or program is or may be originated by any lender approved by the agency.
 - b. The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.
14. That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, “public services” includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if the 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.

In addition, a County Board member shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if the 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 considered to be financially interested in a contract if County Board member has only a remote interest in the contract as specified in Government Code section 1091, and the fact of the remote interest is disclosed during a County Board meeting and noted in the County Board’s official minutes, and the contract was authorized, approved or ratified by a vote of the County Board’s membership sufficient for the purpose without counting the vote of the County Board member with the remote interest. Remote interests are specified in Government Code section 1091, subdivision (b), and they include, but are not limited to, the interest of a parent in the earnings of a minor child for personal services. (Government Code 1091.)

FRESNO COUNTY BOARD OF EDUCATION

To avoid the appearance of impropriety, County Board members may decide not to participate in any discussion or action involving contracts where the County Board member's interest is a "noninterest" or "remote interest" as described in Education Code 1091 and 1091.5.

Common Law Doctrine against Conflict of Interest

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

County Board members shall 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

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 pursuant to Government Code 87101 and 2 CCR 18705.

Incompatible Offices and Activities

County Board members shall not engage in any employment or activity or hold any office that is inconsistent with, incompatible with, in conflict with, or inimical to the County Board member's duties as a member of the County Board. (Government Code 1099, 1126.)

Gifts

County Board members 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.)

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except as described in Government Code 89506. A gift of travel does not include travel provided by the County Board for its members. (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.)

FRESNO COUNTY BOARD OF EDUCATION

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 County Board or County Superintendent for donation into the general fund without being claimed as a deduction from income for tax purposes.

Adopted: 04/20/1995

Amended: 10/20/2011, 11/15/2018, 09/21/2023

Legal ReferenceEducation Code

1006 Qualifications for holding office

35230-35240 Corrupt practices

Family Code

297.5 Rights, protections, and benefits of registered domestic partners

Government Code

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82003 Agency defined

82011 Code reviewing body

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, income

82033 Definition, interest in real property

82034 Definition, investment

87100-87103.6 General prohibitions

87200-87210 Disclosure

84308 Campaign disclosure

87300-87313 Conflict of interest code

87500 Statements of economic interests

89501-89503 Honoraria and gifts

91000-91014 Enforcement

Penal Code

85-88 Bribes

Code of Regulations, Title 2

18110-18997 Regulations of the Fair Political Practices Commission, especially:

18700-18760 Conflicts of interest

FRESNO COUNTY BOARD OF EDUCATION

18722-188740 Disclosure of interests
18753-18756 Conflicts of interest codes

Court Decisions

McGee v. Balfour Beatty Construction, LLC, et al. (2016) 247 Cal.App.4th 235
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

105 Ops.Cal.Atty.Gen.69 (2022)
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>