

# S.C.R.T.D. LIBRARY

SOUTHERN CALIFORNIA  
RAPID TRANSIT DISTRICT

## CODE OF CONDUCT



SCRTD

1986

.C62

c.2

**S.C.R.T.D. HANDBOOK**  
**CODE OF CONDUCT**

**ADOPTED BY**  
**SOUTHERN CALIFORNIA**  
**RAPID TRANSIT DISTRICT**  
**BOARD OF DIRECTORS**

**FEBRUARY 20, 1986**

## XVI.CODE OF CONDUCT

- 16.1 This Code of Conduct shall govern the conduct of all employees, consultants, and members of the Board of Directors of the Southern California Rapid Transit District
- 16.2 There are numerous laws and regulations which govern the conduct of public officers and employees and which are applicable to the SCRTD. Because they are contained in various California Code sections and District policy statements, it is desirable to set them forth in one document for ready reference so that all persons affected can more easily become familiar with them.
- 16.3 The complete texts of the foregoing laws and regulations are attached hereto as Appendix A. When in doubt as to the applicability of any law or regulations to any particular situation, the potentially affected officer or employee should request an advisory opinion from the District's Legal Department.

**Comment:** The comments and examples which follow do not have the force and effect of the sections of the Code to which they pertain, but are intended as an aid in interpreting the Code.

16.4 The following sections, which summarize law and regulations pertaining to conduct of public officers and employees, govern the conduct of District Board members, officers, employees, and consultants. All Board members, District officers and employees and consultants shall be familiar with the provisions of this Code of Conduct.

A. Board members, and District officers and employees shall not be financially interested in any contract made by them in their official capacity. Board members, District officers, or employees shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

a contract made in violation of these sections may be voided by the Board of Directors(Government Code §1090 et seq.).

**Comment:** Board members officers, and employees (hereinafter called officers) are prohibited from having any interest in a contract "made by them in their official capacity". Cases applying this language have not confined it to the narrow and technical interpretation of the word "made". Rather if an officer was in any way involved with the contract through planning, preliminary discussions, compromises, drawing of plans and specifications, solicitation of bids or award of the contract, that officer has "made" the contract under Section 1090. In such circumstances the

District cannot enter into the contract. Should the contract be executed it would be void and the officer would be subject to a fine of up to \$1,000 or imprisonment and would be forever disqualified from holding any office in this state (Section 1097). If a Director is involved, the mere fact that he/she is a member of the Board constitutes participation in the award of a contract, irrespective of whether the Director abstains from discussion or voting. An officer is not deemed to be "interested" in a District contract if his/her interest is remote. These remote interests are set forth in Section 1091 in the appendix.

Similarly, an officer is viewed as having no interest whatsoever if he/she falls within one of the categories set forth in Section 1091.5 in the appendix.

### EXAMPLE:

1. An officer of the District is a member of a staff committee which will recommend 5 medical clinics to give physical examinations for District employees. The officer's wife, a physician, is part owner of one of the clinics. The District is prohibited from contracting with that clinic.
  2. A member of the Board of Directors is a partner in a real estate venture which buys and sells commercial property. The District is accepting bids for the sale of an abandoned division site. Bids from the firm in which the Board member has an interest cannot be accepted.
- B. District Board members or employees shall not engage in any employment or activity for compensation which is inconsistent or incompatible or in conflict with his or her duties as a District Board

member or employee or with the duties of his appointing power or agency by which he is employed.

**Comment:** The purpose of this section is to insure that District personnel do not accept other employment that will impair their ability to exercise an independent, objective judgment in their official roles and is based on the fundamental theory that a person cannot serve equally two masters. Incompatible employment may exist by virtue of a physical inability to execute diligently the functions of both jobs or because the duties and functions of each are inherently inconsistent or repugnant. The inherent inconsistency which makes employment incompatible lies in a potential conflict of interests or duties, as where one job is subject in some degree to the supervisory control of the other or where one activity will



require a person to disclose confidential information which he has gained by reason of his other position or employment with the District.

