



Board of Trustees

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Linda Fowler
Vice President

Michael Baker
Clerk

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Member

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Member

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Member

Superintendent

Steven Martinez, Ed.D.

*To inspire each student to
extraordinary achievement
every day*

October 7, 2016

Honorable Kevin D. Culhane, Presiding Judge
Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

Re: Response of Superintendent Steven Martinez and Twin Rivers Unified
School District Board of Trustees to the 2015-2016 Sacramento County
Civil Grand Jury Report – Conflict of Interest

Dear Presiding Judge Culhane:

INTRODUCTION

Steven Martinez, Superintendent of the Twin Rivers Unified School District ("District" or "TRUSD") and the District's Board of Trustees ("Board"), have received the 2015-2016 Sacramento County Grand Jury Report titled "Twin Rivers Conflict of Interest: Do The Right Thing" ("Report"). In the Report, the Grand Jury requests that both the Superintendent and Board reply to the Grand Jury's Findings and Recommendations. This response is prepared and submitted as a single, joint response on behalf of the Superintendent and Board pursuant to Penal Code section 933, subsection(c).

The Superintendent and Board respects the function of the Grand Jury to investigate and report on the operations of local government agencies, and the District has fully cooperated with the Grand Jury's requests, including production of documents, and interviews with witnesses.

The Superintendent and Board note that there is currently an investigation pending by the Fair Political Practices Commission ("FPPC") regarding matters raised in the Grand Jury's Report. The Superintendent and Board believe that the findings and conclusions of the FPPC investigation may provide necessary clarification on these matters.

The Superintendent and Board appreciates the Grand Jury's recognition of the Superintendent's "leadership, responsibility, and accountability for implementing the vision, goals, and policies of the district." (Grand Jury Report, pg. 35.) It is equally important to note the limitations and authority of school district governing

boards, and the relationship between the superintendent and the trustees. The Superintendent and Board find some valid observations in the Report that will be considered in the District's future governance training of current and new board members.

At the outset, in response to the Grand Jury's comments pertaining to the responsibility of governing board members to adhere to the conflict of interest laws and avoid even the potential appearance of a conflict, the Superintendent and Board have always been and remain committed to executing their duties and responsibilities to the highest of standards of ethical conduct.

In response to the Grand Jury's specific findings and recommendations, the Superintendent and Board respond as follows:

Findings

Finding F1.

The Trustee acted contrary to conflict of interest laws, by voting and/or participating in Twin Rivers Unified School District Board of Trustee (TRUSD Board) and Highlands Community Charter & Technical Schools Board of Directors (HCCTS Board) discussions and entering into a contract in which the Trustee had an alleged financial interest.

The Superintendent and Board agrees in part and disagrees in part with this Finding.

The Trustee had no financial interest at the time the Board voted to approve the HCCTS charter. Further, it is the Trustee's position that the Trustee did not enter into a contract with HCCTS because on September 25, 2014, a vote by the HCCTS Board on a proposed contract between the Trustee and the charter school was not effectuated because Education Code section 35164 requires that a governing board act by majority vote of all of the membership constituting the governing board. However, the Superintendent and Board recognize that at least an appearance of conflict of interest may have resulted from the discussions and proposal to enter into a contract and vote by the HCCTS Board to approve such a proposed contract.

While the Board has limited legal authority to provide any direction to an appointed representative to a charter school's board of directors, the Superintendent and Board recognize that an appearance of impropriety may arise and a possible conflict of interest may occur if and when a board member votes and/or participates in discussions and enters into a contract in which a board member has an alleged financial interest.¹ As explained herein, the Superintendent and Board recognize that the law strongly opposes possible and actual conflicts of interest and, as such, the District continues to implement measures to avoid any such conflicts.

Finding F2.

¹ Although law charter schools were intended to be independent and free of many of the school laws of the state, they are subject to oversight by the charter granting authority. Among other supervisory duties, the school district governing board is required to monitor the fiscal condition of the charter schools under its authority. (Ed Code, § 47604.32.)

The TRUSD Board failed to provide clear direction and oversight regarding the duties and responsibilities of a trustee appointed to represent the TRUSD Board on the HCCTS Board.

The Superintendent and the Board agrees in part and disagrees in part with this Finding.

While the Board has limited legal authority to provide any direction to an appointed representative to a charter school's board of directors, the District's board policies, the Education Code, and the Government Code outline the role and responsibilities of a public school board member who is appointed as the Board's representative to another board. In order to avoid the appearance of impropriety and the possibility of a conflict of interest arising from a member's appointment as the Board's appointee, the Superintendent and Board ensure that the District's board policies and the laws pertaining to the role and responsibilities of Board appointees are reviewed annually.

Finding F3.

The TRUSD Board violated public trust by inadequately addressing the allegation of conflict of interest on the part of a Trustee.

The Superintendent and Board disagree with this Finding.

The Superintendent and Board agree that allegations of conflict of interest on the part of a Board trustee may raise concerns regarding the oversight and responsibilities of the Board. The Superintendent and Board have always and continue to be committed to maintaining the highest level of public trust. The Superintendent and Board ensure that if allegations of this nature are raised in the future, that the Superintendent and Board will seek a legal opinion.

Finding F4.

The TRUSD Superintendent failed to take actions needed for the TRUSD Board to clarify and adhere to Board policy regarding conflict of interest laws pertaining to public officials.

The Superintendent and the Board disagree with this Finding.

In this instance, the Superintendent adhered to Board policy and conducted the standard communication protocol in sharing information with Board members. As such, the Superintendent did not fail in his duties and responsibilities in educating the Board members regarding conflict of interest laws as they pertain to their role as board members. With this being said, the Superintendent follows direction given to him by the majority of the Board.

Recommendations

Recommendation R1.

The Twin Rivers Unified School District Board of Trustee (TRUSD Board) should ensure that no trustee serves as a representative on any board or TRUSD Board position/office where there is a potential conflict of interest.

District's Response to Recommendation R1.

The Superintendent and Board appreciate the intent of this recommendation, but will comply with its Board policy regarding the appointment of a Trustee to serve as a representative on another board. Additionally, the Superintendent and the Board will seek legal advice if and when an issue arises regarding the appearance of a conflict of interest or an actual conflict of interest.

Part of the actions recommended by the Superintendent and taken by the Board, include the attendance and participation of all Trustees at two conflict of interest training sessions. The most recent training sessions were held on February 16, 2016, and August 30, 2016. The first conflict of interest training session was conducted by Peter Fagen and Diane Marshall-Freeman, Partners, with the education law firm of Fagen Friedman & Fulfrost, LLP. Mr. Fagen and Ms. Marshall-Freeman are highly regarded and experienced attorneys with expertise in the area of Fair Political Practice, conflict of interest regulations, and board policies pertaining to conflict of interest as they relate to board members of public school districts. All Board members, except Trustee Michael Baker, attended the workshop.² The agenda and training materials for the workshop are attached hereto as Exhibit A.

A second governance workshop was convened on August 30, 2016, and was conducted by Peter Fagen, Partner, Fagen Friedman & Fulfrost, LLP. All Board members attended this training session. The agenda and training materials for the workshop are attached hereto as Exhibit B.

Further, subsequent to its Board training sessions, each Trustee has reviewed the Board's Conflict of Interest Policy, Board Bylaws 9270. Attached hereto as Exhibit C is a copy of Board Bylaws 9270. The Board has also established a committee for the review and updating of Board policies, as necessary.

Recommendation R2.

The TRUSD Board President and Superintendent should ensure that board members received training every two years on conflict of interest laws and that this training occur immediately for all new board members. All trainings should be documented in records maintained by TRUSD Board.

Response to Recommendation R2.

See Response to Recommendation R1. Aside from the training sessions identified in Response R1., the Superintendent has recommended, and the Board has agreed, to participate in an annual conflict of interest training session, rather than a training session every two years as recommended by the Grand Jury. The Board will also provide conflict of interest training for new board members no later than sixty (60) days of the new members' election to the Board.

² Trustee Baker is a long-term and experienced Board member, who has attended previous conflict of interest trainings.

Recommendation R3.

The TRUSD Board President and Superintendent should review Board policy and bylaws and make necessary changes to clearly specify the authority and responsibilities involved when the Board appoints a Board representative to a charter board of directors.

Response to Recommendation R3.

The Superintendent and Board note that independent charter schools work independent of the chartering district's direction. The chartering district's oversight responsibilities and authority are delineated by statute, not by board policy.

In response to this issue, the Board President and Superintendent have reviewed Board policies and bylaws to determine if any changes are required in order to clarify the authority and responsibilities of any Board representative who is appointed as a representative to the board of directors of a charter school. Additionally, the Board Ad Hoc Committee had and are currently reviewing Board policies. The Superintendent has also designated a staff member who is charged with directly monitoring the District's charter schools, in accordance with law.

Conclusion

Superintendent Martinez and the Board of Trustees wish to reiterate that the Grand Jury's findings and recommendations will be used as a catalyst for the District in its continued vigilance of potential areas/issues regarding conflicts of interest real or perceived.

Sincerely,



Steven Martinez
Superintendent and Secretary to the Board

cc: Sacramento County Clerk – Recorder
Sacramento County Grand Jury

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 5115 Dudley Blvd., McClellan, CA 95652.

On October 7, 2016, I served true copies of the following document(s) described as **Response of Superintendent Steven Martinez and Twin Rivers Unified School District Board of Trustees to the 2015-2016 Sacramento County Civil Grand Jury Report – Conflict of Interest** on the interested parties in this action as follows:

Hon. Kevin R. Culhane, Presiding Judge
Sacramento Superior Court
720 Ninth Street, Dept. 47
Sacramento, CA 95814

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Twin Rivers Unified School District's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 7, 2016, at Sacramento, California.

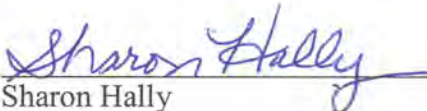

Sharon Hally

Exhibit A

Twin Rivers USD Agenda

Special Board Meeting and Workshop

February 16, 2016 5:30 PM

Twin Rivers Unified School District Board Room

5115 Dudley Boulevard, Bay A

McClellan, CA 95652

Please Note: If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in the public meeting, please contact the Superintendent's at (916) 566-1745 at least 24 hours before the scheduled Board meeting. [Government Code §54954.2] [Americans with Disabilities Act of 1990, §202.]

