

Conflict of Interest Laws

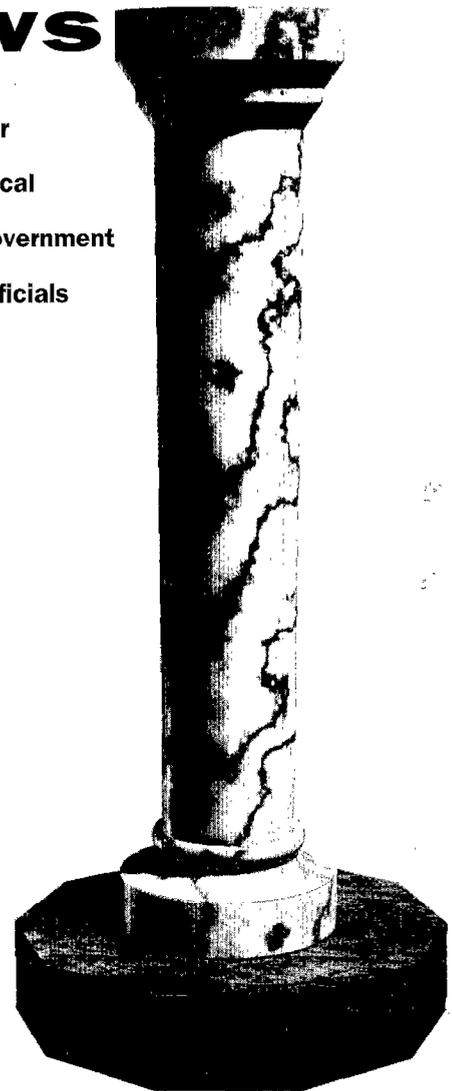
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For
Local
Government
Officials



**Pocket Guide to
Conflict of Interest
Laws For Local
Government
Officials**

Fall 1995

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PURPOSE OF THIS BOOKLET

"No man can serve two masters." This simple principle from the New Testament is the underlying tenet of the hundreds of code sections which have been enacted to define conflict of interests and regulate against them. This booklet is designed to alert you to the situations where you as a local official could face conflict of interest questions, so that you may seek advice from experts and avoid trouble.

Conflict of interests can arise in many different ways, and often at the last minute, without warning. Trying to determine whether one has a conflict of interests in such circumstances can be very difficult. This guide is intended to assist you in making that determination. In using this guide, keep in mind that it is only a summary, not a treatise. It does not attempt to address all situations or problems. Specific questions should be directed to your agency's legal counsel.

OVERVIEW OF LAWS DISCUSSED

The following California laws governing conflict of interests will be discussed in more detail in subsequent pages.

Political Reform Act. Enacted by the voters in 1974, the Political Reform Act (we will refer to it as the PRA) covers a variety of subject areas. However, this booklet discusses the four parts that are most significant to members of boards and commissions. Penalties for violation may include administrative or civil fines, injunctive relief, misdemeanor sanctions for willful violations, and in some instances may include disqualification from running for public office for four years.

Disqualification. The PRA's primary provision prohibits public officials from making, participating in making, or attempting to influence governmental decisions in which they have reason to know they have a financial interest. The Act provides a five-part test to determine if a conflict of interests exists. The Act also provides exceptions. See pages 7-12.

This guide is intended as a basic reference document to alert you to situations where you may face a problem with the various conflict of interest laws. Listed below are other publications and sources of information available to you for more detailed advice.

1. Legal counsel to your local public agency
2. Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814
 - The Commission has numerous publications on various aspects of the law, which are periodically updated.

