



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Loren W. Soukup
Erin E. Stagg

Of Counsel
Ellie R. Austin
Robert J. Henry
Patrick C. Wilson
Frank Zotter, Jr.

MEMORANDUM

To: Mia N. Robertshaw, General Counsel

From: Erin E. Stagg, Associate General Counsel

Date: November 16, 2020

Re: Campaign Contributions and Conflict of Interest Considerations

The conclusion of an election cycle often presents questions regarding the interaction of campaign contributions and conflict of interest requirements. College of Marin contacted our office to provide a summary of the law with respect to this issue.

In brief, the receipt of campaign contributions does not generally give rise to a duty for an elected official to disqualify absent additional disqualifying interests or evidence that such contributions were in anticipation of or as a result of political favor.

A decision to recuse or disqualify oneself from a matter is an individual decision that must be made by an elected official themselves. Generally, campaign contributions alone are not disqualifying conflicts of interest. However, there is a tension between preventing even the appearance of impropriety with the constitutional protections afforded campaign contributions and the practical reality that a campaign contribution disqualification rule could be abused. Board members with concerns that a campaign contribution may be construed as made in anticipation of or as a result of political favor should consult with their own legal counsel regarding the specific facts of the situation to determine whether to seek advice from the Fair Political Practices Commission.

Conflict of Interest Laws

Conflict of interest analysis typically considers the following broad categories of legal authority, each of which is addressed in more detail below:

- **The Political Reform Act**¹ (the “Act”), which prohibits a public official from participating in governmental decisions where their personal economic interests may be affected. The Act expressly addresses campaign contributions in section 84308.

¹ Cal. Gov. Code § 87100 *et seq.*, as well as the regulations found in the California Code of Regulations, 2 C.C.R. § 18700 *et seq.*

However, that particular provision only applies to locally elected officials in limited circumstances.

- **Government Code § 1090**, which prohibits a public agency from entering into a contract if a public official, including elected members of the governing body, has a direct or indirect financial interest in the contract.
- **Common law conflict of interest**, which is a body of law made by precedential judicial decisions by the California Supreme Court and Appellate Courts and extends to both financial and nonfinancial personal interests.

Governing board members should also remain familiar with local board policies relating to conflict of interest to maintain compliance with all applicable requirements.² Finally, governing board members should be reminded that counsel’s advice does not provide a person being advised with any immunities from criminal or civil prosecutions. Only good faith reliance upon written advice from the Fair Political Practices Commission on a particular situation at issue can protect an official.

Political Reform Act

The Act prohibits participation in governmental decisions that affect the personal economic interests of elected officials. Economic interests which may give rise to a conflict of interest include sources of income or gifts. However, *political contributions are specifically excepted from the definitions of both income and gift*. See Gov. Code §§ 87103(c), 82028(b)(4) and 82030(b(1)).³ As the California Supreme Court explained, the Act provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting in matters in which the recipient is interested.⁴

Section 84308 of the Act specifically addresses campaign contributions and governmental decisionmaking by certain officials. However, local governmental agencies whose members are directly elected by voters, such as city councils, county boards of supervisors, school districts and community college districts, are exempt from the provisions of section 84308. Gov. Code § 84308(a)(3).

In sum, reportable campaign contributions are not deemed “gifts” or “income” under the Act and do not give rise to a conflict of interest for elected local officials when acting for the locally elected agency.⁵

² College of Marin Board Policies 2710 and 2715 and related Administrative Procedures.

³ See also *All Towing Servs. LLC v. City of Orange*, 220 Cal. App. 4th 946, 955 (2013); ANN LEATHERBURY, 1990 WL 692785, at *1; MONICA COOPER, 2017 WL 325894, at *1; GUY D. PETZOLD, DEPUTY CITY ATTORNEY, 2003 WL 22045704, at *1

⁴ *Woodland Hills Residents Association v. City Council of L.A.* 26 Cal.3d 938, 945 (1980); MONICA COOPER at *2

⁵ In certain circumstances, a locally elected official may be subject to section 84308 when acting as a voting member of a covered public agency. For example, an elected city councilmember acting as a voting member of a regional air quality district could be disqualified from certain air quality district matters as a result of campaign contributions.

