

CONFLICT OF INTEREST and THE BROWN ACT

Salinas Valley Basin Groundwater
Sustainability Agency Committees
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CONFLICT OF INTEREST and THE BROWN ACT

- **General advice only.**
- **No personal attorney-client relationship.**
- **May need to consult with a personal attorney.**
- **May need to consult with attorney for underlying public entity.**
- **Presentation will not cover all aspects of conflicts or ethics, including campaign contribution issues and reporting requirements.**

CONFLICT OF INTEREST

GENERAL RULE IS THAT A PUBLIC OFFICIAL MAY NOT SERVE TWO MASTERS.

CONFLICT OF INTEREST

GOVERNMENT CODE § 1090

Section 1090:

- **Prohibits a government official from making, or participating in the making of, a contract in which the official has a financial interest.**
- **A public entity may not enter into a contract in which one of its legislative members has a financial interest.**
- **Prohibits direct or indirect involvement.**
- **Contracts entered into in violation of § 1090 are void.**
- **Any financial interest, no matter how winding the trail, is prohibited. (People v. Honig.)**

CONFLICT OF INTEREST

GOVERNMENT CODE § 1090 (cont.)

- **Some exceptions:**
 - Defined non-interests;
 - Defined remote interests.
- **Violation is a crime (felony or misdemeanor).**
- **Private gain must be returned.**
- **Contract void even if the transaction favors the public entity.**

CONFLICT OF INTEREST POLITICAL REFORM ACT GOVERNMENT CODE § 87100

Political Reform Act:

- **Prohibits a government official from making or participating in the making of decisions in which the official knows or should know the official has a financial interest.**
 - **Public official;**
 - **Making or participating in the making of, or using official position to influence, a governmental decision;**
 - **Identify the economic interest:**
 - **Business entity;**
 - **Real property;**
 - **Source of income;**
 - **Source of gift;**
 - **Personal financial effect;**
 - **Business entity in which official is an officer, director or employee.**

CONFLICT OF INTEREST POLITICAL REFORM ACT GOVERNMENT CODE § 87100 (cont.)

- **Is the economic interest directly or indirectly involved;**
- **Will the decision have a material financial affect**
 - **If directly involved, presumption of materiality with very narrow exceptions.**
 - **If indirectly, several step analysis to determine materiality.**
- **Is it reasonably foreseeable that the economic interest will be materially affected.**
- **Is the effect indistinguishable from the effect on the public generally.**
 - **Specific rules apply to determine which segment of the public is applicable.**
 - **Specific exceptions for fees for public services and utilities, and use or licensing fees.**
- **Legally required participation.**
 - **Rare.**

CONFLICT OF INTEREST POLITICAL REFORM ACT GOVERNMENT CODE § 87100 (cont.)

- **If covered official (§ 87200) or adopted as part of conflict of interest code must announce the financial interest and leave the room; non specific announcement for closed session.**
- **Violations result in fines and potential criminal prosecution (misdemeanor only).**
- **12 month look back for economic interest.**
- **FPPC has adopted guidelines that provide specific guidance.**
 - **Cal. Code Regs. § 18700 et seq.**

CONFLICT OF INTEREST-OTHER

- **Common law conflict rules.**
 - Avoid appearance of impropriety.
- **Reporting.**
 - SEI Form 700.
 - Directors must file within 30 days of assuming office
 - File with Monterey County Clerk of the Board
 - Electronic filing will be made available in the future.
- **Incompatible activities.**
 - Improper use of government resources (Govt. Code § 1125).
- **Incompatible offices.**
 - Conflicting loyalties (Govt. Code § 1099).

ETHICS TRAINING

AB 1234

- **AB 1234 requires biennial ethics training for members of a legislative body that provides any type of compensation.**
 - Salary, per diem, stipend, reimbursement of expenses.

- **Fair Political Practices Commission (“FPPC”) has on line training program.**
 - About 2 hours.
 - <http://www.fppc.ca.gov/index.php?id=477>.
 - Receive a certificate.

THE BROWN ACT OPEN MEETING LAW

GOVERNMENT CODE § 54950:

- **In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them.**
- **The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.**

THE BROWN ACT

OPEN MEETING LAW (cont.)

- **Generally requires “legislative bodies” to have open meetings.**
 - **“Legislative body” broadly defined.**
 - Includes governing bodies, committees, commissions and many non-profits that receive funding or perform government functions.
 - Generally means a quorum.
 - **“Meeting” broadly defined.**
 - “Serial meetings” prohibited.
 - Several exceptions (conferences, social gatherings etc.) where no entity business discussed.
 - **May use teleconferencing.**
 - **Meeting location must comply with ADA.**
 - **Member of the public may record meeting (audio or video).**

THE BROWN ACT

OPEN MEETING LAW (cont.)

- **Legislative body must adopt schedule of regular meetings.**
 - Meetings generally must occur within the jurisdictional boundaries of the agency.
- **Regular agenda must be posted at least 72 hours prior to meeting.**
 - Must contain “brief” description of each item (generally need not exceed 20 words).
 - With limited exceptions, no action may be taken on an item not appearing on the agenda (“urgency” items).
 - Must allow for public comment on each item on the agenda.
 - Must allow for “non agenda” public comment.
 - May not prohibit criticism of the agency’s policies, procedures, programs or services, nor the acts or omissions of the legislative body.
 - Does not protect speaker against defamation.

THE BROWN ACT

OPEN MEETING LAW (cont.)

- **Special meetings may be called upon 24 hour notice.**
 - **Must notify the press.**
 - **Need not provide non agenda public comment.**
 - **Limitations on items that may be considered (salaries of officials or executives, passage of certain County ordinances).**
- **Emergency meetings may be called under very strict limitations without 24 hour notice.**
 - **Must notify the press.**

THE BROWN ACT

OPEN MEETING LAW (cont.)

- **Closed sessions allowed for specific matters.**
 - **Litigation (pending, anticipated or threatened).**
 - **Liability claims.**
 - **Real property negotiations.**
 - **Labor negotiations.**
 - **Personnel matters (hiring, firing, discipline, performance).**
 - **Disciplined employee may request open meeting.**
 - **Threats to public facilities.**
- **Items must appear on the agenda.**
 - **Act contains safe harbor disclosure language.**
 - **Public must be allowed to speak to items before closed session.**
- **Must report out any action, primarily if final action.**
- **Confidential information received in closed session may not be disclosed without the permission of the legislative body.**

THE BROWN ACT

OPEN MEETING LAW (cont.)

- **May not require member of the public to sign in.**
- **Special procedures for taxes and assessments.**
 - **Need to correlate to Prop. 218 requirements.**
- **Materials distributed to legislative body are public records.**
- **Civil action may require compliance or prohibit violation.**
 - **Legislative body may “cure” violation.**
 - **Costs and attorney’s fees may be awarded.**
- **Violation of the Act is a misdemeanor.**

CONFLICT OF INTEREST and THE BROWN ACT

CONCLUSION

- Rules can be complicated.
- Consult with agency or personal attorney.
- FPPC website has very useful information and links.
 - www.fppc.ca.gov