For advice concerning disclosure of economic interests, call (916) 322-5662.
For advice concerning the disqualification requirement, call (916) 322-5901.
3. California Attorney General's Office
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
(800) 952-5225
 - The Attorney General has published and periodically updates a pamphlet titled "Conflict of Interests." Individual copies may be ordered free of charge.
4. California State Legislature
Senate Local Government Committee
 - The Committee published a booklet in 1992 titled "YOUR GUIDE TO CONFLICT OF INTERESTS LAW: How We Govern Our Public Officials." It focuses on the Political Reform Act. It may be purchased for \$4.30 per copy, plus current California sales tax, from:
Senate Publications
1100 J Street, B-15
Sacramento, CA 95814

When ordering, request Senate Publication Number 632-S, and make checks payable to the Senate Rules Committee.

- in which the incumbent performs a public function for the public benefit and exercises some of the sovereign powers of the State.”

By contrast, employment depends primarily upon contract or civil service law. Some examples of positions the Attorney General has ruled to be “employment”:

- school teacher;
- legal counsel to a legislative interim committee;
- manager of a district agricultural association;
- engineer for a community services district;
- civil service position of Assistant Superintendent of Public Instruction;
- membership on committee of bar examiners;
- membership on city personnel board.

An individual is prohibited from being sworn into office as an elected or appointed member of a local agency’s governing board if he or she is an employee of the local agency. If the employee does not resign, the employment automatically terminates upon being sworn into office. Individuals who are both an employee and an elected or appointed member of a local agency’s governing board prior to January 1, 1996 must comply with these provisions upon re-election or re-appointment on or after January 1, 1996. County employees and volunteer firefighters are exempt from these provisions. The law regarding school district and community college district employees’ governing board membership remains unchanged.

Test of Incompatibility. The Attorney General has articulated the test with the following two questions:

“Do the duties and responsibilities of the offices so conflict that the public interest will be harmed when both offices are held by the same person? Is it against public policy for the same individual to hold both offices?”

Some examples of offices found incompatible are:

- one office is subordinate to the other and subject in some degree to the supervisory power of the other;
- the incumbent of one office has the power to remove the incumbent of the other; or
- one has the power to audit the accounts of the other.

Reporting Requirements. Elected officials and most appointed officials must file economic interest statements. These statements:

- are public records;
- disclose certain assets and income of the official.
- are generally filed when:
 - taking office;
 - annually while in office; and
 - upon leaving public office.

Candidates for elected office also have detailed reporting requirements on campaign contributions and expenditures.

Gifts and Honoraria. The PRA generally precludes public officials from receiving gifts from any one person aggregating more than \$280 per year and prohibits receipt of honoraria, except to reimburse reasonable travel expenses. See pages 6-17.

Campaign Contributions. The law:

- prohibits officials from soliciting, receiving or directing campaign contributions of more than \$250 from persons who are parties to, or participants in, a license or permit proceeding during the pendency of the proceeding and for three months after the proceeding;
- requires the official to disqualify himself or herself from such a proceeding if the official has received more than \$250 in campaign contributions from a party within the prior 12 months; and
- requires disclosure of such campaign contributions.

These provisions do not apply to elected officials serving on the board or council to which they were elected, but apply to them when serving on other bodies, the most common one being a Local Agency Formation Commission (LAFCO). See pages 19-21.

Contractual Conflict of Interests. Until the felony conviction of former Superintendent of Public Instruction Bill Honig, *Government Code Section 1090* was little known outside the circles of public attorneys. This code section contains an *absolute prohibition* on a public officer or employee entering into a contract in which he/she has a financial interest.

Unlike the PRA, even if a board or council member does not participate in the decision, a public agency may not enter a contract with one of its officials or an entity in which the official has a financial interest.

Specific exceptions are contained in succeeding sections of the code to address situations in which the official's interest is small enough to permit the contract if the official does not participate in the decision, or so small that it does not create a conflict.

Penalties are severe. The contract is void and unenforceable with the official forfeiting anything he/she gained under the contract; and for willful violation, felony prosecution and a lifetime preclusion from holding public office. See pages 22-24.

