

CAPISTRANO UNIFIED SCHOOL DISTRICT
33122 Valle Road
San Juan Capistrano, CA 92675

BOARD OF TRUSTEES
Board/Superintendent/Cabinet
Conflict of Interest Training

January 27, 2015

Open Session 5:30 p.m.

AGENDA

OPEN SESSION AT 5:30 P.M.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA – ROLL CALL

CONFLICT OF INTEREST TRAINING:

Facilitators: Attorneys Dan Shinoff and Catherine Cameron, Stutz Artiano Shinoff & Holtz

The interactive training will provide a clear understanding for completing and submitting Form 700 and cover the what, why, and impact of the filing process. Facilitator will provide guided practice using case studies and will summarize critical components.

EXHIBIT 1

Page 1

ADJOURNMENT

Motion by _____ Seconded by _____

THE NEXT REGULAR MEETING OF THE BOARD OF TRUSTEES IS WEDNESDAY, JANUARY 28, 2015, 7:00 P.M. AT THE CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM, 33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA

INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY PARENTS AND CITIZENS PRESENT AT THIS MEETING

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school district's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES

ITEMS ON THE AGENDA. Any person may address the Board concerning any item on the agenda and may, at the discretion of the Board, be granted three (3) minutes to make a presentation to the Board at the time a specific item is under discussion. However, the time assigned for individual presentations could be fewer than three (3) minutes depending upon the total number of speakers who wish to address a specific agenda topic. Prior to the opening of the meeting, a Request to Address the Board card (located in the foyer) should be completed and submitted to the Secretary of the Board. The total time devoted to presentations to the Board shall not exceed twenty (20) minutes, unless additional time is granted by the Board. All presentations shall be heard by the Board prior to the formal discussion of the agenda topic under consideration. Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic.

ORAL COMMUNICATIONS (Non-Agenda Items). Citizens may address the Board on any item not appearing on the agenda. Individual presentations are limited to three (3) minutes per individual, with twenty (20) minutes in total being devoted for this purpose, but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. However, at its discretion, the Board may refer items to the administration for follow-up or place topics on a future Board agenda.

PUBLIC HEARINGS. Anytime the Board schedules a separate public hearing on any given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the policy or recommended actions which are directed at the time of the hearing.

CLOSED SESSION. In accordance with Education Code §35146 and Government Code §54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

REASONABLE ACCOMMODATION

In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.

Capistrano Unified School District
Conflict of Interest & Economic Disclosure
Board Policy No. 9270

Presented by: Stutz Artiano Shinoff & Holtz

Stutz
Artiano
Shinoff
& Holtz

Daniel R. Shinoff
Christina M. Cameron

Introductory Comments

- BP 9270 (Conflict Code) was recently updated
- Governmental ethics and avoiding conflicts of interest are your personal responsibility
- Only you know what economic interests you and members of your immediate family have
- In general, you have to report and avoid conflicts related to anything you or your spouse, registered domestic partner, or dependent children owns

Roadmap

- Disclosure
- Conflicts of Interest
 - Economic, Related to Contracts, Due Process
- Incompatible Activities
- Time for Questions

Disclosure Categories

- **Real Property** that is located, in whole or part, within the District boundaries OR within 2 miles of the District boundaries
- **Investments** in or **Income** from businesses that:
 - Are contractors or subcontractors engaged in building construction or design used by the district currently or within the past 2 years
 - Manufacture or sell supplies, books, machinery or equipment of the TYPE used by the District (even if they are not currently under contract or doing business within District boundaries)
 - Are currently contracting with the District or have within the past 2 years
 - Are engaged in acquisition or disposal of real property within the District boundary
 - Are contractors or subcontracts that perform the TYPE of work or services used by your department

Real Property

- \$2,000 or more in value
- Includes both ownership and leases
- Includes property owned by spouse, registered domestic partner and dependent children
- Includes property owned by your business or trust
- Does not include month to month rentals

Investments

- \$2,000 or more in value
- Include stocks, partnership interests or any ownership interest
- Includes the investments of your spouse, registered domestic partner and dependent children