A copy of the Board agenda and backup materials is available for inspection and review at the Twin Rivers Unified School District office located at 5115 Dudley Blvd., Bay A, McClellan, CA during regular business hours. In addition, this agenda has been posted on Twin Rivers Unified School District website at www.twinriversusd.org. An audio recording of Board Meetings may be made.

Noted on the agenda are approximate times. The Board may adjust the time or sequence of agenda items during the meeting.

Regular Board meetings shall be adjourned by 10:30 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date. (Board Bylaw 9323)

Interpreter Services are available in Spanish, Hmong, and Russian at Board meetings upon request.

Servicios de interpretación están disponibles en español, hmong, y ruso en las reuniones del consejo a petición

Muaj neeg txhais lus Mev, Hmoob, thiab Russian nyob rau lub koom txoos kev sib tham no yog thov txog.

PowerPoint presentations will not be accepted from members of the public at Board meetings without prior approval by the Superintendent or Board of Trustees.

A. 5:30 P.M. CALL TO ORDER by the President

B. INTRODUCTION OF INTERPRETERS

C. PLEDGE OF ALLEGIANCE Led by Trustee Sonja Cameron

D. ORAL COMMUNICATION - ORGANIZATIONS/PUBLIC

(PLEASE COMPLETE SPEAKER CARD)

Individuals who wish to address the Board on topics within the Board's subject matter jurisdiction speaker for a total of ten (10) minutes of public comment as designated on this agenda. Individual appropriate staff member will furnish answers to questions. Please note that if you wish to accept from members of the public during a presentation.

E. BOARD WORKSHOP

1. The Ralph M. Brown Act

Diane Marshall-Freeman of Fagen Friedman & Fulfroost LLP will provide a presentation

2. Conflict of Interest

Diane Marshall-Freeman of Fagen Friedman & Fulfroost LLP will provide a presentation

3. Communication

Terilyn Finders of Fagen Friedman & Fulfroost LLP will update the Board of Trustees on

F. ANNOUNCEMENT OF NEXT MEETING

Board of Trustees to meet again, unless otherwise announced and approved by the Board of
McClellan, CA 95652

G. ADJOURN

H. FEBRUARY 16, 2016, MULTILINGUAL AGENDAS

Special Board Meeting and Workshop

Twin Rivers USD

February 16, 2016 5:30PM

**Twin Rivers Unified School District Board Room 5115 Dudley Boulevard, Bay
A McClellan , CA 95652**

A. 5:30 P.M. CALL TO ORDER by the President

Minutes:

President Linda Fowler called the special Board meeting and workshop to order at 5:30 p.m. in the board room.

Trustee Michael Baker was absent due to illness.

Administration Present: Steven Martinez, Ed.D., Superintendent; Bill McGuire, Deputy Superintendent, Administrative Services; Jacqueline Perez, Ed.D., Associate Superintendent, Teaching and Learning; and Sara Noguchi, Ed.D, Associate Superintendent, Innovation, Research and Design.

B. INTRODUCTION OF INTERPRETERS

Minutes:

Oliver Thor, Hmong Interpreter, and Clarissa Laguardia, Spanish Interpreter, introduced themselves.

C. PLEDGE OF ALLEGIANCE Led by Trustee Sonja Cameron

Minutes:

Trustee Sonja Cameron led the flag salute.

D. ORAL COMMUNICATION - ORGANIZATIONS/PUBLIC

Minutes:

There were no public comments.

Quick Summary / Abstract:

(PLEASE COMPLETE SPEAKER CARD)

Individuals who wish to address the Board on topics within the Board's subject matter jurisdiction, but not listed on this agenda may do so at this time. While all time limitations are at the discretion of the Board, generally members of the public will be limited to a maximum of two (2) minutes per speaker for a total of ten (10) minutes of public comment as designated on this agenda. Individuals with questions on school district issues may submit them in writing. The Board will automatically refer any formal requests to the Superintendent that are brought before them at this time. The appropriate staff member will furnish answers to questions. Please note that if you wish to address the Board on an agenda item, you should do so when the specific item is called. Speaker cards for agenda items must be brought forth at the beginning of the meeting. Speaker cards will not be accepted from members of the public during a presentation.

E. BOARD WORKSHOP

E.1. The Ralph M. Brown Act

Minutes:

Attorney Peter Fagen of Fagen Friedman & Fulfrost LLP conducted a presentation on the Ralph M. Brown Act, the California Open Meeting Law, noting that the basic premise is that the public's business is to be conducted

in public.

Attorney Fagen highlighted the following information: the purpose of the Brown Act; general constraints/restrictions for meetings; public observation and participation; subjects and language for closed sessions as determined by the Legislature; requirements for public comment before or during the Board's consideration of an agenda item or vote; perimeters for conducting business of a public agency in the public; what constitutes a meeting, both agendized and non-agendized; individual contact, conferences, other public agency meetings, community meetings, and social gatherings are not considered meetings; recommendation to avoid grouping in public to avoid meeting assumptions by members of the public; description of serial meetings and discussion of topics; personal intermediaries sharing information between Board members; Governance Code Section 54992.2 to allow each Board member to talk to an individual to gather or share information so long as that person doesn't share the thoughts of each Board member; agenda posting timeline for various types of meetings; special meeting limited to items on the agenda only as well as public comments; legal rights of individuals to address the Board during public comment without interference or interruption; time limitation on public comments as stated in Board bylaws; examples of closed session items to include negotiations/collective bargaining, personnel matters, pending litigations, real property negotiations, student matters, and security matters; agenda requirements for closed session to include the code section and description; closed session action to be reported out in public session with few exceptions including settling of a case that the Board is offering; legal requirement for confidentiality of closed session for a lifetime; liability for violating confidentiality may include indictment, civil lawsuit, or grand jury investigation; violations - misdemeanor when action is taken to deprive the public of information that the public is entitled to receive, District Attorney or any interested person may bring a civil action to stop or prevent violations or to have Board action taken in violation declared null and void; and the opportunity to cure or correct demands before action.

Trustee Kawamoto asked Attorney Fagen to expound on the suggestion for Board members not to gather in groups at community events; if guests or community members could be invited into closed session; and if a speaker could speak beyond the two minute time period if he or she chooses to do so.

Attorney Fagen stated that grouping together at events could raise questions in the minds of members of the public; therefore, it is recommended that Board members not group up at public events. The assumption most people would make is that Board members are talking about school district business. Attorney Fagen stated that the closed session meeting is designed for the Board and people who are necessary to be there. If someone is necessary to present information on an item on the closed session agenda, it would be permissible for him or her to be present for that item. If community members are invited to the closed session, it's no

longer a closed session meeting and they don't have the same duty or responsibility to maintain confidentiality. By doing this the Board would have breached the duty to maintain confidentiality in closed session. During public comment, the Board can't stop a speaker from speaking because of the content of what he or she is saying; however, the speaker can be disallowed to speak once the allotted time is up.

Trustee Cameron asked about the liability of a person commenting and speaking lies in the public about someone, which could be damaging and slanderous.

Attorney Fagen reiterated that the person has the right to speak and that defamation of character about a public official is nearly impossible to prove.

President Fowler asked when a lawyer could legally be in closed session if there is no issue for the lawyer to talk about or address; if a staff member could be present in closed session if he or she doesn't have anything to talk about; and if he could distinguish for the Board the difference between a legal complaint and a complaint from a disgruntle individual and when these complaints could be heard in closed session.

Attorney Fagen stated that the lawyer represents the district and maintains the same confidentiality as Board members. If the Board wants to invite its lawyer into closed session, there is no prohibition legally. During discussion the lawyer may at times chime in on something that may come up. In California attendance of the Superintendent's Cabinet in closed session is a general practice. However if challenged, the language of the Brown Act could lead to some discrepancy. Hearing of a complaint in closed session is a factual analysis based on the complaint and the decision is based on many factors.

Trustee Cameron asked if an employee is being terminated, can he or she ask to meet with the Board in closed session and if so is the Board obligated at all to accept that request.

Attorney Fagen informed the Board that this type of decision can be conducted in closed session and the employee does not get to come into closed session. However, if the employee moves to have the discussion heard in open session, the discussion is to be held in open session, not in closed session.

Attorney Diane Marshall-Freeman of Fagen Friedman & Fulfroest LLP discussed the Board's use of Robert's Rules of Order parliamentary procedures for conducting effective meetings. She stated that a majority vote is necessary for an item to carry (Education Code Section 35164). This applies when members are absent or abstain (exception to Robert's Rules of Order). Every Board member is afforded one vote and the general rule is that all voting members should cast a vote in favor of or against the measure before the Board for action.

Attorney Marshall-Freeman also shared the process to be used to limit debate on important items and for amending, postponing, and reconsidering motions.

Quick Summary / Abstract:

Diane Marshall-Freeman of Fagen Friedman & Fulfroest LLP will provide a presentation and overview of the requirements of the Ralph M. Brown Act. Contact person: Dr. Steven Martinez, telephone number (916) 566-1600 ext. 50902

E.2. Conflict of Interest

Minutes:

Attorney Fagen reported that there are four different types of conflicts of interest: economic conflicts of interest - financial interest in Board decision; Government Code section 1090 - contractual conflicts; common law conflicts of interest - disqualifications because of bias; and incompatible offices and activities - Board bylaws 9270.

Attorney Fagen recommended that public officials put forth efforts to avoid the appearance of impropriety and shared how to approach every decision to ensure there is no conflict of interest. He highlighted related information as follows: economic conflicts of interest - governed by the Political Reform Act, underlying premise is that public officials are not to benefit financially from holding public office; disqualification based on economic interest prohibits an official from participating in a decision, discussion, or influencing others; disqualifying interest if a decision has a material financial effect on an official or any of his or her financial interests; a good question to ask oneself if a decision is going to affect you or someone who gives or has given you money whether the affect is positive or negative; examples of conflicts of interest and important information to consider pertaining to an official's sources of income, lender and loan guarantor, campaign contributors, property interest, business or investments, spouses and family members; exception to the conflict of interest rule if the public generally benefits; caution when an official is affected differently than the public, this should be a cause for concern.