Finally, this booklet describes other conflict of interests, including:

Free Transportation. The state Constitution prohibits a public officer from receiving free passes or discounts from a transportation company. The penalty: forfeiture of the public office. See page 25.

Incompatible Offices. State law precludes a public officer from simultaneously holding two offices which are incompatible. For example, a court found that the offices of general manager of a county water district and county supervisor were incompatible. If the two are found incompatible, the office held first is automatically vacated. See page 27.

Other Prohibitions or Requirements. In addition to these specific statutory prohibitions, the common law may proscribe a conflict of interests. Local ordinances and charters may contain stricter prohibitions than state law. Additionally, laws applicable only to certain types of local entities, such as hospital districts, school districts and air quality management districts, may contain prohibitions or requirements applicable to only that one type of local public agency.

On occasion, a person holding one public office is elected or appointed to another. In these cases, the doctrine of "incompatibility of office" may arise. If the public official is found to be holding two "incompatible" public "offices," the official automatically vacates the first one held.

When a public official has a conflict between his or her public duties and private financial interests, conflict of interest laws apply. However, when there is a potential clash between the public duties of two public offices the doctrine of incompatibility of office comes into play. Incompatibility normally refers to the "public-public" situation where no personal conflict of interest is involved.

The courts have created the doctrine of incompatibility of office, which prevents an individual from occupying two public offices having overlapping or conflicting functions and duties. The court-made rule is supplemented, but not displaced by, constitutional and statutory provisions prohibiting certain types of dual office holding.

This common law doctrine of incompatibility applies if:

- both positions are public positions;
- the positions are incompatible; and
- both are "offices," that is, neither is merely a public "employment."

The holding of one office does not necessarily disqualify the incumbent from holding another office at the same time *if* there is no overlap or conflict in the functions of the two offices in question. But where the functions potentially overlap or conflict, they are incompatible.

Office vs. Employment. The Attorney General has defined the term "office" for purposes of this doctrine as :

"A position in government:

- which is created or authorized by the Constitution or some law;
- the tenure of which is continuing and permanent, not occasional or temporary;

Although California statutes largely cover the scope of conflicts, court decisions remain on the books as well. The common law still requires a public officer to exercise his or her powers with disinterested skill, zeal and diligence, primarily for the benefit of the public.

The Attorney General has cautioned that where there is no conflict under statutory law, there may still be special situations where a conflict of interest violating the common law could still arise. Prudence is advised to avoid any situations where private interests might be enhanced through official actions.

DISQUALIFICATION REQUIREMENT

Government Code Section 87100

The heart of the Political Reform Act (PRA) is *Government Code Section 87100*. It prohibits any public official from making, participating in making, or attempting to influence a governmental decision if it is reasonably foreseeable that the decision could have a material financial effect on the official, the official's immediate family, or on specified economic interests of the official, if that financial effect is different from the effect on the general public.

There are five basic questions that you as a public official need to ask yourself in determining whether or not you have a conflict of interest with respect to a specific decision under the PRA.

- Are you making, participating in making, or using your "official position" to influence a governmental decision? (see page 7)
- Do you have an economic interest involved in the decision? (see page 8)
- Is it reasonably foreseeable that the decision will affect your economic interest? (see page 9)
- Will the effect of the decision on your economic interest be material? (see page 10)
- Will the effect of the decision on your economic interest be different from the effect on the general public? (see page 12)

If the answer to all of the above questions is yes, then you have a conflict of interests and must disqualify yourself from making, participating in making, or even influencing the decision. You should seek further advice from your agency's legal counsel.

1. Are you making, participating in making, or using your official position to influence a governmental decision?

- Are you voting on a decision regarding ordinances, regulations or resolutions, contract awards, purchases

or leases; hiring, firing or other personnel actions; permits, zoning variances or other land use issues; or any decision coming before you in your role as a public official? Remember that whether you vote for or against an issue, or for or against your economic interests, you are still making a governmental decision.