Income

- \$500 or more during the reporting period (usually the calendar year)
- Anything of value that you receive for which you return services of an equal or greater value.
- Includes half of spouse's non-governmental income
- Governmental income does not have to be disclosed

Gifts

- \$50 or more is reportable.
- \$460 limit per calendar year
 - indexed every two years – next change January 2015
- Includes rebates and discounts not available to the public
- Includes meals and entertainment (i.e. golf) at conferences that are not part of the official conference schedule and included in the conference cost
- Any gift you 'control' is a gift to you even if you give it away to a friend/family
- Some gifts given directly to spouses or dependent children are considered to be gifts to you
- Numerous exceptions

Gift – Exceptions

The following are not gifts and do not have to be disclosed:

- Gifts from close relatives
- Personalized plaques (valued at less than \$250)
- Hospitality in a friend's home (you must have a pre-existing relationship)
- Up to two tickets to a campaign or 501(c)(3) fundraiser
- Campaign contributions
- Inheritances
- Educational materials that assist in official duties – limitations.
- Unused (by anyone) tickets or passes to specific events
- Returned to giver or donated to charity
- Some travel expenses (rare – disclosure usually required)*

Gifts of Travel

- Unless paid by the District, travel is usually reportable
- Travel costs add up fast and can easily exceed the gift limit
- Travel includes: transportation, meals, and lodging
- Travel paid for by a governmental agency, educational institution or tax-exempt non-profit (must be a 501(c)(3)) that is reasonably related to a legislative or governmental purpose must be disclosed but is not subject to the gift limit

Conflict of Interest ...

Scruz
Artiano
Shinoff
& Holtz

Conflicts Under the Political Reform Act

• • •

The General Rule

Public officials must not participate in decisions if it is reasonably foreseeable that the decision will affect an economic interest of that official

Political Reform Act

- Applies to any decision
 - Permit
 - License
 - Contract
- Requires recusal
- Penalties including fines, criminal prosecution, removal from office

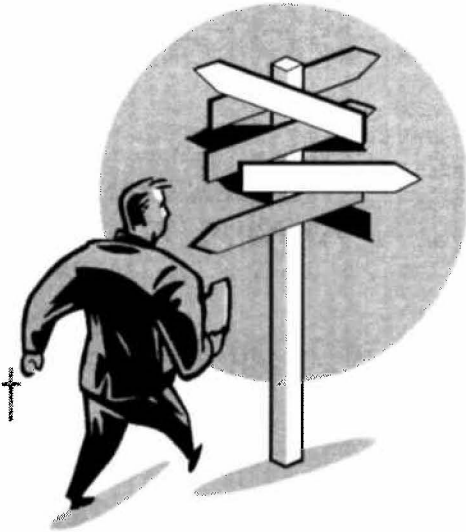
Do I Have a Conflict of Interest?

- 1) Am I a public official?
- 2) Am I making a decision?
- 3) Do I have an economic interest?
- 4) Is that economic interest related to the decision?
- 5) Is it likely the decision will have a
- 6) material effect on my economic interest?
- 7) Is the effect distinguishable from the effect on the public?
- 8) Is my action legally required?

Once you have determined that 1 through 4 apply, you should recuse or seek expert advice via the Superintendent's office regarding your ability to participate.

Decision

- Voting
- Appointing
- Entering into contracts
- Otherwise obligating the District



Note: Decisions include preliminary negotiations, advising, and making recommendations leading up to a decision

Economic Interest

This is the most important step in the process.

You must be able to understand and recognize when you have an economic interest so that you will know when a conflict might arise.



Economic Interest

An economic interest may be any of the following:

- Owning a business
- Being on a company's board of directors
- Owning or leasing property (near or affected by a decision)
- Owning stock or having an investment interest
- Personal Financial Effect - saving or having to spend \$250 or more as a result of decision
- Income of more than \$500 from an individual or private entity
- Your spouse, dependent child, or registered domestic partner having any of the interests above
- Gift(s) greater than \$460 during the 12 months prior to the decision

Related to the Decision

- **Direct**
 - Initiates the proceeding
 - A named party to the proceeding
 - The *subject* of the decision
 - Real property interests within 500 feet
- **Indirect** - Benefits because of the governmental decision but not directly involved