**Examples:**

1. An Assistant Counsel of the District is retained by a homeowners' group to advise it in how to proceed in opposing a proposed Metro Rail station. The attorney must terminate one of the relationships because he/she could not possibly give undivided loyalty to both employers.

2. A senior planner is asked to provide consultant services in his spare time to cities forming a transportation zone. The planner must abandon one of his occupations because they are incompatible.

For District employees, the General Manager may determine through

written regulations or delegate to Department Heads the authority to determine outside activities which are incompatible with their duties as District employees. Employees may appeal the determination of incompatible activities through the Non-Contract Grievance Procedure or through the particular grievance procedure applicable to them. (Government Code §§1126 and 1128)

- C. Board members, and all employees and consultants required to file Disclosure statements pursuant to the District's Conflict of Interest Code, shall disqualify themselves from making, or participating in the making of, or in any way attempting to use their official position to influence, a governmental decision in which they know or have reason to know they have a financial interest (Government Code §87100).

All persons holding designated positions shall comply with the District's Conflict of Interest Code.

**Comment:** This section of the Code of Conduct, as well as the District's Conflict of Interest Code is derived from Government Code Section 87100 et seq., which is the Initiative Measure approved in the primary election of June 1974. An officer is deemed to have financial interest if the decision to be made will have a material financial effect on:

(a) Any business entity in which the public official has a direct or indirect investment worth \$1,000 or more.

(b) Any real property in which the public official has a direct or indirect interest worth \$1,000 or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$250 or more in value provided to.

received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

As provided in Section 87103, "indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater". It should be noted that, by virtue of Section 87101, an officer is not prohibited from making a decision if his

participation is legally required in order for the decision to be made. In such case, the officer must disclose the nature of the financial interest before he/she participates in the making of the decision. However, the fact that the officer's vote is needed to break a tie does not make his participation "legally required". This section applies primarily to the need of a body to have a quorum present. The regulations defining the terms used in these sections are attached.

**Examples:** The above disclosure and non-participation requirements would apply to the following individuals:

1. A Board member owns shares valued at \$2,500 in General Motors who has submitted a low bid of \$1,700,000 in a District bus procurement. The Board member must disclose the interest and disqualify him/herself from voting because the effect of the award would increase General Motors' gross revenue by over \$100,000. (See Appendix B, page 3).

2. A member of a staff committee selecting possible sites for a new division owns land valued at \$10,000 adjacent to one of the sites. To have the division next door would increase the fair market value of the staff member's property by over 1/2 of one percent. (See Appendix B, page 3).
- D. No Board member or employee shall participate in the award or selection of a contract supported by federal funds if a real, or apparent, conflict of interest would be involved, as conflict is defined in §10, UMTA C4220.1A. (UMTA Circular 4220.1A)
- E. No Board member, employee or agent of the District shall solicit or accept gratuities, favors or anything of monetary value from contractors/consultants, potential contractors/consultants or subcontractors/consultants. (§10 UMTA Circular 4220.1A).

An unsolicited gift of a value less than twenty-five dollars shall be considered to be of nominal intrinsic value and not in violation of this section, provided, however, that each District department shall set more restrictive requirements regarding unsolicited gifts as directed by the General Manager.

**Examples:**

1. A Board member or officer is invited by a District consultant to attend a \$100 a plate dinner for an elected official. Assuming the value of the dinner is less than twenty-five dollars, the District representative may attend since the balance constitutes the consultant's contribution to the elected official's campaign fund.
2. A board member running for office may not solicit or knowingly accept campaign donations from a person doing business with the

District. There is, obviously, no violation if the Board member neither solicits nor is aware of the contribution; however, once it is discovered, it should be returned.