- Are you participating in the making of a decision set forth in the prior paragraph by responding to comments, taking part in discussions or making recommendations regarding any of the above topics or decisions?
- Are you in any way using your "official position" to influence the outcome of a governmental decision of your agency or an agency with members appointed by, or which is subject to, the budgetary control of your agency? You are using your official position to influence a governmental decision if you contact, appear before, or otherwise attempt to influence, any member, officer, employee or consultant of the agency.

If the answer to any of the above three questions is yes, you need to answer the question in part 2, below. If the answer to all of the questions is no, you probably do not have a conflict of interests.

2. **Do you have an economic interest?** Will the decision financially affect any of the following?
- Your personal expenses, income, assets or liabilities, or those of your immediate family.
 - *Business interests.* Business entities are economic interests if you have an investment in the business worth \$1,000 or more, or you are a director, officer, partner, trustee, employee, or hold any position of management in the business entity. A nonprofit organization is not a "business entity;" however, it may still be a source of income as discussed below.
 - *Real property.* Real property is an economic interest if you have an interest in the property worth \$1,000 or more. Please note that mortgages, options to buy and leasehold interests are all considered to be interests in real property, although month-to-month tenancies are not.

Article 12, Section 7 of the California Constitution provides that:

"A transportation company may not grant free passes or discounts to anyone holding an office in this State; and the acceptance of a pass or discount by a public officer . . . shall work a forfeiture of that office . . ."

The prohibition applies to *all* personal or business travel, whether intrastate or interstate. The Attorney General has opined that where the holding of public office is not related to the free or discounted travel, the prohibition does not apply, and where the public office is related, the prohibition applies.

Examples:

- The prohibition *did not* apply where the elected official received a first-class airline upgrade because he was going on his honeymoon, and the upgrade was given to all honeymooners.
- The prohibition *did not* apply to an elected official who received free airline travel because he was the spouse of a flight attendant.
- The prohibition *did* apply where an airline gave a first-class upgrade to 20 prominent local citizens, and one of those citizens was the mayor. Further, the mayor could not escape the prohibition by paying for the value of the upgrade when he learned of the prohibition.

- that of a supplier of goods or services, when those goods or services have been supplied to the contracting party by the officer for at least five years prior to assuming office.

A remote interest exception applies to a board or council member if the officer's interest is one listed as remote in *Section 1091*, and the following steps are followed:

- the board or council member discloses the financial interest to the board or council, and disqualifies himself or herself from participating in all aspects of the decision;
- the disclosure is noted in the official records of the board or council; and
- the board or council, after such disclosure, approves, ratifies or authorizes the contract by a good faith vote of the remaining qualified members of the board or council.

Non-interest Exception. Some potential interests are so small that the Legislature has classified them as non-interests in a contract. One example is an officer of a board who receives public services provided by the officer's board on the same terms that the services are provided to the general public; for example a member of a water district board may receive water service. *Section 1091.5* provides a full list of exceptions.

Limited Rule of Necessity.

Even if there is not an exception from the prohibition, an official may still enter into a contract if the rule of necessity applies. In general, this rule will permit an agency to acquire an essential supply or service. The rule also permits an officer to carry out essential duties of his or her office where he or she is the only one who may legally act.

Be sure to consult with legal counsel when situations arise involving *Section 1090 et seq.*

- *Income and gifts.* Sources of \$250 or more in income and donors of gifts aggregating \$280 or more within the past 12 months are considered economic interests under the PRA. Both "income" and "gift" are broadly defined to include virtually any payment received other than campaign contributions (and other expressly enumerated exceptions). "Income" also includes your community property interest in the income of your spouse and a pro-rata share of any income to any business or trust in which you, your spouse or dependent children, own directly, indirectly or beneficially, a 10 percent interest or greater.
- *Indirect interests.* Indirect interests are also considered economic interests under the PRA. Indirect interests are investments and real property owned by your spouse or dependent child, or by any business entity or trust in which you or your immediate family have a 10 percent interest or greater. Please note, an indirect interest includes investments and property owned by your spouse as separate property.