Public Generally Exception

If an official has an economic interest in the decision, but the impact of the decision on the official's interest is no different than the impact on a "significant segment" of the public generally, he or she may not be precluded from participating

- This is not a rule of thumb – specific percentages used to determine "significant segment"
- Do not assume the public generally rule applies – seek legal guidance

Legally Required Participation

When a public official is disqualified and that disqualification makes it impossible for the government to act, the official may be allowed to participate under very strict rules if there is no reasonable alternative manner of decision-making

- The need to break a tie vote is never “legally required”
- Can be used to cure quorum when there are multiple disqualifications
- Legal guidance is needed. Do not assume this rule applies

What to do when Disqualified

- Identify the disqualifying interest on the record when the decision is being considered
- Leave the room while the matter is discussed and voted on
- Exception
 - If a disqualified official has personal property or a business interests at stake, they may be able to remain in the room and participate as a member of the public
 - Rule is limited

Economic Interest in Contracts

...

The Basic Rule

A public official may not have an *economic interest* in any *contract* made by his or her agency

Govt. Code section 1090

- Limited to contracts
- Economic interests are broader
- Prohibits participation at any stage
- Recusal generally not available
- VOIDS the contract - cannot be enforced
- Criminal Penalties (Felony) for willful violation (fine or prison up to 3 years, lifetime ban on holding office)

Economic Interest in Contracts

Making a Contract

- Contracts: written, oral, informal, e.g., purchasing
- Includes preliminary discussions, negotiations, planning and solicitation of bids & voting on the contract itself
 - Board members are **presumed** to have participated in any contracts approved by the Board, but not those made by the Superintendent alone, without Board approval
- Officials cannot benefit after the fact in a contract they made
- But, if no contract approved, no 1090 violation

Economic Interest in Contracts

Financial Interests

- Broadly defined
- Includes the following relationships with contracting party:
 - Employee
 - Attorney, agent or broker
 - Supplier of services or goods
 - Landlord-Tenant
 - Creditor-Debtor
 - Officer or employee of non-profit corporation
 - Includes spouse community and separate property

The relationship can be complicated or involve intermediaries

Economic Interest in Contracts

Exceptions

- Remote Interests
 - Includes some long-term employment situations, stock ownership derived from employment, and landlord-tenant relationships
 - Allows official to disclose the interest and recuse
- Non-Interests
 - Includes stock of less than 3% in a corporation, reimbursement of expenses, uncompensated service on non-profit boards
 - No disclosure or recusal requirement – official may participate

Common Law Conflict of Interest

...

Common Law Conflicts

- A personal interest can also interfere with your ability to act in a fair and impartial manner, resulting in a conflict of interest
 - Includes familial relationships, friendships, or general sympathy for a particular viewpoint
- Ask yourself whether there is a non-economic situation which makes you unable to make a decision in a fair manner primarily for the benefit of the public
- If so, you may not participate
- Quasi-Judicial matters – Due process issues

Conflicts Involving Relatives

- You may not vote on, participate in, or attempt to influence personnel matters or contracts that affect any relative or someone with whom you are living
- A Relative is an adult who is related by blood, affinity or adoption within the third degree
- Within the third degree means, the following relatives of you and of your spouse (unless divorced): parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers and sisters, aunts and uncles, and nieces and nephews

Incompatible Activities

...

Incompatible Duties

- 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)

Incompatible Offices

- Board members shall not simultaneously hold two public offices that are incompatible. (Government Code §1099)
- Offices are incompatible when any of the following circumstances are present unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
 - Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body
 - There is a possibility of a significant clash of duties or loyalties between the offices
 - Public policy considerations make it improper for one person to hold both offices

Conclusion

- REMEMBER
 - You are doing the public's business
 - When it seems like you are receiving a personal benefit, there may be a problem
 - Know your own economic interests so you will recognize situations when you may have a conflict of interest
- ASK BEFORE YOU ACT
 - If you think you are faced with an ethical dilemma, consult legal counsel BEFORE you act
 - Not all problems can be fixed after you have acted

Daniel R. Shinoff
dshinoff@sashlaw.com



Christina M. Cameron
ccameron@sashlaw.com

619-232-3122

