

Workforce Investment Board

“Conflicts” Orientation

June 6, 2012

Public Conflicts Generally

Two primary (but not exclusive) areas of concern:

- **Political Reform Act** (Gov. Code §§ 87100 etc.)
 - Economic Disclosure
 - Conflicts of Interest
- **Government Code § 1090**
 - Financial Interests in Contracts

Political Reform Act Financial Disclosure

- WIB Members are “Public Officials”
- Must file Statements of Economic Interests (“Form 700”)
- Form 700s provides basic disclosure info
 - Specifics on holdings
 - Order of magnitude in amounts
- Form 700s are public documents

Political Reform Act

Disqualifying Interests

- Public Officials cannot “make, participate in making, or influence” governmental decision
- Disqualifying conflicts are based on economic interests only, not philosophical or personal issues
- If have “material” economic interest in decision, must disclose and recuse
- Eight step process, based on specific facts, found in “Can I Vote?” Pamphlet.

Political Reform Act Disqualifying Interests

- Is the member participating in a government decision?
- Does the decision affect an “economic interest” (real property, investment, or source of income)?
- Is there a reasonable possibility the decision will significantly impact that “economic interest?”
- Is that impact different from the public generally?
- If so, then there may be a Disqualifying Conflict of Interest under FPPC Rules.

Section 1090 Conflicts

- Public Official cannot be financially interested in contract with Official's body
 - Theory that “cannot serve two masters”
 - Strict liability; doesn't matter if contract is beneficial to public body
- Violation of 1090 voids contract; official must disgorge all funds
- Violation of 1090 can lead to criminal sanctions

Section 1090 Conflicts

- Definition of “financial interest” in contract can be broad
 - “However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void.”
People v. Deysher (1934) 2 Cal.2d 141
 - Has even been applied to pro bono services

Section 1090 Conflicts

- “Participation” in making of contract can be defined broadly
 - “... an official may be convicted of [1090] violation, no matter whether he actually participated personally in the execution of the contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.”

People v. Sobel (1974) 40 Cal.App.3d 1046

Section 1090 Conflicts

- Grants and donations are “contracts”
- “Financial interest” extends to spousal property and employment
- “Financial interest” extends to employee of contract provider
- Campaign contributions are not “financial interests” per se, but if shown contribution made in anticipation/result of decision, is prohibited “financial interest”

Section 1090 Conflicts

- Board members presumed to have “made” contracts approved by Board
- Section 1090 also applies to Advisory Boards members, because of influence in “participating” in development of contracts
 - Individual members of Advisory Boards may be able to avoid conflict by disqualifying self from any participation

Section 1090 Conflicts

- Policy determinations that some interests are “non-interests” for 1090 purposes
 - May still have Political Reform Act disqualifying interest; check with FPPC Regs
- Sample “non-interests” include:
 - Receipt of public services by official
 - Contracts between government agencies
 - If contract involves department, must disclose
 - If contract does not involve department, no interest

Section 1090 Conflicts

- Limited exceptions for “remote interests”
 - Must disclose interest before action on contract is taken
 - Must have interest noted in official records of body
 - Must completely disqualify self and not attempt to influence other board members
- Failure to comply with all steps is violation and could void the contract

Section 1090 Conflicts

- Officer or employee of Non-Profit/501(c)(3) may have “remote interest”
- Employee (not officer) of private entity may have “remote interest” if
 - Entity has 10 or more employees
 - Employed for at least 3 years prior to original term as board member
 - Owns less than 3% of stock in entity
 - Did not directly participate in formulating bid of entity

Conflicts: Where to Get Help

- Own legal counsel; County Counsel cannot advise on any individual's conflict issue
- Fair Political Practices Commission
 - www.fppc.ca.gov
 - 1-866-ASK-FPPC (275-3772) (toll free)
- State Attorney General website information
 - www.oag.ca.gov/government (Open Gov)