If the answer to the above question is yes, you need to answer the question in part 3, below. If the answer is no, you probably do not have a conflict of interests.

3. Will the decision foreseeably affect an economic interest identified in section 2, above?

A conflict of interests may be present when there is a "substantial likelihood" that there will be a foreseeable financial effect on your economic interests. Even during the preliminary stages of the decision-making process, you must consider whether the end result of a decision is likely to have a foreseeable financial effect on your economic interests.

If you answered yes to the question of whether there is a substantial likelihood that your economic interests identified in part 2 above will be financially affected, you need to answer the questions in number 4 below. If you answered no, you probably do not have a conflict of interests.

4. Will the effect on you or your economic interests be material?

Whether or not a financial effect is material will depend upon the types of economic interests involved.

Ownership of real property

- Will the decision affect the zoning, annexation, sale, lease, use of, or taxes or fees imposed on your real property, or a license, permit or other land use entitlement for the property?
- Does the decision involve the inclusion of your property in (or exclusion from) any city, county district or other local governmental subdivision, or the designation of a survey or project area, adoption of a preliminary plan, certification of an environmental document, adoption of a redevelopment plan, or the addition of territory to a redevelopment area in which you own any interest in real property within the boundaries or proposed boundaries of the affected areas?
- Will the decision result in new or substantially improved services for your property?
- Does the decision concern real property? A decision concerns real property if it is:
 - within 300 feet of your property and the decision will have some financial effect on your property;
 - more than 300 feet from, but within 2,500 feet of your property and the decision will affect the value of the property by \$10,000 or more, or the rental value by \$1,000 or more per 12-month period; or
 - more than 2,500 feet from your property but there are specific circumstances regarding the decision that make it reasonably foreseeable that the value of the property will be affected by \$10,000 or more, or the rental value by \$1,000 or more per 12 month period.

Effect of Violations / Potential Penalties

Any contract made in violation of *Section 1090* is void (*Section 1092*). The transaction will be undone and:

- the public agency keeps the benefits it has received;
- the officer who violated the law must give back to the agency any benefits received (that is, compensation), plus interest on any money.

For example, in 1985 the California Supreme Court decided that a city acquired land owned by a council member by a contract that violated *Section 1090*. The Supreme Court ordered the council member to surrender the land, and he had to return the city's money. The practical effect was that he made a gift of the land to the city.

Also, if the officer willfully violates this law, he or she is subject to a fine of not more than \$1,000 or state imprisonment (*Section 1097*). The penalty also permanently disqualifies the officer from ever holding public office in the state. This is the section of law under which former Superintendent of Public Instruction Bill Honig was convicted.

Exceptions to the Prohibition

There are exceptions to the general prohibition where the officer has a financial interest but will still be allowed to enter into the contract.

Remote Interest Exception. A local agency may enter into a contract where a board or council member has a "remote" interest. *Section 1091* lists these remote interests. Several of the most common remote interest exceptions include:

- that of an officer or employee of a nonprofit corporation;
- that of an employee of the contracting party, if the contracting party has 10 or more employees and the employee commenced his or her employment at least three years prior to initially assuming office; and

Relationship of Government Section 1090 et seq. to the Political Reform Act

Government Code Section 1090 et seq. deals with public contracts in which a public official has a financial interest. These provisions are in addition to the restrictions of the Political Reform Act. All references in this summary of contractual conflict of interests are to the Government Code.

The Basic Prohibition, Section 1090

Public officials shall not have a financial interest in *any* contract made by them in their official capacity, or by any board of which they are a member.

Making a contract. The making of a contract includes preliminary discussions, negotiations, planning and solicitation of bids.

