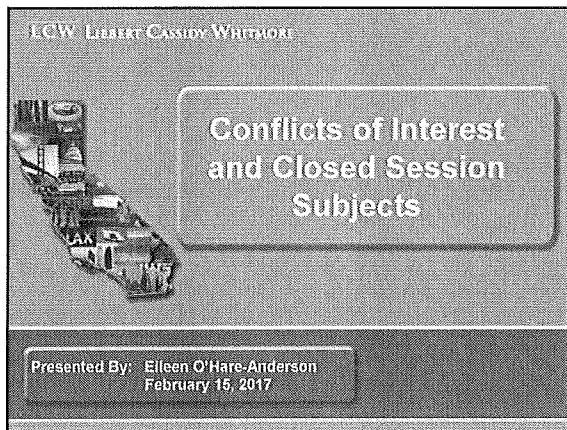


# Conflicts of Interest and Closed Session Subjects

Yosemite Community College District | February 15, 2017

Presented by: Eileen O'Hare-Anderson



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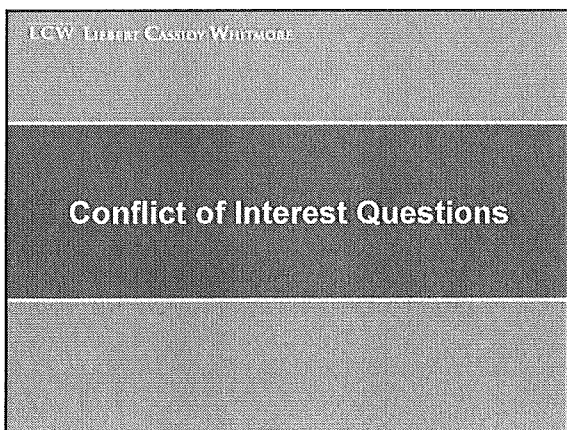
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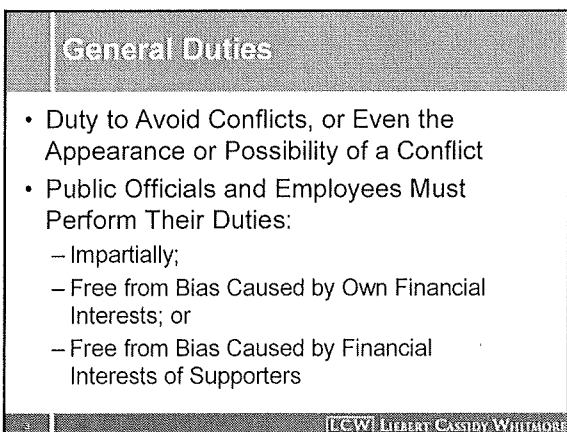
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# Conflicts of Interest and Closed Session Subjects


Yosemite Community College District | February 15, 2017

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**Gov't Code § 1090 - Contracts**

General Rule

- A Public Officer or Employee May Not Make Contracts in Which He or She Is Financially Interested

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**Gov't Code § 1090 Test**

**Is There a Gov't Code § 1090 Issue?**

1. Is the Person an Officer or Employee?
2. Is There a Contract?
3. Did the Person "Make" the Contract?
4. Do They Have a Financial Interest?

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**What is a "Financial Interest?"**

- Financial Interest Is Not Defined by Statute
- General Inquiry:
  - Would Employee or Official Realize a Private Gain?
  - Would the Interest Cause the Employee's or Official's Loyalties to Be Divided?
- Can Be Direct or Indirect Financial Interest

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# Conflicts of Interest and Closed Session Subjects


Yosemite Community College District | February 15, 2017

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**Gov't Code §1090 Exceptions**

If Gov't Code § 1090 Is Triggered, It Is Not a Violation If One of the Following Applies:

1. The Financial Interest Is a Statutory "Non-Interest"
2. The Financial Interest Is a Statutory "Remote Interest"
3. The Narrow "Rule of Necessity" Exception Applies

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**Effect of Gov't Code § 1090 Conflict**

- The Legislative Body Is Barred from Making the Contract
- Abstaining Is Insufficient to Cure a Conflict
- Does Not Matter if Contract Is Fair or More Advantageous
- No "Good Faith" Defense
- If the Contract Is Already Made, It Is Void and Unenforceable

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**Political Reform Act  
Gov't Code § 87100**

General Rule

- No Public Official May Make, Participate in Making or in Any Way Use or Attempt to Use His/Her Official Position to Influence a Governmental Decision in Which He/She Knows or Has Reason to Know He/She Has a Financial Interest

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# Conflicts of Interest and Closed Session Subjects