Attorney Fagen further reported what public officials must do if there is a disqualifying conflict, which includes: publicly announcing the economic interest and the fact that they are disqualifying themselves, not engage in discussion or voting of the matter, not attempt to influence the decision in any way, and consider leaving the room until the matter is over unless the item is on the consent calendar. Political Reform Act violations could have serious consequences - the decision to be invalidated; punishable by both criminal and civil sanctions; conviction could result in removal from office; the possibility of personally hiring an attorney to defend may be necessary; the possibility of paying the opposing party's attorney fees; and the embarrassment factor of being accused or found guilty of violating the law.

Attorney Fagen encouraged Board members to contact the Fair Political

Practices Commission (FPPC) if they have any questions pertaining to economic conflict of interest and the FPPC's opinion on future conduct.

Attorney Fagen stated that Section 1090 is a special category of conflict of interest with respect to agency contracts. Under this conflict of interest a public official may not have a financial interest in any contract made in his or her official capacity or by the Board of which he or she is a member. Violation of Section 1090 is a felony and may be punishable by fines, imprisonment, and being disqualified from ever holding public office again and contracts entered into in violation of Section 1090 are void. Attorney Fagen further provided details pertaining to making a contract, no disqualification allowed, direct or indirect financial interest if the public official has any financial interest in a contract.

Attorney Fagen also informed the Board about common law conflict of interest disqualification due to bias. The basic requirement under common law is that an elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interest, including bias that has nothing to do with financial gain or loss. Types of common law bias includes: personal interest in a decision's outcome, party bias, factual bias, and opinions vs. bias. When bias exists, the public official should disqualify himself or herself from the decision making process, including discussing and voting on the matter before the Board. Consequences of a bias decision may result in the decision making being set aside and the official may be subject to liability for violations of due process in extreme situations.

President Fowler asked how a distinction is made between a campaign contribution to a member of the state Legislature and a Board member.

Attorney Fagen reported that the rules are different for the state Legislature.

Trustee Fowler also asked if contributions given by the unions or school police would have to be disclosed.

Attorney Fagen stated that should something that impacts them comes before the Board and the official is over the \$250 limit within the 12 month time period of having received that contribution, the public official would need to disclose.

Mr. McGuire reported that additional information on this subject would be provided to the Board.

The Board thanked Attorney Fagen for his presentations.

Quick Summary / Abstract:

Diane Marshall-Freeman of Fagen Friedman & Fulfroft LLP will provide a presentation and overview relative to conflict of interest policies. Contact person: Dr. Steven Martinez, telephone number (916) 566-1600 ext. 50902

E.3. Communication

Minutes:

Terilyn Finders, Director of Communications and Legislative Affairs for Fagen Friedman & Fulfrost LLP, discussed the value of developing a process to help the Board create a governance handbook to allow the Board to discuss as a group and decide on the communication strategies to be used by members of the Board as a team. This includes the process for setting the agenda; reviewing agenda items; how to get items on the agenda; contacting staff; how to communicate with each other; how to manage everything from promotions to publicity; to address social media; electronic communications; school site visits, and habits and practices to lead to collaboration and communication across the district.

Ms. Finders shared and discussed samples of communication tools from other districts. She recommended that a working group of the Board be formed to work with the Superintendent to identify the process to develop governance protocols, followed by a study session to present the information to the Board, and eventual action for approval at a Board meeting.

Dr. Martinez reported that the district is in the top 30 of 1,000 school districts in California in terms of an enrollment of 31,000 students. He expressed the importance of coming up with Board protocols regarding what is expected from one another and to lay a foundation of communication that helps the Board be more effective in governing the school district.

Trustee Cameron stated interest in a guide for each Trustee Area to inform the respective Trustee about upcoming events and a protocol to give school sites advanced notice of a Trustee's visit.

Trustee Kawamoto reported that most of this work was done prior to his arrival on the Board. A lot of the information was discussed and agreed upon. He feels it's not necessary to create a new document, rather a review of the current document would be a good place for the working group to determine what the Board might want to keep and what to bring forth to the Board in a study session.

Trustee Sandoval stated support of a clear communication plan as a guide for Trustees. She stated consensus with Trustee Kawamoto and emphasized the need to review and revise some of the information in the current governance document to address the issues and needs of the district, including when the Board is at the dais, when visiting schools, when in the community, and in other necessary areas.

Trustee Bastian also stated consensus and that when visiting sites an individual Board member has no authority. The visit is only in support of the site. Trustee Bastian also stated a need for better communication of Board member schools listed within the Trustee Area boundaries.

Trustee Kawamoto stated that this is an opportunity for everyone to review the current document and suggested that a regular review of the Board's governance policies should be included on the calendar on an annual or two-year basis.

Ms. Finders recommended that the existing document be pulled together for conversation, review, and refinement as a group to determine the best practices and most efficient document for the governance team.

Dr. Martinez stated that he would speak to Trustees to get three members to be part of the working group as the next step.

President Fowler stated that the Board would take a look into the revision of the governance handbook and thanked Ms. Finders for her presentation.

Quick Summary / Abstract:

Terilyn Finders of Fagen Friedman & Fulfrost LLP will update the Board of Trustees on the latest trends in communication protocols used by Districts. Contact person: Dr. Steven Martinez, telephone number (916) 566-1600 ext. 50902

F. ANNOUNCEMENT OF NEXT MEETING

Minutes:

President Fowler announced that the Board of Trustees is scheduled to meet again, unless otherwise announced and approved by the Board of Trustees, on Tuesday, February 23, 2016, Regular Board Meeting; 6:00 p.m. - Closed Session, 7:00 p.m. - Open Session; at Twin Rivers Unified School District, 5115 Dudley Boulevard, Building A, McClellan, CA 95652.

Quick Summary / Abstract:

Board of Trustees to meet again, unless otherwise announced and approved by the Board of Trustees, on Tuesday, February 23, 2016, Regular Board Meeting; 6:00 p.m. - Closed Session, 7:00 p.m. - Open Session; at Twin Rivers Unified School District, 5115 Dudley Boulevard, Building A, McClellan, CA 95652

G. ADJOURN

Minutes:

There being no further business, President Fowler adjourned the meeting at 7:30 p.m.

Respectfully submitted by,

Steven Martinez, Ed.D., Superintendent

Approved and ordered entered into the official proceedings of the school district on March 1, 2016.

H. FEBRUARY 16, 2016, MULTILINGUAL AGENDAS

Minutes:

Note: Agendas for the February 16, 2016, special Board meeting and workshop were posted and made available to the public in English and in Spanish.

Attachments:

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ENGLISH - February 16, 2016, Special Board Meeting and Workshop Agenda

SPANISH - Junta Especial del Consejo Directivo y Taller 16 de febrero, 2016

2/16/2016 5:30:00 PM (Original)

Absent Michael Baker

Present Bob Bastian


Present Sonja Cameron

Present Linda Fowler


Present Walter Kawamoto

Present Michelle Rivas

Present Rebecca Sandoval

**Fagen Friedman & Fulfroft LLP**

The Brown Act and Conflicts of Interest




Board Retreat
Twin Rivers Unified School District

February 16, 2016
Peter Fagen
Diane Marshall-Freeman


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What We'll Cover Today

1. **Open Meeting Laws - The Brown Act**
2. **Robert's Rules of Order**
3. **Conflicts of Interest**

**Fagen Friedman & Fulfroft LLP**

1. Open Meeting Laws – The Brown Act

**Fagen Friedman & Fulfroft LLP**

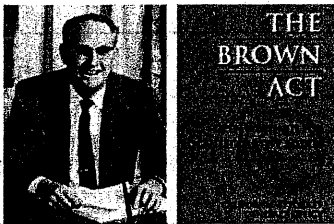
Introduction

- A. Quiz
- B. Overview of Open Meetings Law
- C. Closed Sessions



Fagen Friedman & Fulfroft LLP

Test Your Brown Act Knowledge



Fagen Friedman & Fulfroft LLP

Test Your Brown Act Knowledge True or False

1. Standing committees do not need to comply with the Brown Act.
2. Away from a meeting, as long as a majority of the board members do not discuss board related issues, a few of the board members can meet and chat about any subject.
3. Away from a meeting, a majority of the board members may discuss any board related issue as long as they do not come to a decision.



Fagen Friedman & Fulfroft LLP

Test Your Brown Act Knowledge True or False

4. The Brown Act authorizes your organization to hold meetings by teleconference.
5. A member of the public must sign in at a meeting before he is allowed to speak.
6. A member of the public may video tape a meeting if the board is warned 24 hours before the meeting starts.



Fagen Friedman & Fulfroast LLP

Test Your Brown Act Knowledge True or False

7. If an item was not placed on the agenda that was posted 72 hours before the meeting, that item cannot be discussed or acted upon at the meeting.
8. The Brown Act prohibits the board from responding to questions from the public which are raised during the public comment portion of the agenda.
9. During public comment, the board may prevent a member of the public from criticizing and complaining about the actions of the superintendent and the board, if the issues being complained about are not identified on the agenda.



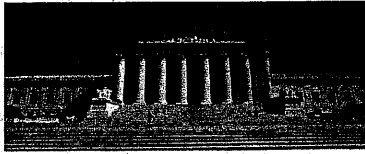
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B. Overview of Open Meetings Law



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Legislative Bodies



The school board is a legislative body subject to California's Open Meeting laws, commonly referred to as the Brown Act



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Open Meetings

- The Brown Act requires that all meetings of a legislative body be open to the public, except for authorized closed sessions.
- Purpose of meeting: To accomplish district business
- Provide public opportunities for questions and comments



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"Meeting" Defined

- A meeting occurs whenever:
 - A majority of the Board members gather at same time and place
 - To hear, discuss, or deliberate
 - Upon any item that is within the subject matter jurisdiction of the Board or district. (Gov. Code § 54952.2)



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Serial Meetings Prohibited

- Serial Meeting: Communications outside formal meeting, each of which involve less than a quorum, but collectively encompass a majority



- "A majority of the members ...shall not, outside a meeting ...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item ...that is within the subject matter jurisdiction of the legislative body." (Gov. Code § 54952.2)



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Personal Intermediaries

- Separate conversations or communications with board members, where the speaker answers questions or provides information to board members regarding a matter that could come before the board, are not prohibited **if the person communicating with the board members "does not communicate to [board] members ... the comments or position of *any other member or members.*"**

(Gov. Code § 54952.2(b)(2).)



