

COPY

CONFLICT OF INTEREST CODE REVIEW STATEMENT

JUN 29 2010

TO: El Dorado Union High School District

Please select one of the following:

_____ The Board of Directors of the above named Agency has reviewed the agency's Conflict of Interest Code for the year 2010, and find it to satisfy our needs for the coming year.

 X The Board of Directors of the above named agency has reviewed the agency's Conflict of Interest Code for 2010 and found that revisions are necessary. I have enclosed a copy of the revised document.

Sherry Smith
Secretary of the District

This 25th day of June, 2010

**EL DORADO UNION HIGH SCHOOL DISTRICT
BYLAWS**

JUN 29 2010

Bylaws of the Board

**CONFLICT OF INTEREST
BB 9270**

INCOMPATIBLE ACTIVITIES

Governing Board 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

The district's conflict of interest code shall comprise of the terms of 2 CCR 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 positions, amendments or revisions 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 is including, but not limited to, any of the following: *(Government Code 1091.5)*

1. That of an officer in 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 the public body or board of which he/she is a member, on the same terms and conditions as if he/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 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 1 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** or a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the board or to which the board has 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 agency**, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the Board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

8. That of an **attorney** of the contracting party of 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 any 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 apparent 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 OF 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:

CONFLICT OF INTEREST (continued)

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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 according or any other nonpublic information regarding the Board's decision. *(2 CCR 18702.5)*

GIFTS

Note: Pursuant to 2 CCR 18730, the prevailing gift limitation is currently \$390. This amount is adjusted on odd-numbered years by the FPPC.

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 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 limitations 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 any 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.

Legal References:

EDUCATION CODE

- 1006 Qualifications for holding office*
- 35107 School district employees*
- 35230-35240 Corrupt practices*
- 35233 Prohibitions applicable to members of governing boards*
- 35239 Compensation for board members in districts under 70 ADA*

GOVERNMENT CODE

- 1090-1098 Prohibitions applicable to specified officers*
- 1125-1128 Incompatible activities*
- 81000-91015 Political Reform Act of 1974, especially:*
- 82011 Code reviewing body*
- 82019 Definition of "designated employee"*
- 82028 Definitions "Gifts"*
- 82030 Definitions "Income"*
- 87100-87103.6 General prohibitions*
- 87200-87210 Disclosure*
- 87300-87313 Conflict of interest code*
- 87500 Statements of economic interests*
- 89501-89503 Honoraria and gifts*
- 91000-91015 Enforcement*

CODE OF REGULATIONS, TITLE 2

- 18110-18997 Regulations of the Fair Political Practices Commission*
- 18702.5 Public identification of a conflict of interest for Section 87200 filers*

COURT DECISIONS

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

86 Ops.Cal.Atty.Gen 138 (203)

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)

Management Resources:

WEB SITES

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

**APPENDIX
DESIGNATED POSITIONS / DISCLOSURE CATEGORIES**

DISCLOSURE

A. Designated Positions

Persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code 87200:

- Governing Board Members
- Superintendent of Schools

Disclosure Category 1 – Persons occupying the following positions are **designated** employees in Category 1:

- Associate Superintendents
- Assistant Superintendents
- Chief Business Official
- ← ~~Purchasing Agent~~

Designated persons in this category must report:

- a. **Interest in real property** located entirely or partly within district boundaries, or within 2 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. **Investment or business position** 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 2 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.

Disclosure Category 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

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 any of several specified governmental decisions 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

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- 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 187202.2 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)*