- F. All inquiries from any proposer, bidder, or prospective bidder or proposer to any Board member or employee to discuss any RFP, specification, bid or proposal shall be referred to the Office of Contracts, Procurement and Materiel. No action shall be taken, or information provided, for or on behalf of any prospective contractor or vendor which interferes with free and open competition for District contracts. No Board member or employee shall disclose or otherwise use confidential information acquired by virtue of his/her position or employment with the District for his/her or another person's private gain.

- 16.5 In addition to the above requirements of Section 16.4c, Board members, employees and consultants shall conduct themselves as follows whenever the member, employee or consultant



has, or may have, a financial interest in making or participating in the making of any governmental decision.

- A. Directors: Unless his/her participation is legally required, when the matter comes up on the agenda, the Director shall:
  - 1. Disclose his/her interest
  - 2. refrain from participating in any way in the decision making process
  - 3. withdraw from the room if the subject is being discussed in closed session.
- B. Employees: The employee shall immediately report the nature of the matter and the existence of a conflict to his/her superior so that the work may be assigned to another.
- C. Consultants: The consultant shall immediately report the nature of the matter and the existence of the conflict to the General Manager.

- 16.6 No Board member, officer, or employee shall by his conduct give reasonable basis for the impression that any person improperly can influence him or unduly enjoy his favor in the performance of his official acts or actions, or that he is affected unduly by the kinship, rank, position of, or association with, any person.
- 16.7 A. An employee who violates any of the standards of conduct set forth herein is subject to discipline, up to and including discharge, in addition to any penalties provided by law.
- B. If a Board member or consultant violates any of the standards of conduct set forth herein, the matter shall be referred to the Administration, Efficiency and Economy Committee of the Board which shall, following investigation and review, make a recommendation to the full Board for action to be taken, in addition to any penalties provided by law.

**APPENDIX A**  
**GOVERNMENT CODE**

**§1090** Conflicts of Interest; Contracts,  
Sales and Purchases

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

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

**§1090.1** Acceptance of Commissions  
for Placement of Insurance

No officer or employee of the State  
nor any Member of the

Legislature shall accept any commission for the placement of insurance on behalf of the State.

§1091 Remote Interest of Officer or Member

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of such interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of a nonsalaried officer of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if such contracting party has 10 or more other employees and if the officer was an employee or agent of such contracting party for at least three years prior to the officer initially accepting his or her office.

For the purpose of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though such contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by such officer. Time of employment in such case shall be counted only if, after the transfer or change in organization, the real or ultimate

ownership of the contracting party is the same or substantially similar to that which existed before such transfer or change in organization. For the purposes of this paragraph, stockholders, bondholders, partners or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of such contracting party.

(3) That of a parent in the earnings of his or her minor child for personal services.

(4) That of a landlord or tenant of the contracting party.

(5) That of an attorney of the contracting party.

(6) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supply of water.

(7) That of a supplier of goods or services when such goods or services had been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(8) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(9) That of an officer, director or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(10) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(c) The provisions of this section shall not be applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section shall be punishable as provided in Section 1097. Such violation shall not void the contract, however, unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

#### §1091.1 Interest in Contracts: Subdivided Lands

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or



in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions: provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

§1091.5 Ownership of Corporate Shares; Reimbursement for Expenses; Recipient of Public Service; Landlord or Tenant Contracting with Federal or State Agencies; Employment of Spouse; Officer, Director, or Employee of Bank or Savings and Loan Association.

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public service generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) 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 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 event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board

of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board

or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.

For purposes of this paragraph an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(b) -An officer 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 or 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.

## §1092 Avoidance of Contracts

Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member.

## §1092.5 Lease, Purchase or Encumbrance of Real Property; Avoidance

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

§1093 Warrants and Other Evidences of Indebtedness, Private Use or Benefit

The State Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell or in any manner receive for their own or any other person's use or benefit any State, county or city warrants, script, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof. This section does not apply to evidences of indebtedness issued to or held by such an officer, deputy or clerk for services rendered by them, nor to evidences of the funded indebtedness of the State, county, or city.