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Meetings Do Not Include...

- Individual contact
- Public conferences
- Other local agency meetings
- Community meetings
- Social gatherings



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General Constraints

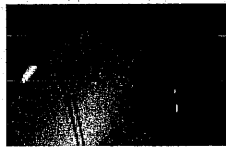
- Majority of the members cannot discuss school district business among themselves at "non-meetings"



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Agendas

- Agenda must be posted
 - At least 72 hours prior to holding a regular board meeting
 - At least 24 hours prior to holding a special board meeting
 - At a location freely accessible to the public
 - Agenda must also be posted on a school district's Internet Web site, if it has one



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Agenda Description

- The agenda must contain a brief general description of each item of business to be transacted or discussed at the meeting, including closed session items
 - Generally, not to exceed 20 words



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Action and Discussion of Items

- The Board may not discuss or take action on an item not appearing on the agenda except:
 - To respond to statements made or questions posed by the public during the public comment section – Be careful
 - To ask questions of staff or the public for clarification



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Action and Discussion of Items (cont'd)

- To ask staff to report on an item not on the agenda at a subsequent meeting
- To make a brief announcement
- When an emergency severely impairing the public health or safety exists
- When there is a need to take immediate action on an item that came to the attention of the agency after the agenda was posted



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Public Participation and Comment

- Regular meeting: Members of the public must be provided an opportunity to address the legislative body on any item within the subject matter jurisdiction of the agency
- Special meeting: Public provided an opportunity to address the Board on any item described in the notice



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Public Participation and Comment (cont'd)

- Regular or special meeting: Members of the public must be provided an opportunity to address the legislative body on any item on the agenda either before or during the Board consideration of that item



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Public Participation and Comment (cont'd)

- The Board may not prohibit public criticism of the policies, procedures, programs, or services of the agency, or the acts or omissions of the Board



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Public Records

- All agendas and other documents distributed at a Board Meeting in connection with an agenda item are public records
- This also means that any document a member brings to the Board meeting to share with the Board will become a public record



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Public Records

- Documents distributed to the Board less than 72 hours prior to an open public meeting shall be made available for public inspection when distributed to the Board
- Need to list on the agenda the location of where item can be viewed or can post on website.



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C. Closed Sessions



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Closed Sessions

- May be held only for purposes expressly authorized by the Brown Act or Education Code
- Board must disclose in open session (or via the agenda) the item(s) to be discussed in closed session
- Board may only consider those items covered in statement (or via the agenda)
 - Board Bylaw 9321, Closed Session Purposes and Agendas



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Permissible Closed Sessions



1. **Personnel Matters**

- ☐ Purpose: to discuss appointment, employment, evaluation of performance, discipline or dismissal of a public employee



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Permissible Closed Sessions (cont'd)

- If specific complaints or charges against employee:
 - ☐ Employee entitled to 24-hour Brown Act Notice
 - ☐ Right to have complaints and charges heard in open session
 - ☐ Does not include closed sessions to discuss negative comments in an employee's performance evaluation



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Permissible Closed Sessions (cont'd)

2. **Pending Litigation**

- ☐ Purpose: to receive advice from legal counsel
- ☐ "Pending" defined as:
 - Existing litigation against the district
 - Anticipated litigation against the district where there are facts and circumstances to indicate a significant exposure to litigation
 - Deciding whether to initiate litigation



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Permissible Closed Sessions (cont'd)

- Allowed to reach agreement or settle litigation in closed session, i.e., Board can adopt in closed session
- Caution! If settlement includes items which require a public notice and opportunity for comment



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Permissible Closed Sessions (cont'd)

3. Student Matters

- Closed session required if Board is considering the suspension of, disciplinary action against, or any other action against student when public hearing would violate student privacy right (Education Code § 35146, 48912)



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Permissible Closed Sessions (cont'd)

3. Student Matters, cont.

- Exception: Expulsions
 - Final action to expel a student must be taken in open session (Education Code § 48918)
 - Student may request expulsion hearing be public, Board may still deliberate in closed session
 - Do not disclose student name (FERPA)



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Permissible Closed Sessions (cont'd)**4. Negotiations/Collective Bargaining**

- Discuss negotiations and instruct district negotiators without complying with the Brown Act
- Additional exceptions to the Brown Act: meeting and negotiation discussions between district and union, mediation, meeting or investigation conducted by fact-finder or arbitrator (Govt. Code § 3549.1)



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Permissible Closed Sessions (cont'd)**5. Security Matters**

- Purpose: To meet with law enforcement or security expert
- To discuss a threat to building security, or to essential public services (water, drinking water, wastewater treatment, natural gas service, and electric service, or public's right of access to public services or public facilities)



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Permissible Closed Sessions (cont'd)**6. Real Property Negotiations**

- Purpose: to instruct negotiators on price and terms of payment for the purchase or sale of identified real property
- May not provide general briefings on area land use issues, environmental impacts, site design and related issues
- After negotiations are concluded, any agreements and approval of the agreement must be reported in open session



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Permissible Closed Sessions (cont'd)

6. Real Property Negotiations (cont'd)

- ❑ Recent Narrowing of Exception: Recent Attorney General Opinion stated that closed sessions cannot be used to discuss any issues that *might affect* the "economic value of transaction" or the "price that the local agency is willing to pay or accept."
- ❑ Closed session can include: (1) the amount of payment district is willing to pay or accept in a real estate transaction; (2) the form, manner and timing concerning such payment; and (3) items that are essential to arriving at the authorized price and payment terms (i.e. comparables).



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Closed Session: Agenda Requirements

- ❑ Closed sessions must be identified on the agenda
- ❑ The Brown Act provides safe harbor language which automatically satisfies this requirement



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Closed Session: Reporting Out Requirements

- ❑ Following a closed session, the Board must publicly report actions taken unless final approval rests with another party or disclosure would hamper the initiation or defense of litigation



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Closed Session: Exceptions to Reporting Out Requirements

- Personnel matters: dismissal or nonrenewal of contract shall be deferred until the first public meeting after administrative remedies, if any, are exhausted
- Agreements, including labor negotiations: shall be reported after the agreement is final and has been accepted or ratified by other party
- Student matters: no information shall be released in violation of student privacy rights



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Closed Session: Exceptions to Reporting Out Requirements (cont'd)

- Real estate negotiations: approval of an agreement shall be reported after the agreement is final
 - Upon inquiry, if final approval with other party
- Litigation: if final approval rests with other party or with court, district shall report substance of agreement to persons who inquire once settlement final



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Confidentiality of Closed Sessions

- Board members are prohibited from disclosing information obtained during a closed session except to persons entitled to receive that information
- Unauthorized disclosure could waive attorney-client privilege, violate privacy rights of students or employees, or impact collective bargaining
- The prohibition on disclosing confidential information learned in closed session applies to **both** current and former Board members



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Liability for Disclosing Closed Session Information



■ Liability for Disclosing Confidential Information:

Board members may be personally liable if they violate Govt. Code section 54963

■ Removal from office



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Liability for Disclosing Closed Session Information (cont'd)

- Civil lawsuit: A current or former Board member may be civilly liable for unlawfully disclosing confidential closed session information
- Injunctive relief: The Board may seek an injunction to prohibit the offending Board member (current or former) from disclosing confidential information acquired during a closed session meeting
- Criminal liability: Government Code section 1222 provides that every willful omission to perform any duty enjoined by law upon a public officer is a misdemeanor



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Liability for Disclosing Closed Session Information (cont'd)



- Grand Jury: Government Code section 3060 provides that the grand jury can issue an accusation against a current Board member for "willful or corrupt misconduct"
- Written and Verbal Censure by the Board



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Brown Act Violations

- **Misdemeanor:** For Board member to attend a Board meeting where action is taken in violation of The Brown Act, where the member intends to deprive public of information which the member knows the public is entitled to receive
- The District Attorney, or any interested person, may bring a civil action to stop or prevent violations or to have Board action taken in violation declared null and void



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Cure or Correct Demands

- Before bringing the action, the Board must be given notice and an opportunity to correct the violation
- Prevailing plaintiff may be entitled to costs and attorney's fees
- For closed session violations, court can order Board to tape record all closed sessions



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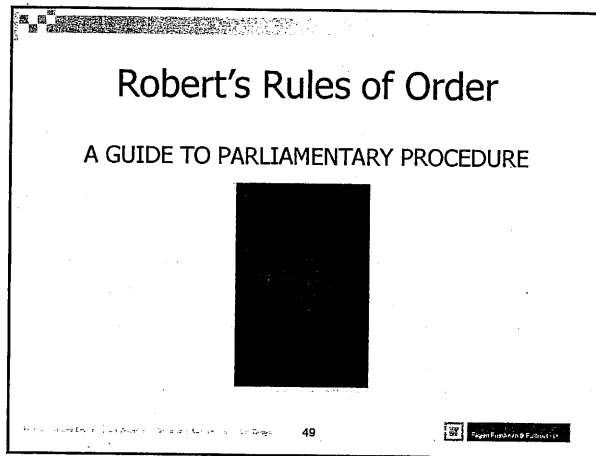
Cure or Correct - Case Law

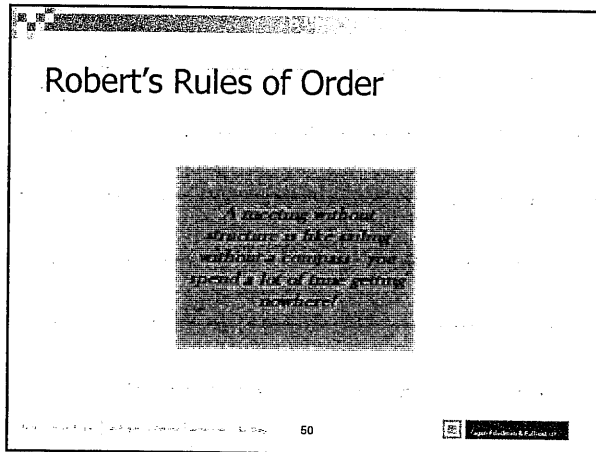
- Even if discussion held without agenda item at one meeting, if at next meeting was on the agenda and action taken, "cure or correct" accomplished and second action avoided "null and void" effect.