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Political Reform Act Test	
1.	Are You a Public Official Making, Participating in Making, or Attempting to Use Your Position to Influence a Decision? – Do you exercise discretion or judgment with regard to the decision?
2.	If Yes, Do You Have an Economic Interest in the Decision?
3.	If Yes, Is Your Interest Directly or Indirectly Involved in the Decision?
4.	If Direct, Is Your Interest Material?
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Political Reform Act Test (Cont'd)	
5.	If Material, Is It Reasonably Foreseeable that the Decision Will Have a Material Effect on Your Economic Interest?
6.	If Foreseeable, Is the Effect Distinguishable from Effect on Public Generally?
7.	If Not, Is Your Official Participation Nonetheless Required?
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Case Study – Political Reform Act	
The Board is asked to review a proposal to lease land to a local business who pays Trustee Jones a monthly salary. The decision to be made by the District will not affect Trustee Jones's monthly salary.	
Can Trustee Jones participate in the decision?	
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# Conflicts of Interest and Closed Session Subjects

Yosemite Community College District | February 15, 2017

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**What Do You Do When a Conflict Exists?**

- Member of Board, Council, or Commission Must:
  1. Publicly Identify, in Detail, the Financial Interest
    - Unless Closed Session Issue, Which Only Requires General Disclosure of a Conflict During a Public Meeting
  2. Leave the Room/Refrain from Participating
  3. Disqualified Officer May Speak During Time General Public Speaks on the Issue if the Conflicting Interest Is a Personal Economic Interest
  4. Disqualified Officer Not Counted in Quorum
  5. Employees/Officials - No Clear Requirements, But Should Advise CEO Immediately

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**Common Law**

General Rule

- No Public Official Can Place Himself/Herself in a Position Where He/She Might Be Tempted by Private Interests to Disregard the Best Interests of the Public.
- Must Avoid Even the Appearance of a Conflict of Interest.

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**Case Study – Common Law**

Board of Trustees Member Huang has a son who is an adjunct faculty member for the District. The Board is considering disciplining Huang's son for absenteeism.

**Can Trustee Huang participate in the decision?**

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# Conflicts of Interest and Closed Session Subjects

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## Case Study – Common Law

Same facts. Trustee Huang serves on a Board Committee that makes recommendations to the Board regarding District-wide policies. The Committee is considering a policy that the part-time faculty union has stated it opposes.

**Can Trustee Huang participate on the Committee?**

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## Case Study – 1090, PRA, and Common Law

Ms. Guzman recently became a Member of the Board of Trustees. Trustee Guzman is married to Frank, a full-time faculty member with the District.

**Could Frank's employment with the District create any conflicts of interest for Trustee Guzman?**

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## Case Study: 1090, PRA, and Common Law

Same facts in previous hypo. Frank has been a faculty member with the District for over 10 years. In addition to his full-time assignment, Frank also teaches overload assignments and receives overload pay.

**Is there an impermissible conflict of interest?**

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# Conflicts of Interest and Closed Session Subjects

Yosemite Community College District | February 15, 2017

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**Case Study: 1090, PRA, and Common Law**

Same fact. District is considering increasing overload assignments for many of its full-time faculty members, including Frank. Trustee Guzman is aware of the conflict. She publicly identifies in detail the financial interest, recuses herself from discussing on the matter, and leaves the room until the matter was concluded.

Was the conflict cured?

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**Brown Act Closed Session Issues**

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**General Brown Act Info**

- Meetings
  - Permissible types of meetings
- Beware of serial meetings!
- Agenda requirements
- Conducting the meeting
- Rights of the public

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# Conflicts of Interest and Closed Session Subjects

Yosemite Community College District | February 15, 2017

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**Closed Sessions**

- Permissible Only When Allowed by Statute, Including:
  - Certain Personnel Matters
  - Labor Negotiations
  - Real Property Transactions
  - Pending Litigation
  - Student Discipline

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**Conducting Closed Session Meetings**

- Closed session meetings should usually involve only the members of the legislative body of the local agency, plus any additional support staff required or any witnesses required
- Individuals not necessary to the meeting should be excluded

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**Reporting After Closed Session**

- After the closed session, the legislative body must reconvene into open session and report the actions taken in the closed session
- The nature of the report depends on the type of action taken
  - On rare occasions report is deferred

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# Conflicts of Interest and Closed Session Subjects

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**Confidentiality of Closed Session**

- A person may not disclose confidential information that was acquired by being present in a closed session
- "Confidential Information" is a communication related to the basis for the legislative body to meet lawfully in closed session

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**Confidentiality of Closed Session**

- Sanctions for improperly disclosing confidential information
  - Injunctive relief to prevent disclosure
  - Disciplinary action against an employee who willfully discloses
  - Referral of a member of a legislative body to the grand jury

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**Thank You!**

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<http://www.lcwlegal.com/>

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