Application of Prohibition to Officers. A member of the governing board of a local agency (including a board of supervisors, board of directors, city council, school board,) is an "officer", and is *conclusively presumed* to have made any contract executed by the board or council, or any person or agency under its jurisdiction, even if the board or council member disqualifies himself or herself from any participation in the contract.

Financial Interest. A "financial interest" includes a direct or indirect financial interest. A direct financial interest is present when the official is the party contracting with the agency. An indirect financial interest involves an official who has a financial relationship with the contracting party or will receive some benefit from the making of the contract with the contracting party.

Leasehold interests

- Will the decision increase or decrease the amount of rent that is paid on the property by the greater of \$250 or 5 percent during any 12 month period, or will it significantly affect the use or enjoyment of the property or its legally allowable use?

Income/assets

- Will the decision affect the income, assets or liabilities of you, your spouse or dependent children by at least \$250 (not including real property)?

Business interests

- Was the proceeding initiated by a business in which you have an economic interest or is the business the subject of the proceeding?
- Will the governmental decision otherwise have a material financial effect on a business in which you have an economic interest?

Nonprofit entities

- Was the proceeding initiated by a nonprofit entity in which you have an economic interest?
- Will the governmental decision otherwise have a material financial effect on a nonprofit entity in which you have an economic interest?

Individuals who are sources of income or gifts

- Will the decision affect an individual who is a source of income or gifts by \$1,000 or more, or will it materially affect the individual's real property?

If you answered yes to any of the questions in this part, the questions in part 5 below need to be answered. If the answer to all of the questions is no, you probably do not have a conflict of interest.

5. Is the effect on your economic interests distinguishable from the effect on the general public?

- Will the material financial effect on you or your economic interests be different from the financial effect on the general public?

You do not have a conflict of interests if the effect of the decision on your economic interests is substantially the same as its effect on most other people in the jurisdiction. For example, a decision to impose a city sales tax will affect you no differently than any other member of the general public. By contrast, if your agency is acquiring or improving land close to your business or property, the decision probably will affect you differently than it will affect the general public and therefore would potentially be considered a conflict of interests for you.

If you answered yes to this question, you have a conflict of interests and must disqualify yourself from the decision or issue. If you answered no to this question, you do not have a conflict of interest and may participate in making the decision.

VIOLATIONS OF THE POLITICAL REFORM ACT

Violations of the PRA can result in severe penalties. These may include administrative penalties, civil penalties imposed by the Fair Political Practices Commission (FPPC), or imposition of criminal sanctions, including fines or imprisonment.

returns the contribution, or that portion which is over \$250, within 30 days from the time the official knows or has reason to know of the contribution and the proceeding.

Disqualification means that the official shall not participate in making any decision in the proceeding, and shall not in any way attempt to use his or her official position to influence the decision. Note that disqualification is required due to actual receipt of campaign contributions, not simply solicitation of campaign contributions if none are received.

No Contributions During the Proceeding. While the permit, license or entitlement proceeding is pending and for three months after the decision, covered officials are prohibited from soliciting or receiving campaign contributions from either parties or participants whom they know or have reason to know are financially interested in the outcome. This prohibition includes a prohibition against soliciting, receiving or directing contributions on behalf of another person or on behalf of a campaign committee.

Likewise, all parties and participants are prohibited during this period of time from making contributions of more than \$250 to any officials involved in the proceedings.

WHAT KINDS OF PROCEEDINGS ARE COVERED?

The general rule applies to all proceedings involving a license, permit, or the entitlement for use. The statute defines these terms as including:

- all business, professional, trade and land use licenses and permits;
- all entitlements for land use;
- all franchises;
- all contracts, other than competitively bid, labor or personal employment contracts.

Examples of entitlements for land use would include conditional use permits, zoning variances, and tentative subdivision and parcel maps. Examples of covered contracts include consulting contracts, whether engineering, architectural or legal.

WHAT ACTIONS MUST BE TAKEN?