Brethren in Christ Community Services of Ontario, Inc. v. San Bernardino County Workforce Investment Board 2007 WL 431972 (2007) (unpublished decision)



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Actions by the Board

- A **majority** vote of **all** Board members is necessary for an item to carry (Education Code § 35164).
 - Applies even where members are absent or abstain (exception to Robert's Rules of Order).

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General Rule

- Every legislative body member is afforded one vote and the general rule is that all voting members should cast a vote in favor or against the measure before the body for action.

Parsons | House Rules | Legislative Process | Committee | Committee | Committee | Committee

52

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Limiting Rights – Limiting Debate

- 2/3 vote of the members present is required.
- Usually intended for lengthy items.
- Any member can introduce, i.e., "I move that each member be given 3 minutes total to discuss this item."
- Not debatable, but it can be amended as to time and length.
- Must be recorded through a roll call vote.
- Move the Previous Question:** Motion to cut off debate and vote immediately; it requires a 2/3 vote.

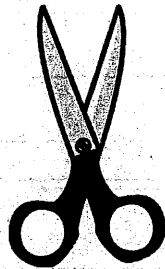
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53

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Amending Motions

- Amendment must be germane to main question.
- Must be offered before, not after, vote.
- Includes adding words or phrases, striking out words or phrases, and substituting words or phrases.



Parsons | House Rules | Legislative Process | Committee | Committee | Committee | Committee

54

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Motions to Postpone

- Cannot postpone until further than the next meeting.
- Must be seconded and passed by a majority.
- Can be debated—but only to the pros and cons of postponement—not the substance of the issue.
- Should be scheduled as unfinished business.

WAIT

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Motions to Reconsider

- Roberts Rules of Order
 - The motion must be brought only by someone who voted on the prevailing side. If a "no" vote, a member of the prevailing "no", must bring the motion for reconsideration.
 - If the motion to reconsider is to be brought at the next meeting, it is recommended that two items be placed on the agenda.
 - The vote to reconsider – requires a majority vote.
 - If passed, the motions to consider the item.



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2. Conflicts of Interest



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Overview

- A. Economic Conflicts of Interest
 - ☐ Financial Interest in Board Decision
- B. Government Code section 1090
 - ☐ Contractual Conflicts
- C. Common Law Conflicts of Interest
 - ☐ Disqualifications Because of Bias
- D. Incompatible Offices and Activities
 - Board Bylaw 9270



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A. Economic Conflicts Of Interest

- Governed by Political Reform Act



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Underlying Principle – Political Reform Act

- Public official should not benefit financially from their position



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Disqualification Based on Economic Interests

- May not participate in, or attempt to influence, a decision if your economic interests could be affected by the decision
- Does not matter if decision hurts you economically – still cannot participate



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Disqualifying Interest

- If it is reasonably foreseeable that the decision could have a "material financial effect" on that official or any of his or her financial interests (2 C.C.R. § 18747(a))
 - If the agency's decision materially affects the personal expenses, income, assets, or liabilities of the official or the official's immediate family
 - Materiality - \$250 in any 12-month period



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Do You Have A Conflict of Interest?

- Does the decision involve someone who gives you or has given you money?
- Worry when...
 - An action by the district. . .
 - May affect (positively or negatively). . .
 - Someone who gives or has given you money



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Do You Have A Conflict of Interest?

- **Your Source of Income:** Receiving or being promised \$500 or more in income from one source, whether an individual or an entity, within twelve months prior to the decision
- **Lender/Loan Guarantor:** A source of a loan (including a loan guarantor to the office)
- **Campaign Contributor:** An official's campaign contributor



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Campaign Contributions

- Generally, will not serve to disqualify official from taking public action
- May not accept contribution of more than \$250
 - While a proceeding involving a license, permit or other entitlement for use is pending before the agency and
 - For three months after final decision is rendered if the officer has a financial interest

(Govt. Code § 84308)



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Campaign Contributions (cont'd)

- Officer must disqualify himself or herself from a proceeding in which the donating party appears...
 - If contribution has been made in the preceding 12 months in excess of \$250

(Govt. Code § 84308)



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Do You Have A Conflict of Interest?

- Does the decision affect property you or your family owns?
- Worry when...
 - ☐ An action by the district. . .
 - ☐ May affect (positively or negatively). . .
 - ☐ Your property interest



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Property Interest

- A direct or indirect interest in real property worth \$2,000 or more held by the official, or the official's immediate family (spouse/domestic partner and dependent children) or the official's business interests
- Includes such interests as ownership, leaseholds, and options to purchase



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Do You Have A Conflict of Interest?

- Does the decision involve your business or investments?
- Worry when...
 - ☐ An action by the district. . .
 - ☐ May affect (positively or negatively). . .
 - ☐ Your business or investment interests



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Business or Investment Interests

- Any business entity in which a public office, or the official's immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2,000 or more
- Any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position in management



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Exception to Conflict of Interest Rule: Public Generally

- Exception: Public Generally
 - If a significant segment of the public would be affected by the agency's decision in substantially the same manner as a public official would be affected



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Exception to Conflict of Interest Rule: Participation Required

- Exception: Participation Required
 - If the official with the conflict of interest does not participate in the decision, will the agency be prevented from acting in a situation in which it must legally act?
 - In other words, will the agency lack a quorum and is there no alternative means of making the decision?



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What to Do If You Have a Disqualifying Conflict

- Public official must:
 - Publicly announce the economic interest and the fact that they are disqualifying themselves
 - Not engage in discussion or voting of matter
 - Cannot attempt to influence the decision in any way
 - Consider leaving the room until the matter is over unless the item is on the consent calendar



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Violating the Political Reform Act

- The decision could be invalidated
- Violations of the Political Reform Act are punishable by both criminal and civil sanctions, depending upon the severity of the violation
 - Conviction could result in removal from office



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Violating the Political Reform Act

- Possible need to hire an attorney to help defend him or herself
- If action to enforce conflict of interest laws, may have to pay the opposing party's attorneys fees
- Embarrassment factor: being accused or found guilty of violating the law



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Beyond Legal Minimums

- If no conflict of interest exists, analysis continues
- Will your constituents reasonably question your ability to put your personal interests and relationships aside and put their, the public's, interests first?
- Can decide to voluntarily abstain if public official is concerned that constituents will reasonably question official's integrity
- The law is a floor, not a ceiling, for public service ethics



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No Personal Financial Gain

- Elected officials and top-level managers prohibited from representing people for pay before their former agencies for one year after leaving their agency
- Prohibits such individuals from, in essence, trading on the relationships developed in public service
- Penalties include: fines, misdemeanor prosecution, attorneys fees



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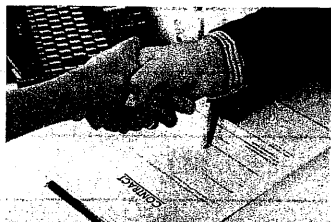
FPPC Opinions on Financial Interests

- Board members can request the FPPC to issue an opinion letter regarding financial interests.
- Must be a query regarding future, rather than past, conduct.
- Reliance on opinion letter advice may be used as evidence of good faith in a civil proceeding.
- But, issuance of an opinion will not preclude a *criminal* prosecution.
- FPPC opinions are considered public records.



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B. Contractual Conflicts of Interest



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Section 1090 Conflicts of Interests

- A special category of conflicts of interest exists with respect to agency contracts.
 - Public officials strictly forbidden from having financial interests in their agencies' contracts.
 - Prohibition against self-dealing.
 - Government Code section 1090 et seq.



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The Basic Prohibition

- A public official may not have a financial interest in any contract made in his or her official capacity or by the Board of which he or she is a member.



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Making a Contract



- The "making" of a contract includes preliminary discussions, negotiations, planning and solicitation of bids, as well as voting on the contract itself.



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No Disqualification Allowed

- Board members are *conclusively presumed* to have made any contract executed by the Board, or any person or agency under its jurisdiction, *even if* officials disqualify themselves from participating in the contract
- If any one Board member has a financial interest in a contract, it is an *absolute bar* for that Board to enter into the prohibited contract



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Financial Interest

- A financial interest includes a direct or indirect financial interest
- Again, it does not matter if the official's financial interest is positively or negatively affected – Section 1090's prohibition is triggered by having *any* financial interest in a contract



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Direct vs. Indirect

- Direct financial interest: when the official is the party contracting with the agency.
- Indirect financial interest: (1) when an official has a financial relationship with the contracting party; or (2) the official will receive some benefit from the making of the contract with the contracting party.



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Effect of Violations and Potential Penalties

- Violation of Section 1090 is a felony and may be punished by fines, imprisonment, and being disqualified from ever holding public office again.
(Govt. Code § 1097)
- Contracts entered into in violation of Section 1090 are "void"



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Exceptions

- Non-Interest
- Remote Interest
- Rule of Necessity

Talk to your legal counsel to determine if any of these exist.



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C. Common Law Conflicts Of Interest: Disqualification Due To Bias



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Basic Requirement

- Under common law, an elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interest



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Free from Personal Bias

- Public official required to exercise his or her powers free from personal bias.
 - Includes biases that have nothing to do with financial gain or loss
- Fair and impartial decision makers when the decision-making body is sitting in "quasi-judicial" capacity.
 - Variances, use permits, annexation protests, personnel disciplinary actions, and licenses



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Types of Common Law Bias

- **Personal Interest in the Decision's Outcome.** For example, one court found a council member was biased and should not participate in a decision on a proposed addition to a home in his neighborhood where the addition would block the council member's own ocean view. (Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152)



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Types of Common Law Bias (cont'd)

- **Party Bias.** Where there is a strong like or dislike about a party (e.g., permit applicant) based on conduct occurring outside the hearing
- **Factual Bias.** When information an official might receive outside the hearing causes the official to have a closed mind to any factual information presented in a hearing



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Types of Common Law Bias (cont'd)

- **Opinions vs. Bias.** The rule does not preclude holding opinions, philosophies, or strong feelings about issues or specific projects. (Fairfield v. Superior Court (1975) 14 Cal.3d 768)



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Types of Common Law Bias (cont'd)

- However, However, a decision-maker who has pre-judged a matter and has a completely unalterable view of the outcome of a quasi-judicial decision without regard to the evidence may not participate. (Cohan v. City of Thousand Oaks (1994) 30 Cal.App.4th 547)



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Existence of Bias

- If bias exists, the public official should disqualify himself or herself from the decision-making process, including discussing and voting on the matter before the Board.



