

Board Bylaw 9270: Conflict Of Interest

Status: ADOPTED

Original Adopted Date: 01/13/1998 | **Last Revised Date:** 09/03/2024 | **Last Reviewed Date:** 09/03/2024

The County Board of Education desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the county office of education (COE) 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 1090, those interests related to contracts. The County Board shall consult legal counsel whenever an actual or potential conflict of interest arises.

The Board shall review the Napa County Office of Education's conflict of interest code in even-numbered years. If no change in the code is required, the Napa County Office of Education shall submit by October 1 a written statement to that effect to the code reviewing body, the County Board of Supervisors. If a change in the code is necessitated by changed circumstances, the Napa County Office of Education shall submit an amended code to the code reviewing body. (Government Code 87306.5)

When a change in the conflict of interest code is necessitated due to changed circumstances, such as the hiring of a new consultant in a position that is not already designated in the conflict of interest code or a change to an existing consultant's scope of work in a manner that changes the consultant's position to a designated position, the amended code shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing the conflict of interest code, the County Board shall provide members of the community, the County Superintendent of Schools, COE staff, 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 the disclosure categories specified in the conflict of interest code. A County Board member who leaves office shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office. (Government Code 87302, 87302.6)

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 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, COE officers, which includes County Board members or agency heads, shall comply with Government Code 84308, including the following: (Government Code 84308)

1. A COE officer 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 COE officer 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 COE officer 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 COE officer 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 COE officer 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 COE officer knows or should have known about the contribution and the proceeding.
4. A COE officer 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 contribution, or the portion exceeding \$250, within 14 days of accepting, soliciting, or directing the contribution, provided the COE officer did not knowingly or willfully accept, solicit, or, direct the prohibited contribution. The COE officer 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)

A County Board member shall not be considered to be financially interested in a contract if the interest is a "noninterest" as defined in Government Code 1091.5.

A County Board member shall not be considered to be financially interested in a contract if the County Board member has only a "remote interest" in the contract as specified in Government Code 1091 and if the remote interest is disclosed during a County Board meeting and noted in the official County Board minutes. The affected County Board member shall not vote or debate on the matter or attempt to influence any other County Board member's vote. (Government Code 1091)

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

On a case-by-case basis and upon advice of legal counsel, 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 which is inconsistent with, incompatible with, in conflict with, or inimical to the County Board member's duties as an officer of the COE. (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 limitation on gifts does 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 current 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)

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 COE for donation into the general fund without being claimed as a deduction from income for tax purposes
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Exhibit (PDF) 9270: Conflict Of Interest

Status: ADOPTED

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See PDF on the next page.

APPENDIX

DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

1. Persons occupying the following positions are designated employees (Government Code 87302):

Governing Board Members

Superintendent of Schools

Deputy Superintendent and Chief Business Official

Associate Superintendent

Directors

Designated persons in this category must report:

a. Interests in real property located entirely or partly within the local education agency's boundaries, or within two miles of agency's boundaries or of any land owned or used by the agency. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property except for those associated with a residence used exclusively as a personal residence.

b. Investments or business positions in or income from sources which:

(1) Are engaged in the acquisition or disposal of real property within the local education agency's boundaries

(2) 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 Napa County Office of Education or

(3) Manufacture or sell supplies, books, machinery or equipment of the type used by the Napa County Office of Education

2. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.

3. A consultant is an individual who, pursuant to a contract with the Napa County Office of Education, makes a governmental decision whether to: (2 CCR 18701)

a. Approve a rate, rule or regulation

b. Adopt or enforce a law

c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement

d. Authorize the Napa County Office of Education to enter into, modify or renew a contract that

requires approval of the local education agency

e. Grant Napa County Office of Education approval to a contract or contract specifications which require agency approval and in which the agency is a party

f. Grant Napa County Office of Education approval to a plan, design, report, study or similar item

g. Adopt or grant Napa County Office of Education approval of agency policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the Napa County Office of Education, serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the Napa County Office of Education's Conflict of Interest Code. (2 CCR 18701)