

CONFLICT OF INTEREST EXAMPLES

Questions

[Government Code Section 1090]

1. John is on the board of the Neighborhood Council. Earlier the Council voted on putting on a community fair in the neighborhood to further publicize the Council and to outreach to its stakeholders. At a meeting, the Neighborhood Council discusses wanting to contract with a vendor for the purchase of t-shirts that the board members could wear at the event. John says he owns a company that prints t-shirts and that he would be happy to provide the t-shirts to the Neighborhood Council at cost. May the Neighborhood Council enter into this agreement?

2. A Neighborhood Council desperately needs office space. However, at the last meeting the board members voted down a proposal to spend money on office space. The consensus was that they should attempt to find donated space. Susan is a property owner of several commercial units and is on the board. She has offered to donate space in her building to the Neighborhood Council. May the Neighborhood Council accept the space?

3. A Neighborhood Council wants to purchase booth space for an event being sponsored by the Chamber of Commerce. They want to put flyers, registration forms etc. at the booth to advertise the Neighborhood Council. However, Mitchell, a Neighborhood Council board member, is also on the Chamber of Commerce board. May the Neighborhood Council enter into an agreement with the Chamber to purchase booth space?

[Political Reform Act]

4. [Investments/Business Position]: Kylie is a board member on the Neighborhood Council. Her husband owns \$2,000 worth of stocks from Microsoft and owns his own Software Company. Microsoft is building a computer center in Los Angeles and seeks the board's support. May Kylie participate in the decision?

5. [Interests in Real Property]: Mike is a board member on the Neighborhood Council. His spouse is a 50% partner in a Downtown Skyscraper. The property owner next to the Downtown Skyscraper seeks to develop the property into a mall and seeks the Neighborhood Council's support. What are Mike's economic interests? Is Mike disqualified from participating on the proposal to develop property next to the Downtown Skyscraper?

6. [Sources of Income]: Casey is on the board of the Neighborhood Council. She is an actress employed by Warner Brothers. Warner Brothers is hosting a Job Fair and seeks the Neighborhood Council's participation in the event. What are Casey's economic interests? May Casey participate in the board's decision regarding the Job Fair?

7. [Gifts]: Nick is on the Neighborhood Council's board. His friend Donald is developing a Downtown high rise building. In September 2004, Donald gave Nick a \$100 ticket to a Lakers game. In June 2005, Donald gave Nick a framed Lakers' picture valued at \$260. In September 2005, the Neighborhood Council board will review Donald's Downtown high rise project. Does providing the gifts in separate calendar years eliminate any concern for Nick in participating in the board's decision?

8. [Personal Financial Effect]: Kylie is a board member on the Neighborhood Council. She is employed by Pet Co. She earns extra income of \$250 a year taking her neighbors' dogs over to the local dog park. The Neighborhood Council has been asked for its input on a City Wide Ordinance that would ban dog parks. Lack of a dog park could negatively affect Kylie's personal finances by at least \$250 in a 12-month period. Should Kylie participate in any decision regarding the dog park?

[Common Law Personal Bias]

9. A developer of a commercial project wants to present a project proposal to the Neighborhood Council to get a favorable recommendation from them. He has already been before the local homeowners association, which board opposes the project because they believe it is too dense and will cause too much traffic. The homeowners association took a vote on the project and has gone on record in opposition. Jorge is a member of the homeowners association but has not taken any position on the project and is keeping an open mind. Jorge is also a board member of the Neighborhood Council. May Jorge participate in the matter when it is presented before the Neighborhood Council if he is solely a *member* of the homeowners association? May Jorge participate in the matter if he is an *officer* of the homeowners association and the bylaws require that a representative from a homeowners association be a board member on the Neighborhood Council?

10. Kylie is on the board of the Neighborhood Council and has a month-to-month rental apartment with an ocean view. A developer seeks the Neighborhood Council's recommendation on a condo complex that would block Kylie's view. May Kylie participate in the decision?

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Answers

Answer to Example 1:

No. John is a supplier of goods and services. The Act considers this a FULL financial interest and the ENTIRE board is unable to enter into an agreement with John. As a general rule, a Neighborhood Council may not enter into agreements with their board members.

Answer to Example 2:

No. Even though the space is being offered for free, because Susan is on the board and is also a landlord, Government Code 1090 prohibits the board from entering into this agreement, even though Susan will not personally benefit from the arrangement, and even if the deal to the public entity is beneficial to it.

Answer to Example 3:

Yes, PROVIDED that Mitchell recuses himself from participation, discloses his interest and the matter is noted on the Neighborhood Council's records. Mitchell's interest in the Chamber (officer of a nonprofit corporation) is treated as a REMOTE interest. Mitchell also must not have any discussions with board members about the booth, or have suggested it to the board - otherwise, the board may *not* act on the matter.

Answer to Example 4:

This question presents an example where a conflict of interest may arise. The answer to whether disqualification is required depends on a specific analysis of the facts. What is Kylie's interest in the stocks? What impact would approval or disapproval of the computer center have on the stocks? Whether Microsoft is a Fortune 500 company? The type of stock, the interest in the stock, the value of the stock and the size of the company holding the stock have varying answers under the Fair Political Practice Commission regulations.

Answer to Example 5:

Mike is disqualified from voting. Mike has an indirect interest in the downtown skyscraper due to his wife's 50% ownership. Since the mall is next door to the skyscraper, or within 500 feet of the skyscraper, Mike is deemed to have a material interest that is financially affected by a decision on the mall.

Answer to Example 6:

Casey has an economic interest in a source of income from Warner Brothers. Her employer is hosting the job fair and Casey's decision on the board would directly impact her employer. Casey is disqualified from voting. Note, that there may also be concerns under Government Code section 1090 if the board was considering making any payment or entering into a contract regarding the job fair.

Answer to Example 7:

Providing the gifts in separate calendar years does not eliminate Nick's concern for participating on the matter. Nick has an economic interest in his friend Donald's Downtown high rise project because the total amount of gifts from Donald equals or exceeds \$360 within 12 months of the Neighborhood Council decision and, therefore, Nick may not participate in the decision.

Answer to Example 8:

Kylie should not participate in the decision because Kylie's personal finances may be effected by \geq \$250. If the reduction or increased dog traffic results in profits or losses of \geq \$250, then Kylie is disqualified from participating.

Answer to Example 9:

This scenario does not implicate either the Political Reform Act (no *financial* interest) or Government Code Section 1090 (no contract). However, the common law rules of conflict of interest and bias are involved. Under this standard, Jorge may participate in the decision if he is merely a *member* of the homeowners association, particularly where he states that he is keeping an open mind on the project. Moreover, if the Neighborhood Council's bylaws *require* that a homeowners association representative be on the Neighborhood Council board, Jorge may participate in the matter. (However, where a Neighborhood Council does not have a designated seat for a homeowners' association member and if Jorge is an *officer* of the homeowners association which has taken a position on the matter (regardless of whether he voted on the matter or not and his professed statement of keeping an open mind), he would have to recuse himself from participation).

Answer to Example 10:

Although a monthly rental does not qualify as a "financial" interest under the Political Reform Act, protection of her view is a personal interest and requires Kylie to recuse herself from all consideration of the condo development matter because of the common law bias standard.