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Consequences of Biased Decision-Making

- The decision may be set aside
- Subject to liability for violations of due process in extreme situations



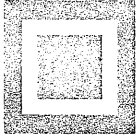
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**Thank you for being here
and participating !**



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Navigating the Gray Haze of the Brown Act



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The Brown Act ensures that California public agencies conduct their business in public. This legal mandate requires public agencies to discuss, deliberate and vote in public, with very limited exceptions. It is also just good common sense – the public has a right to observe and comment on how its elected officials direct and manage public affairs and spend public money.

Purpose of the Agenda

- A legislative body meeting gives the public advance notice of the business to be addressed.
- Agenda descriptions need not be overly detailed, but must give the public reasonable notice of items the board will consider at the meeting so the public has the opportunity to attend and comment on the item.
- The legislative body sets policy for how the agenda is determined. Typically, the chair and chief executive, e.g. superintendent or chancellor, work together to outline the agenda details.
- Posting of the agenda at an accessible site is required at least 72 hours in advance for regular meetings, 24 hours in advance for special meetings, and the agenda must be posted on the public agency's website if it has one.
- A legislative body may consider only those items that are on the agenda; otherwise the purpose of the Brown Act is foiled.

Open Session/Closed Session

- All business must be conducted in open public session, unless specific exception authorizes closed session consideration.
- Documents provided or received in open session are public documents that must be produced upon demand.
- Very limited exceptions in the Brown Act allow certain items to be considered in closed session.
- Closed sessions are permitted for:
 - Most personnel matters affecting agency employees.
 - Existing or threatened litigation.
 - Real property negotiations – to direct the agency's negotiator.
 - Confidential student matters.
 - Superintendent's evaluations and his/her specific goals.
 - Other limited exceptions.
- Even when business may be conducted in closed session, the meeting and items discussed must still be properly agendized. In most circumstances, actions taken in closed session must be "reported out" to the public after the closed session.
- The permissible subjects for closed sessions are very narrow. There is no "catch-all" closed session allowed for attorney-client conferences or any other reason.
- Discussions in closed sessions are strictly confidential with very narrow and limited statutory exceptions.
- Consequences for revealing closed session information include referral to a grand jury; court order prohibiting such disclosure; formal public censure of an offending member of the legislative body; and disciplinary action against an employee, among other things.
- Agendas must reflect the permitted matters to be held in closed session, and the legislative body must first meet in open session before convening in closed session; public comment should also be allowed on the closed session agenda.

A legislative body must reconvene in open session following closed session.

The legislative body must report on actions taken in closed session or report that no reportable action took place.

It is wise to work with staff and/or legal counsel to prepare the appropriate language to be used in the report.

This information is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this may apply to your specific facts and circumstances. Please call 323.330.6300

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Board Committees

Committees set up by the legislative body are governed by specific rules:

- If the committee includes a quorum of the board, it is a "legislative body" covered by the Brown Act and must comply with all requirements.
- If the committee includes less than a quorum of the board, but is a standing committee with ongoing jurisdiction or a regularly scheduled meeting governed by law or rule, it is a "legislative body" covered by the Brown Act and must comply with all requirements, including producing an agenda and meeting minutes.
- If the committee includes less than a quorum of the board and is an ad hoc committee with limited jurisdiction or is temporary in nature, it is not a "legislative body" covered by the Brown Act.

Taking Public Comments

- Meetings of legislative bodies are business meetings that must be conducted in public.
- At regular meetings, the public may address the legislative body on any matter within the agency's jurisdiction whether or not on the agenda.
- An agency's policy may indicate the amount of time that each speaker has to address the Board. Further, the agenda may indicate the total amount of time allocated for public comment, e.g., 30 minutes.
- Speakers should offer their name for the record, but they are not required to provide any other information.
- The public may criticize the board, its individual members and public employees. Members of the legislative body should resist engaging in debate or dialogue with the public when personally criticized and not comment on any personal matter that might be raised by members of the public.
- Special meetings ... are also public meetings, however public comment is limited to items listed on the special meeting agenda.
- Study sessions or retreats of a legislative body are public meetings too, and the right of the public to attend and comment applies.
- Large groups or particularly vocal or demonstrative individuals also have the right to provide public comment and cannot be treated differently than any other group or speaker.
- However, existing policies with reasonable limits on an individual's time and the amount of public comment time on any one topic can be extended.
- Consider requesting that large groups of speakers pool their comments or select a spokesperson.
- Disruptions: the meeting chairperson may halt the meeting or eject persons where such persons unreasonably disrupt the ability of the Board to continue its meeting.

Meetings May Occur When You Least Expect It

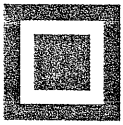
- A majority of a legislative body must not discuss the agency's business with each other at any time or place other than during properly and publicly noticed and agendized open or closed session meetings.
- Beware of Serial Meetings:
 - Once a majority of a public body discusses any matter within the jurisdiction of the agency, a "meeting" governed by the Brown Act may have occurred.
 - Such discussions can occur even where members do not speak directly to each other, i.e., they effectively communicate via intermediaries.
 - One-way email from agency staff to members of a public body is OK, but it is important to remember that, unintentionally or intentionally, email can be forwarded, moving beyond the intended recipient. Board members should generally refrain from responding to one-way email from staff. These messages and any responses are likely to be deemed public records and are disclosable.
 - Never "Reply All" to an email addressed to members of a public body; do not "bcc" other members of a public body.
- Social gatherings, community events and meetings of other agencies that are attended by members of a legislative body can also result in a "meeting" violation.
- Comments on Facebook, Twitter, blogs and even comments in line at the supermarket are all governed by these rules.
- Best advice: Public body members' discussions among themselves about the agency's business should only take place at a properly agendized open or closed meeting.

The Brown Act, Email and Social Media

Tips: Discuss and establish protocols for email communication among board members. Carefully consider Brown Act implications. Limit acceptance of electronic messages, (including text messages) during Board meetings, as the goal is transparency, (and such data can be subject to Public Records Act requests).

Strictly avoid: Online communication with fellow board members on matters that will be discussed and voted on at a public meeting, or offering opinions on social media sites regarding matters within the board's jurisdiction.

Remember: All communication can be subject to the Public Records Act, so a good rule of thumb is: If you do not want to read it in a newspaper tomorrow, do not post, Tweet, text, blog or email the message today.



Form 700: Legal Requirements and Practical Pointers

Background: The purpose of the Form 700 and financial disclosure laws is to help ensure that public employees' business decisions are free from improper influence and not driven by self-interest. Public education trustees and administrative leaders must put the best interest of the district before their own financial interests or those of contractors, vendors and other potential sources of income of gifts to the public official.

Overview: The Political Reform Act ("PRA") requires most state and local government officials and designated high level employees to, among other things, publicly disclose their personal assets and income. This information must be reported on a Statement of Economic Interests ("Form 700"), which is issued by the Fair Political Practices Commission ("FPPC").

Who Must File: Local district rules, typically Board of Education by-laws, identify who, by position, must submit a Form 700 to the district. Generally, members of the Board and Superintendents are "Category 1" employees and have the highest level of disclosure. Other employees may have lesser disclosure obligations (i.e., may be designated "Category 2" or "Category 3"), as specified by district rules.

When to File: Form 700 must be completed annually. However, individuals assuming or leaving designated positions/offices must file Form 700 within 30 days of assuming or leaving such position

GIFTS - LIMITATIONS, REPORTING OBLIGATIONS AND BEST PRACTICES

DEFINITION OF A "GIFT"

A gift is defined as anything of value that provides a personal benefit, either tangible or intangible, to a public official or candidate for which the donor has not received equal or greater consideration. Gifts frequently include money, meals, transportation, accommodations, tickets, plaques, flowers and articles for household, office, or recreational use. A gift also includes rebates or discounts 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 official status.

REMEMBER! Some commonly reportable gifts include: Tickets/passes to sporting/entertainment events; tickets/passes to amusement parks; parking passes; food, beverages and accommodations, including those provided in direct connection with an attendance at a convention or conference; transportation and lodging; forgiveness of a debt or obligation; and rebates/discounts not made in the regular course of business to members of the public.

LIMITS

The dollar-value gift limit from a single source during a calendar year is \$440. This limit is effective until December 31, 2014. For 2015, the gift limit will be adjusted based on changes to the Consumer Price Index. Generally, gifts from a single source that exceed this limit are prohibited.

REPORTING REQUIREMENTS

A gift is reportable if its fair market value is \$50 or more and it is received from a source subject to disclosure. In addition, multiple gifts totaling \$50 or more received during the reporting period from a single source must be reported. For example, five (5) separate gifts valued at \$10 each received from a single source in a single reporting period must be reported.

REMEMBER! It is the acceptance of the gift, not the ultimate use to which it is put, that creates your reporting obligation. With limited exceptions, you must report a gift even if you never used it or if you gave it away to another person.

VALUATION OF GIFTS

Gifts are valued as of the date they are received. The value of a gift is the fair market value on that date. Remember! A ticket providing you with a single admission to an event or facility, such as a game or theater performance, is valued at the face value of the pass or ticket, if that face value is a price that was offered to members of the public.

GIFTS THROUGH INTERMEDIARIES

When a gift is given via an intermediary, both the source of the gift and the intermediary must be disclosed.

This information is a summary only and not legal advice.

We recommend that you consult with legal counsel to determine how this may apply to your specific facts and circumstances.

Please call 323.330.5300.