Government Code § 1090

Courts evaluating the relationship between campaign contributions and conflict of interest caution that public policy mandates that *a third party's contribution to an official's campaign cannot, without more, disqualify the official* from participating in the making of contracts involving the contributor. The fact that persons or entities make campaign contributions to officials who favor a particular position or who support the donee does not prove illegality.⁶ However, if evidence demonstrates that a contribution was made in anticipation of political favor or on account of favors given, such contribution constitutes an illegal interest within the meaning of section 1090 as well as under existing criminal sanctions for bribery and political corruption.⁷

In sum, campaign contributions alone will not invalidate a contract under section 1090. However, a violation may be established if circumstantial or direct evidence is presented that the contribution was made in anticipation of or as a result of political favor.

Common Law

A common law conflict of interest arises when a public official, while not necessarily having a financial conflict, may be so involved in the matter that personal bias precludes the official from acting in a neutral manner. This is also referred to as a nonfinancial personal interest.

For example, in a 2009 opinion, the Attorney General concluded that common-law conflict of interest principles disqualified a parent from voting on a contract award that could financially benefit her adult son. "It is difficult to imagine that the agency member has *no* private or personal interest in whether her son's business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member's participation..."⁸ "Our conflict-of-interest statutes are concerned with what might have happened rather than merely what actually happened. They are aimed at eliminating temptation, avoiding the appearance of impropriety, and assuring the government of the officer's undivided and uncompromised allegiance."⁹ The Attorney General concluded that under those circumstances, "the only way to be sure of avoiding the common law prohibition is for the board member to abstain from any official action..."

Established legal precedent and local Board Policy¹⁰ caution that the "appearance of impropriety" should be prevented. However, the public's right to unbiased officials must be balanced with the constitutional protections afforded campaign contributions as political speech and associational freedoms. Courts have cautioned that there is a practical reality that a campaign contribution disqualification rule could be easily manipulated and abused.¹¹

⁶ *All Towing Servs.*, *supra*, 220 Cal. App. 4th at 960.

⁷ *Hub City Solid Waste Servs., Inc. v. City of Compton*, 186 Cal. App. 4th 1114, 1127 (2010)("illegality is proven if there is an understanding that a payment is made in anticipation of political favor or on account of favors given...").

⁸ 92 Ops. Cal. Atty. Gen. 19 (2009)

⁹ *People v. Honig*, 48 Cal. App. 4th 289, 314 (1996)(internal quotations and citations omitted).

¹⁰ BP 2715: "Prevent conflicts of interest and the perception of conflicts of interest."

¹¹ "As a practical example, the court noted: if a political contribution automatically disqualifies the recipient after his election from considering and acting on matters in which the contributor has an interest, the enterprising developer



Common law conflict of interest claims are highly fact-specific and analyzed on a case-by-case basis, thus, it is difficult to predict with certainty how a reviewing court will analyze issues in common law conflict of interest cases. However, opinions applying section 1090 to campaign contributions are instructive. Thus, campaign contributions alone will arguably not rise to the level of bias precluding an official from acting in a neutral manner absent evidence that such contributions were in anticipation of or as a result of political favor.

could disqualify all known environmentalists who are running for municipal office by making nominal contributions to the campaign committees of such persons... to disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms. For instance, it would curtail the right of contributors such as developers, builders, engineers, and attorneys who are related in some fashion to developers to participate in the electoral process.” *All Towing Servs. LLC v. City of Orange*, 220 Cal. App. 4th 946, 956 (2013)(internal quotations and citations omitted)(discussing *Woodland Hills*, *supra*, 26 Cal. 3d 938).