Disclosure. When someone files a permit, license or entitlement application, he or she must publicly report all covered officials to whom they made contributions of more than \$250 during the previous 12 months. Likewise, a covered official must publicly disclose on the record of the proceeding any party or participant who has contributed more than \$250 during the previous 12 months to that official. The disclosure must be made prior to the agency rendering any decision in the proceeding (without the member's participation).

Disqualification. If, prior to making a decision in the proceeding, a covered official knowingly receives more than \$250 in campaign contributions from a party during the previous 12 months, that official must disqualify himself or herself from participating in the proceeding. Likewise, with respect to contributions received from a participant, the covered official must disqualify himself or herself if he or she has reason to know, prior to making a decision in the proceeding, that the participant is financially interested in the outcome of the proceeding.

A covered official may avoid disqualification if he or she

ADVICE

Your agency's legal counsel can give you valuable advice on the PRA and conflict of interests. Compliance with that advice is not, however, a guarantee against imposition of penalties by the FPPC. That type of immunity can only be achieved by seeking formal written advice from the FPPC and then complying with the advice rendered. Compliance with the FPPC formal written advice is a complete defense in any enforcement action initiated by the FPPC, and evidence of good faith in any civil or criminal proceeding. Please note that the FPPC is required to respond to requests for formal written advice within 21 working days of the date that the FPPC has all the facts pertinent to the question.

In addition, informal telephone advice is available from the staff of the FPPC. Compliance with such advice does not, however, provide any immunity.

ECONOMIC DISCLOSURE

CAMPAIGN CONTRIBUTIONS

(Government Code Section 84308)

MUST I DISCLOSE MY ECONOMIC INTERESTS?

Under the PRA, certain public officials must disclose personal economic interests which may be affected by their decisions. This disclosure is made on forms called statements of economic interests which are filed on an annual basis. Copies of these forms are generally provided to you by your agency, or may be obtained from the FPPC. These statements are public records.

To determine whether you are required to file a statement of economic interests you must ask yourself the following:

- Are you listed in your agency's conflict of interests code? If, as part of your official duties, you participate in making decisions that may have a foreseeable effect on your personal economic interests, your position must be listed in your agency's conflict of interests code. Those persons holding positions listed in the conflict of interests code must file the 730 version of the statement of economic interests.
- Do you fall into one of the following groups: member of planning commissions, member of the board of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers of cities, members of city councils, or other public officials who manage public investments? The persons holding these positions must file the 721 version of the statement of economic interests.

WHEN MUST I FILE?

Statements of economic interest must be filed:

- when you assume office (i.e., are sworn in or appointed);
- annually thereafter; and
- when you leave office.

THE GENERAL RULE

Certain "covered" local agency officials must disqualify themselves from participating in proceedings regarding licenses, permits and other entitlements for use if the official has received campaign contributions of more than \$250 during the previous 12 months from any party or participant.

In addition, these officials are prohibited from receiving soliciting or directing a contribution of more than \$250 from any party or participant in a license, permit or entitlement proceeding while the proceeding is pending and for three months afterward.

WHO IS COVERED BY THE RULE?

Covered officials include local agency heads (such as a district manager) but do not include officials directly elected to the board of local agencies while acting in the scope of the office for which they were elected. However, elected officials are covered by the prohibitions of *Government Code Section 84308* when they sit as members of other boards for which they were not elected such as joint power agencies, regional government entities or Local Agency Formation Commissions.

These prohibitions are applicable only with respect to campaign contributions from persons who are financially interested in the outcome of the specified proceedings. Those interested persons include: parties to the proceeding, such as applicants for the permit, license or entitlement, and, a participant who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for use, and who has a financial interest in the outcome of the decision. A person qualifies as a "participant" if he or she attempts to influence the officers or employees of the agency with respect to the decision, or testifies in person before the agency with respect to the decision.