GIFTS TO AN AGENCY

In some circumstances, payments are considered to be made to the public official's agency and are not reportable as gifts by the official. To qualify under this exception:

- The payment must be controlled by the agency and used for official agency business.
- The official who controls use of payment must not select himself/herself as the recipient.
- Other limitations apply, so approach this exception cautiously

GIFT EXCEPTIONS

There are numerous exceptions to the basic definition of a "gift." While many of the rules regarding these exceptions are quite complex (and some of the exceptions contain exceptions), the following are several examples of items that generally are exempt from any reporting or dollar-value limitations placed on gifts

- | | |
|---|---|
| • Informational material | • Gifts on holidays, birthdays, etc. where gifts commonly exchanged |
| • Unused, returned or donated gift (within 30 days) | • Reciprocal exchanges in social relationship |
| • Gift from family member | • Ticket to event where official performs ceremonial role |
| • Devise or inheritance | • Prize or award in contest or competition |
| • Personalized plaque or trophy (<\$250) | • Bereavement offerings |
| • Home hospitality | • Bona fide date or dating relationship |
| | • Gift from close, long-time personal friend |

SOME FORM 700 BEST PRACTICES REGARDING GIFTS:

- If in doubt, just say "No, thank you"
- Know the sources of gifts that are reportable for you (under your disclosure category)
- Keep track of all gifts
- Ask for a receipt or statement of fair market value, including when attending hosted meal events

TRAVEL

Gifts

With limited exceptions, travel payments are considered gifts, subject to gift reporting limitations, if you did not provide services that were equal to or greater in value than the payments received.

Income

Also with limited exceptions, travel payments are income if you provided services that were equal to or greater in value than the payments received. You have the burden of proving the travel payments are income rather than gifts.

MISCELLANEOUS

Filing and Record Keeping:

Form 700, including all Schedules, must be submitted to the district. The district must retain a copy of all Forms 700 and Schedules that it receives. These documents must be available for public inspection and reproduction.

Amending Form 700:

Form 700 can be amended at any time. If a filer discovers an error or omission on any statement, he/she must file an amendment as soon as possible. The filer only needs to amend the schedule that needs to be revised; the entire form does not need to be re-filed.

SOURCES

- California Attorney General's Office Conflict of Interest Handbook (<https://ag.ca.gov/publications/coi.pdf>)
- California Association of School Business Officials (CASBO), Form 700: Best Practices and Big Pitfalls (video presentation) (www.F3Form700.com)

Fagen Friedman & Fulfroft LLP represents nearly 500 of California's educational institutions and related agencies. These institutions include school districts, community college districts, SELPA's, county offices of education and public agencies. The firm is guided by a desire to assemble the most knowledgeable and skilled attorneys in the nation to represent our current and future clients.

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Fax 323.330.6311

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Exhibit B

Twin Rivers USD Agenda

Special Board Meeting and Workshop

August 30, 2016 5:30 PM

Twin Rivers Unified School District Board Room

5115 Dudley Boulevard, Bay A

McClellan, CA 95652

Please Note: If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in the public meeting, please contact the Superintendent's at (916) 566-1745 at least 24 hours before the scheduled Board meeting. [Government Code §54954.2] [Americans with Disabilities Act of 1990, §202.]

A copy of the Board agenda and backup materials is available for inspection and review at the Twin Rivers Unified School District office located at 5115 Dudley Blvd., Bay A, McClellan, CA during regular business hours. In addition, this agenda has been posted on Twin Rivers Unified School District website at www.twinriversusd.org. An audio recording of Board Meetings may be made.

Noted on the agenda are approximate times. The Board may adjust the time or sequence of agenda items during the meeting.

Regular Board meetings shall be adjourned by 10:30 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date. (Board Bylaw 9323)

Interpreter Services are available in Spanish, Hmong, and Russian at Board meetings upon request.

Servicios de interpretación están disponibles en español, hmong, y ruso en las reuniones del consejo a petición

Muaj neeg txhais lus Mev, Hmoob, thiab Russian nyob rau lub koom txoos kev sib tham no yog thov txog.

PowerPoint presentations will not be accepted from members of the public at Board meetings without prior approval by the Superintendent or Board of Trustees.

A. 5:30 P.M. CALL TO ORDER by the President

1. Introduction of Interpreters

2. Pledge of Allegiance Led by Trustee Michael Baker

B. CONSENT AGENDA

1. APPROVE Routine Administrative Contracts \$35,000 and Above

Included in the Board packet is the spreadsheet of Routine Administrative Contracts \$35,000 and above. Contact person: Bill McGuire, telephone number (916) 566-1600 ext. 50138

C. ORAL COMMUNICATION - ORGANIZATIONS/PUBLIC

(PLEASE COMPLETE SPEAKER CARD)

Individuals who wish to address the Board on topics within the Board's subject matter jurisdiction, but not listed on this agenda may do so at this time. While all time limitations are at the discretion of the Board, generally members of the public will be limited to a maximum of two (2) minutes per speaker for a total of ten (10) minutes of public comment as designated on this agenda. Individuals with questions on school district issues may submit them in writing. The Board

will automatically refer any formal requests to the Superintendent that are brought before them at this time. The appropriate staff member will furnish answers to questions. Please note that if you wish to address the Board on an agenda item, you should do so when the specific item is called. Speaker cards for agenda items must be brought forth at the beginning of the meeting. Speaker cards will not be accepted from members of the public during a presentation.

D. BOARD WORKSHOP - GOVERNANCE TEAM TRAINING

1. Welcome and Introductions

2. Governance Team Roles and Responsibilities

Attorney Peter Fagen of Fagen Friedman & Fulfrost LLP will present information pertaining to the roles and responsibilities of Governance Team members and facilitate discussion. Contact person: Dr. Steven Martinez, telephone number (916) 566-1600 ext. 50902

3. Governance Team Communication Process and Protocols

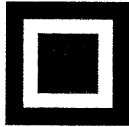
Terilyn Finders, Director of Communications and Legislative Affairs for Fagen Friedman & Fulfrost LLP, will discuss the value of developing a process as a group to help the Board discuss and decide on the communication process and protocols to be used by members of the Board as a team. Ms. Finder will also help the Board create a governance handbook, which outlines the Governance Team's communication process and protocols. Contact person: Dr. Steven Martinez, telephone number (916) 566-1600 ext. 50902

E. ANNOUNCEMENT OF NEXT MEETING

Board of Trustees to meet again, unless otherwise announced and approved by the Board of Trustees, Tuesday, September 13, 2016, Regular Board Meeting; 6:00 p.m. - Open Meeting for Closed Session; 7:00 p.m. - Open Session Meeting; at Twin Rivers Unified School District, 5115 Dudley Boulevard, Building A, McClellan, CA 95652

F. ADJOURN

G. AUGUST 30, 2016, MULTILINGUAL AGENDA



Fagen Friedman & Fulfroft LLP

1525 Faraday Avenue, Suite 300
Carlsbad, California 92008
Main: 760-304-6000 Fax: 760-304-6011

Peter K. Fagen
Direct Dial: 760-304-6009
pfagen@f3law.com

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED

TO: Clients of Fagen Friedman & Fulfroft
FROM: Peter K. Fagen
RE: Conflict of Interest Rules

The primary purpose of conflict of interest statutes is to minimize the pursuit of personal financial interests by public employees at the expense of the official business of the public entity. This memo will discuss sections of the California Government Code which prohibit conduct that creates or gives the appearance of a conflict of interest. The memo will also discuss specific rules relating to gifts and campaign contributions. Finally, potential liability for violation of these rules will be discussed.

The Political Reform Act (Government Code Section 81000 et seq.)

In California, the principal statutory framework under which these issues are covered is the Political Reform Act of 1974 ("PRA"), codified at California Government Code ("Govt.Code") section 81000 *et seq.* If any provision of the PRA conflicts with other laws or administrative regulations passed by an agency, the PRA controls. Govt.Code § 81013.

A conflict of interest arises when the official actions of a public entity official could potentially result in a material financial benefit to that official. The PRA provides, in pertinent part, as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Govt.Code § 87100.

Under Government Code section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family. Additionally, the

official will be deemed to have a financial interest in any decision that affects the following:

- (a) a business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more, or in which the official is a director, officer, partner, trustee, employee, or holds any position of management;
- (b) a parcel of real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more;
- (c) a source of income to the official of five hundred dollars (\$500) or more which was promised to or received by the official within the 12 months prior to the time of the decision; or
- (d) the donor of a gift or gifts worth four hundred sixty dollars (\$460)¹ or more which was promised to or received by the official within the 12 months prior to the time of the decision.

Govt.Code § 87103.

As noted, section 87100 is violated not only when an interested official participates in the decision in which he or she has a financial interest, but when the official directly or indirectly influences such a decision. *Commission on California State Government Organization and Economy v. FPPC* (1977) 75 Cal.App.3d 716.

Elected school board members must refrain from participating in the making of a decision that could affect a financial interest as outlined above. The financial interest creates a conflict of interest which absolutely prohibits the board member's participation. If such a conflict exists, the board member must note the conflict on the public record and thereafter remove himself from further proceedings on the matter, including abstaining from both the discussion and vote on the decision.

Limits on Government Contracts (Government Code Section 1090 et seq.)

In addition to the PRA, Government Code section 1090 specifically prohibits the governing body of a public entity from entering into contracts which create a conflict.

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or

¹ This figure is increased every two years to reflect changes in the Consumer Price Index. The current limitation of \$460 is operative through December 31, 2016. See 2 C.C.R. § 18940.2.

employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Govt.Code § 1090.²

The object of section 1090 is to prohibit individuals "from being financially interested in any contract made by them in their official capacity or by the body or board of which they are members is to insure absolute loyalty and undivided allegiance to the best interest of the [government agency] they serve and to remove all direct and indirect influence of an interested officer as well as to discourage deliberate dishonesty." *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 215.

Thus, under this section, the public entity may not enter into any contract in which *any* of its board members has a direct or indirect financial interest, even if that member seeks to disqualify himself from participating in the decision to enter into the contract. "Where section 1090 applies, it is an absolute bar to a board or commission entering into the prohibited contract. Even if the interested board or commission member abstains from any participation in the matter, section 1090 applies to prevent fellow board or commission members from being influenced by their colleague." *Thorpe v. Long Beach Community College District* (2000) 83 Cal.App.4th 655, 659.

