

CSBA Sample County Board Bylaw

Bylaws of the Board

BB 9270(a)

CONFLICT OF INTEREST

Note: The following **optional** county board bylaw covers county board members only. County offices that wish to make the bylaw applicable to its employees should modify the bylaw as necessary.

Incompatible Activities

Note: Government Code 1126 prohibits County Board members from engaging in any employment or activity which is inconsistent, incompatible, in conflict with or inimical to their duties on the County Board. Such incompatible service or assumption of office results in termination of the prior incompatible office. Though the Attorney General opinions in this regard addressed school district situations (e.g., 85 Ops.Cal.Atty.Gen. 60 (2002); 68 Ops.Cal.Atty.Gen. 171 (1985); 65 Ops.Cal.Atty.Gen. 606 (1982)), it is believed that the opinions apply to County Boards as well. It will be 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. 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; therefore, it is recommended that legal counsel be consulted as appropriate.

A County Board of Education member shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to his/her duties as a member of the County Board. (Government Code 1126)

Note: Pursuant to Education Code 1006, any registered voter is eligible to be a County Board member, except the county superintendent of schools, an employee of the county office or an employee of "any school district." In 69 Ops.Cal.Atty.Gen. 290 (1986), the Attorney General opined that, 'any school district' should be interpreted to mean any school district within the jurisdiction of the county office.

Conflict of Interest Code

Note: The County Board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313. Pursuant to 2 CCR 18730, Government Code requirements are satisfied if the County Board incorporates that regulation by reference, as provided for in this bylaw. The following paragraph provides for the incorporation of the provisions of 2 CCR 18730 and any subsequent amendments adopted by the Fair Political Practices Commission (FPPC), as the terms of the County Board's conflict of interest code.

The County Board's conflict of interest code shall be comprised of the terms of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission.

Note: Pursuant to Government Code 87303, the County Board's conflict of interest code must be approved by the county board of supervisors.

CONFLICT OF INTEREST (continued)

Upon direction 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 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 code is necessitated by changed circumstances, the County Board shall submit an amended 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 changed code shall be submitted to the county board of supervisors within 90 days after the changed circumstances necessitating the amendment to the code. (Government Code 87306)

When reviewing and preparing 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)

Statements of economic interests submitted by County Board members pursuant to the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

Financial Interest

Note: Pursuant to Government Code 1092, if any one County Board member has a financial interest in a contract, the County Board may not enter into that contract. The Attorney General has opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that this prohibition cannot be avoided by having the financially interested County Board member abstain from participating in the decision-making process.

The determination of whether a financial interest exists involves a review of statutes, court decisions and attorney general opinions as they apply to the particular facts at issue. The analysis can be complex and legal counsel should be consulted as appropriate.

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 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 5 percent of his/her total annual income, and any other payments made to him/her by the corporation do not exceed 5 percent of his/her total annual income.

CONFLICT OF INTEREST (continued)

2. That of an officer 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 County Board, on the same terms and conditions as if he/she 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 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 he/she has an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm
9. 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 with the County Board has a relationship of borrower or depositor, debtor, or creditor.

CONFLICT OF INTEREST (continued)

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 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)

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

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, the fact of the remote interest is disclosed to the County Board and noted in the County Board's official records, and the contract was authorized, approved or ratified in good faith 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 1091(b) and they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

Note: Even if no exception in Government Code 1091.5 applies, a County Board member may still participate in entering into a contract if the rule of necessity or legally required participation applies, pursuant to Government Code 87101. In general, this rule will permit a County Board to acquire an essential supply or service. The rule also permits a County Board member to carry out an essential duty of his/her office where he/she is the only one who may legally act and there is no alternative source of decision-making authority other than to permit the conflicted County Board member to participate in accordance with 2 CCR 18708.

It is recommended that the County Board consult legal counsel when situations arise involving financial interests in contracts or the rule of necessity.

A County Board member may participate in a County Board decision to enter into a contract if the rule of necessity or legally required participation applies pursuant to Government Code 87101.

Gifts

Note: Pursuant to 2 CCR 18730, the prevailing gift limitation is currently \$340 from any single source. This amount is adjusted on odd-numbered years by the FPPC.

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)

CONFLICT OF INTEREST (continued)

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)

Note: Exceptions exist within the Government Code's definitions of gifts, income, interest in real property and investment; see Government Code 82028, 82030, 82033 and 82034.

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 for donation into the general fund without being claimed as a deduction from income for tax purposes

**APPENDIX
DISCLOSURE CATEGORIES**

Note: It is important that every County Board's Conflict of Interest Code contain an appendix specifying the financial disclosure requirements applicable to its members. County Board members are not considered to be "public officials who manage public investments" when serving on County Boards that do not have any surplus or special reserve funds to invest and merely deposit all funds they receive in the county treasury pursuant to Education Code 41001-41002.5, or participate in funds where Tax and Revenue Anticipation Notes (TRANs) are issued. Such County Board members are required to disclose financial interests and only file specific types of disclosure.

Every County Board member shall report his/her:

1. Interests 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 the County Office. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.

CONFLICT OF INTEREST (continued)

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 County Office
 - (c) Manufacture or sell supplies, books, machinery or equipment of the type used by the County Board and/or County Office

Note: Pursuant to Government Code 87200, County Board members may be required to file a full statement of economic interests rather than specific types of disclosure, when they serve on County Boards whose members are considered to be “officials who manage public investments”. Such County Boards should delete the preceding paragraph and instead, use the following paragraph.
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Every County Board member shall file a full statement of economic interests pursuant to Government Code 87200.

Legal Reference: (see next page)

CONFLICT OF INTEREST (continued)

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*

GOVERNMENT CODE

1090-1098 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91015 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition of designated employee*

82028 *Definition of gifts*

82030 *Definition of income*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

91000-91014 *Enforcement*

CODE OF REGULATIONS, TITLE 2

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

18702.5 *Public identification of a conflict of interest for Section 87200 filers*

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

ATTORNEY GENERAL OPINIONS

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.* 290 (1986)

69 *Ops. Cal. Atty. Gen.* 255 (1986)

68 *Ops. Cal. Atty. Gen.* 171 (1985)

65 *Ops. Cal. Atty. Gen.* 606 (1982)

Management Resources:

WEB SITES

Fair Political Practices Commission: <http://www.fppc.ca.gov>