§1094 Accounts: Certificate as Prerequisite to Allowance

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such offices to make and file with him an affidavit or

certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who willfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

§1095 Warrants and Other Evidences of Indebtedness; Restrictions on Payment

Officers charged with disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

§1096 Accounts; Suspension of Settlement or Payment; Prosecutions

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be



settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may process to settle, audit, or pay the account as if no affidavit had been filed.

#### §1097 Penalty for Violations

Every officer or person prohibited by the law of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing script, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever

disqualified from holding any office in this state.

§1126 Inconsistent, Incompatible or Conflicting Employment, Activity or Enterprise by Local Agency Officer or Employee

(a) except as provided in Section 1128, 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. Such officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner described by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, of not

performing such act, would be required or expected to render in the regular course of hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee of the agency by which he or she is employed, or (4) involves such time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

The local agency may adopt rules governing the application of this section. Such rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action

to be taken against employees for engaging in prohibited activities, and for appeal by employees from such determination and from its application to an employee.

§ 1128 Agency Employed Attorneys; Service on Boards, etc.

Service on an appointed or elected governmental board, commission, committee, or other body by an attorney employed by a local agency in a non-elective position shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the attorney as an officer or employee of the local agency and shall not result in the automatic vacation of either such office.

§ 87100 Public Officials; State and Local; Financial Interest

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.

**UMTA REGULATIONS**  
**UMTA CIRCULAR C4220-1A**  
**SECTION 10**

10. **CODE OF CONDUCT.** Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of contract supported by the Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- a. The employee, officer or agent;
  - b. Any member of his immediate family;
  - c. His or her partner; or
  - d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

## APPENDIX B

TITLE 2 FAIR POLITICAL PRACTICES COMMISSION  
(Register 77. No. 14-4-2-77)

### CHAPTER 7. CONFLICTS OF INTEREST

#### Article 1. Conflicts of Interest; General Prohibition

#### **18700. Public Official Making, Participating in Making, or Using His Official Position to Influence a Governmental Decision (87100).**

The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

- (a) Public official at any level of state or local government means every natural person who is a member, officer, employee or consultant of a state or local government agency.
- (1) "Member" shall include, but not be limited to salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:
  - (A) It may make a final governmental decision;



- (B) It may compel a governmental decision; or it may prevent governmental decision either by reason of an exclusive power to initiate the decision or by reason of veto which may not be overridden; or
  - (C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.
- (2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:
- (A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and
  - (B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency

(5) Determines not to act, within the meaning of subparagraphs (1), (2), (3), or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

## ADMINISTRATION TITLE 2

(Register 77, No. 14-4-2-77)

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgement on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Action by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

(e) "In any way attempting to use his or her official position to influence a governmental decision" shall include furthering or attempting to affect in any manner any decision:

(1) Within or before his or her agency; or

(2) Before any agency which is appointed by or subject to the budgetary control of his or her agency.

(f) "In any way attempting to use his or her official position to influence a governmental decision" shall not include:

(1) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest;

(2) Actions by public officials, employees or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

18702. Material Financial Effect.

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning

of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars (\$100,000); or
2. One percent if the effect is one thousand dollars (\$1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars (\$50,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more; or

(C) Current assets or liabilities by the lesser of:

1. One hundred thousand dollars (\$100,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision.

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or
  2. Five percent per month if the effect is fifty dollars (\$50) or more per month;
- or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

(3) Whether, in the case of a source of income, as defined in Government Code Section 87103 (c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months period to the time the decision is made:

(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official, or to confer a financial benefit, or detriment upon the official or a member of the official's immediate family, in an amount of one hundred dollars (\$100) or more; or

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b) (1) above; or



(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b) (1) above; or

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

(c) Subsection (a) and (b) of this section notwithstanding, the making or participation in the making of a governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.