Section 1090 is intended to avoid even "the appearance of impropriety." *Thompson v. Call* (1985) 38 Cal.3d 633, 648. Thus, unless the interest of a board member is "remote," the business should not be transacted. Remoteness is defined to include:

- (1) the board member is an officer or employee of a nonprofit corporation that will be contracting with the public entity;
- (2) the board member is an employee of the contracting party and (a) there are at least ten other employees, (b) the board member has been an employee there for at least three years prior to being on the board and (c) the board member owns less than 3 percent of the stock of the contracting party;
- (3) the board member is an employee of the contracting party and (a) the public agency is in a county with a population of 4,000,000 or less, (b) the contract was competitively bid, (c) the contract is not for personal services, (c) the board member is not an officer, director or manager of the contracting party and holds no ownership interest, (d) there are at least ten other employees, and (e) the board member did not help the company with its bid and the contracting party is the lowest responsible bidder;
- (4) the board member is a parent with an interest in the earnings of his or her minor child for personal services;

² Section 1090 specifically applies to members of governing boards of school districts. Educ.Code § 35233.

- (5) the board member is the landlord or tenant of the contracting party;
- (6) the board member is the attorney of the contracting party or the contracting party's stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm;
- (7) the board member is a member of a nonprofit corporation formed under the Food and Agricultural Code or under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water;
- (8) the board member is 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 his or her election or appointment to office;
- (9) the board member entered into a contract or agreement pursuant to the provisions of the California Land Conservation Act of 1965;
- (10) the board member is a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor;
- (11) the board member is an engineer, geologist, or architect employed by a consulting engineering or architectural firm and who does not serve in a primary management capacity, and is not an officer or director of a consulting firm;
- (12) the board member is an elected officer in connection with a housing assistance payment contract that was in existence before the member joined the board and which will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract;
- (13) the board member is a person receiving salary, per diem, or reimbursement for expenses from a public entity; and
- (14) the board member owns less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

Govt.Code § 1091.

If the interest of a board member is purely "remote," the board may proceed to authorize, approve or ratify a contract provided that (1) the board member discloses his or her interest on

the record and (2) the board member abstains from voting on the contract. Govt.Code § 1091(a). Without these precautions, the agency may not proceed with the contract.

Catch-All Conflict of Interest Statute: Incompatible Activities (Government Code § 1126)

In addition to the specific prohibitions outlined above, the Government Code provides:

[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.

Govt.Code § 1126(a).

Section 1126 contains a broad prohibition that will cover all conflicts of interest, even those that do not implicate an official's personal financial interests. Generally, any outside activity engaged in by an officer or employee should not conflict with his/her duties to the agency itself. An incompatibility of office can exist even where it appears that a conflict is unlikely; it is enough that it *may* arise. See 68 Ops.Cal.Atty.Gen. 337, 338-39 (1985).

Common Law Conflicts

A conflict of interest can arise even though the specific conflict is not identified in a statute; this is referred to as a common law conflict. As noted by one court:

A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated...to discharge their responsibilities with integrity and fidelity....[T]hey may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest service.

Terry v. Bender (1956) 143 Cal.App.2d 198, 206.

The California Attorney General has stated:

The general common-law conflict of interest rule...strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.

46 Ops.Cal.Atty.Gen 74, 86 (1965)

This principle is echoed in the common law which holds that "[a] public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.

If a situation arises where a common law conflict of interest exists, the public officer must abstain from participating in the decision making process (discussion and vote) and from influencing any other public officer or employee with respect to the decision. 67 Ops.Cal.Atty.Gen. 7, 9 (1984).

Gifts

At times, public officials may receive personal gifts from members of the community. Whether or not the gift is permitted is based primarily on its value and the occasion for the gift.

First, gifts are defined as "any payment that confers a personal benefit on the recipient" Govt.Code § 82028(a). The term "payment" includes any "rendering of money, property, services or anything else of value, whether tangible or intangible." Govt.Code § 82044. The receipt of a rebate or discount on the price of an item shall also constitute a gift. Govt.Code § 82028(a).

The following items are not considered gifts: (1) written informational material, (2) items donated to charity or returned to the donor within thirty (30) days of receipt, (3) items received from a family member, unless the family member is acting as an intermediary for a non-family member, (4) inheritances, (5) campaign contributions,³ (6) personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250), (7) gifts of hospitality (food, drink and occasional lodging) in someone's home when the individual or members of his family are also present and (8) tickets to fundraisers for nonprofits and other political candidates.

Govt.Code § 82028; 2 C.C.R. §§ 18942(a)(7); 18942.2; 18946.4.

Generally speaking, all gifts with a value in excess of \$460.00⁴ are prohibited.

No elected state officer, elected officer of a local government agency . . . shall accept gifts from any single source in any calendar year with a total value of more than [four hundred and sixty dollars (\$460)].

Govt.Code § 89503(a).

Two exceptions apply: (1) Payments, advances, or reimbursements for travel and related lodging and subsistence in connection with a governmental purpose and (2) 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. *Id.*

³ Campaign contributions are not considered gifts but are subject to regulation under the PRA, as discussed below.

⁴ This figure is increased every two years to reflect changes in the Consumer Price Index. The current limitation of \$460 is operative through December 31, 2016. See 2 C.C.R. § 18940.2.

The Education Code also prohibits the giving of gifts to any member of a school board district with the *intent to influence* the member's action in regard to (1) granting of a teacher's certificate (2) appointing a teacher, superintendent or other officer, (3) adopting a textbook or (4) the making of a contract with an entity on whose board the donor sits. Educ.Code § 35230. The Education Code makes it a misdemeanor for someone to either give or receive such a gift. *Id.* Importantly, there must be evidence of a "corrupt intent." Thus if the gift is received with no knowledge or understanding that it is meant to influence the board members actions, the board member is arguably without liability under this statute.

Campaign Contributions

In most cases, the receipt of campaign contributions will not serve as a basis to disqualify public officials from taking public action. However if the contributing party has a pending application for a license, permit or other entitlement, the official may not accept the contribution.

Government Code section 84308 provides as follows:

No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent or from any participant, or his or her agent, while a proceeding involving a license, permit or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest

Govt.Code § 84308(b).⁵

The phrase "license, permit, or other entitlement for use" is specially defined to include "all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." Govt.Code §84308(a)(6).

Section 84308 prohibits a public official from soliciting or receiving a campaign contribution from parties who are *currently* involved in a proceeding before the official regarding a license, permit or entitlement to use. Further, if a contribution has been made in the preceding 12 months in excess of \$250.00, the official must disqualify himself or herself from a proceeding in which the donating party appears.

Liability

Any person who knowingly or willfully violates any provision of the PRA may be disqualified from holding public office. Further, he or she may be found guilty of a misdemeanor and subject

⁵ Unlike Government Code section 89503, relating to gifts, the statute does not provide for periodic increases of the \$250.00 threshold amount.

to a fine of \$10,000 or three times the impermissible gift or contribution, whichever is greater. Govt.Code § 91000. Similarly, the Education Code makes violation of the corrupt practices statutes a misdemeanor.

These statutes place liability with the individual who has received the gift or campaign contribution or who proceeds in the face of a known conflict of interest. There is no indication that fellow board members or officers of the school district would be liable for the improper action of a single board member.

If you have any questions or if you would like to receive more information regarding conflicts of interest and related issues, please feel free to contact us. Furthermore, we are available to conduct an inservice or board workshop on these issues if you so desire.

00596-00007/3323210.1

Exhibit C

Twin Rivers USD | BB 9270 Board Bylaws

Conflict Of Interest**Incompatible Activities**

Board of Trustees members shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1126)

Conflict of Interest Code

The district's conflict of interest code shall be comprised of the terms of 2CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

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

When a change in the district's conflict of interest code is necessitated by changed circumstances, such as the creation of new designated positions, amendments or revisions, the changed code shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the district shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (2 CCR 18700)

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

Financial Interest

Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty
2. That of a recipient of public services generally provided by the public body or Board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the Board
3. That of a landlord or tenant of the contracting party if such 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 unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091
4. That of a spouse of an officer or employee of the district if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its 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 nonprofit Board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its 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 officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records

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 these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, a Board member or employee 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)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

Disqualification for Board Members Who Manage Public Investments

A Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

1. Publicly identify the financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required. (Government Code 87105)
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR 18702.5)
3. Leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. (Government Code 87105)

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during the consent calendar. (2 CCR 18702.5)

(cf. 3430 - Investing)

The Board member may speak on the issue during the time that the general public speaks on the issue. The Board member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)

If the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. The Board member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the Board's decision. (2 CCR 18702.5)

Gifts

Board members and designated employees 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)

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 district for Board members and designated employees. (Government Code 89506)

Honoraria

Board members and designated employees 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 district for donation into the general fund without being claimed as a deduction from income for tax purposes

APPENDIX

DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

1. Persons occupying the following positions are designated employees in Category 1:

Board Members

Superintendent of Schools

Assistant/Associate Superintendent

Purchasing Agent/Supervisor

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
 - (1) Are engaged in the acquisition or disposal of real property within the district
 - (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 district or
 - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying the following positions are designated employees in Category 2:

Director

Principal

Assistant Principal

Maintenance and Operations Director

Program Coordinator

Project Specialist

Supervisor

Consultant

Student Housing Technician

Assistant Administrator

Dean of Students

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.
- 3. 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.

A consultant is an individual who, pursuant to a contract with the district, 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 district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district 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 district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18701)

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office

35107 School district employees

35230-35240 Corrupt practices, especially:

35233 Prohibitions applicable to members of governing boards

41000-41003 Moneys received by school districts

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82011 Code reviewing body

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

PENAL CODE

85-88 Bribes

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

Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469

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

92 Ops.Cal.Atty.Gen. 26 (2009)

92 Ops.Cal.Atty.Gen. 19 (2009)

89 Ops.Cal.Atty.Gen. 217 (2006)

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. 255 (1986)

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

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

63 Ops.Cal.Atty.Gen. 868 (1980)

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

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

Institute of Local Government: <http://www.ca-ilg.org>

Bylaw TWIN RIVERS UNIFIED SCHOOL DISTRICT

adopted: May 6, 2008 McClellan, California

revised: January 4, 2011