- income earned for personal services if the services are provided in connection with a bona fide business, trade, or profession—such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting—and the services are customarily provided in connection with the business, trade or profession. FPPC regulations define what is considered to be a bona fide business, trade or profession. This exception does not apply if the sole or predominant activity of the business, trade or profession is making speeches.
- Certain payments provided to an official at an event at which the official gives a speech, participates in a panel or seminar, or provides a similar service are exempt from the honoraria ban and are not considered “gifts” by the PRA. These include free admission to the event, refreshments and similar non-cash nominal benefits received at the event, necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, and transportation to the event (limited to within the state).

CAUTION: This is a general discussion of the gift and honoraria provisions of the PRA. Please note: the PRA also contains special definitions applicable to these provisions and a variety of exemptions. Moreover, some payments exempt from the “gift” or “honoraria” provisions may still have to be reported by the recipient or may result in a conflict of interests.

You should seek legal advice if either the gift limit or honoraria prohibition becomes an issue for you. The FPPC has prepared a fact sheet on gifts, honoraria and travel. For a copy, please call the FPPC at (916) 322-5662.

State law or your agency’s conflict of interests code will specify the date on which the annual statement must be filed, as well as a “grace period” for filing assuming and leaving office statements, (generally 30 days).

WHICH INTERESTS MUST BE REPORTED?

You must disclose any interests in real property, investments, sources of income and gifts which you could potentially affect in your public capacity. The previous section contains a general discussion of economic interests that may be useful in determining which interests are reportable.

Interests in real property which must be reported are those which are either:

- within the jurisdiction of the agency; or
- within two miles of the jurisdiction.

You need to report sources of income and investments when the source or entity:

- is doing business within the jurisdiction of your agency;
- is planning to do business in the jurisdiction; or
- has done business within the jurisdiction during the previous two years.

WHAT ELSE SHOULD I KNOW?

- Except for gifts (which are addressed in the following section) you do not have to report the *specific amount* of your economic interests. Simply check the appropriate range listed on the form: less than \$1,000, greater than \$1,000, or greater than \$10,000. The appropriate value range is determined by the *gross amount received, rather than the net*. You may have reportable income even when you sell real or personal property at a loss.

- You must report all interests in real property and investments held by *your spouse and dependent children*.
- If you own more than 10 percent of a business, you must disclose the sources of income to that business. You must also report any investments made by the business entity and any real property owned by the business entity.

GIFTS AND HONORARIA

GIFTS

In addition to gift and honoraria restrictions imposed on state officials, the PRA now imposes limits on the value of gifts that may be accepted by:

- local elected officers;
- designated employees of local government agencies (i.e., individuals required to file statements of economic interests under a local agency's conflict of interests code);
- elected or appointed members of the governing board of any special district; and
- candidates for any of these offices or positions.

Such persons may not accept gifts from any single source totaling more than \$280 in a calendar year. (The gift limit is adjusted every two years to reflect changes in the Consumer Price Index and will be readjusted in 1996.)

The PRA broadly defines "gift" to include any payment or other benefit received by a public official (including meals), unless the official provided consideration of equal or greater value in return. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to your official status.

The PRA also provides a variety of exceptions to the gift limit. These exceptions include, for example:

- gifts from a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift;
- gifts of hospitality involving food, drink or occasional lodging that is received in an individual's home when the individual or a member of his or her family is present; or
- gifts approximately equal in value exchanged on holidays, birthdays or similar occasions.

HONORARIA

In addition, local elected officials, designated employees of local government agencies, elected or appointed members of the governing board of any special district, and candidates for such offices are prohibited from accepting any honoraria. Honoraria are payments made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

The PRA also provides a variety of exceptions, including:

- a payment that is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization. However, the donation may not be a condition for the speech, article or attendance and may not be claimed as a deduction for income tax purposes. In addition, the donation may not have a reasonably foreseeable financial effect on you or on any member of your immediate family, and you may not be identified to the nonprofit organization in connection with the donation.