

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA #: *A-5e

AGENDA DATE: April 18, 2017

SUBJECT:

Approval to Adopt the Amended Conflict of Interest Code for the Waterford Unified School District

BOARD ACTION AS FOLLOWS:

No. 2017-177

On motion of Supervisor Withrow, Seconded by Supervisor Olsen
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


PAM VILLARREAL, Assistant Clerk

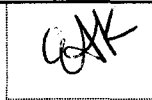
File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Board of Supervisors

Urgent

Routine



BOARD AGENDA #: *A-5e

AGENDA DATE: April 18, 2017

CEO CONCURRENCE:

4/5 Vote Required: Yes No

SUBJECT:

Approval to Adopt the Amended Conflict of Interest Code for the Waterford Unified School District

STAFF RECOMMENDATIONS:

1. Adopt the Amended Conflict of Interest Code for the Waterford Unified School District.

DISCUSSION:

The Political Reform Act requires every local government agency to review its conflict of interest code on a biennial basis to determine if it is accurate or if amendments are needed. It is essential and legally required that an agency's conflict of interest code reflects the current structure of the agency and properly identifies all officials and employees who should be filing a Statement of Economic Interest (Form 700), and what financial interests they must disclose.

The County Board of Supervisors is the code reviewing body for county agencies and any other local government agency whose jurisdiction is determined to be solely within the county (e.g., school districts). An agency's amended code is not effective until it has been approved by the code reviewing body.

The Waterford Unified School District has reviewed its conflict of interest code, and has submitted amendments to the Board of Supervisors for approval. County Counsel has reviewed the subject conflict of interest code in compliance with Government Code Section 87309 and has determined it meets the legal requirements.

POLICY ISSUE:

Stanislaus County Board of Supervisors is the code reviewing body for public agencies whose jurisdictions fall within Stanislaus County. An agency's amended conflict of interest code is not effective until it has been approved by the Board of Supervisors.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

Approval to Adopt the Amended Conflict of Interest Code for the Waterford Unified School District

BOARD OF SUPERVISORS' PRIORITY:

Approval of the recommended action supports the Board's priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Elizabeth King, Clerk of the Board of Supervisors	(209) 525-4494
Thomas Boze, Assistant County Counsel	(209) 525-6376

ATTACHMENT(S):

1. Amended Conflict of Interest Code for the Waterford Unified School District

2016 Local Agency Biennial Notice

Name of Agency: Waterford Unified School District SUPERVISORS
Mailing Address: 219 N. Reinway Ave, Bldg 2, Waterford, CA 95386
Contact Person: Peggy Ward, Secretary Phone No: 209-596-9370
E-Mail: pward@waterford.k12.ca.us

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict of interest code and has determined that (check one box):

An amendment is required. The following amendments are necessary:

(Mark all that apply.)

- Include new positions
- Revise disclosure categories
- Revise the titles of existing positions
- Delete positions that have been abolished and/or no longer make or participate in making governmental decisions
- Other (describe) revising per CSBA recommendations

The code is currently under review by the code reviewing body.

No amendment is required. (If your code is more than five years old, amendments may be necessary.)

Verification (to be completed if no amendment is required)

This agency's conflict of interest code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions. The code includes all other provisions required by Government Code Section 87302.

Signature of Authorizing Official and Title

Date

Complete this notice regardless of how recently your code was approved or amended.

Please return this notice no later than October 3, 2016 to:

**CLERK OF THE BOARD OF SUPERVISORS
STANISLAUS COUNTY
1010 10th Street, Suite 6700
MODESTO, CA 95354
PLEASE DO NOT RETURN THIS FORM TO THE FPPC**

Waterford USD

Board Bylaw

Conflict Of Interest

BB 9270

Board Bylaws

The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(cf. 9005 - Governance Standards)

Even if a prohibited conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her relative belongs. Relative means an adult who is related to the Board member 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 an individual's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse/registered domestic partner unless the individual is widowed or divorced.

Conflict of Interest Code

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions, and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's code reviewing body for approval, in accordance with Government Code 87303 and within the deadline for submission established by the code reviewing body. (Government Code 87303)

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 designated positions, changes to the duties assigned to existing positions, amendments or revisions, the amended code shall be submitted to the code reviewing body within 90 days after the changed circumstances necessitating the amendments have become apparent. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the Superintendent or designee shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

(cf. 9320 - Meetings and Notices)

Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 9222 - Resignation)

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. The statements shall be on file at the WUSD District Office 219 N. Reinway Ave. Bldg. 2, Waterford, CA 95386. (Government Code 81008)

Conflict of Interest under the Political Reform Act

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Conflict of Interest under Government Code 1090 - Financial Interest in a Contract

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract in which he/she has only a "remote interest," as specified in Government Code 1091, if the 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 or district official to enter into the contract. (Government Code 1091)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

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 1099, 1126)

(cf. 4136/4236/4336 - Nonschool Employment)

Gifts

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 that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation, except when: (Government Code 89506)

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.

2. The travel is provided by a person or agency specified in Government Code 89506,

including a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and 2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest/Form 700 as required by law.

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 designated 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

APPENDIX

DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

1. Persons occupying the following positions are designated employees in Category 1:

Governing Board Members
Superintendent of Schools
Assistant/Associate Superintendent
Purchasing Agent
Business Manager

Designated persons in this category must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two 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. Investments or business positions 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 two 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

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
Dean of Students

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 a governmental decision 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
- 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 18702.2 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)

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*

35107 *School district employees*

35230-35240 *Corrupt practices, especially:*

35233 *Prohibitions applicable to members of governing boards*

41000-41003 *Moneys received by school districts*

41015 *Investments*

FAMILY CODE

297.5 *Rights, protections, and benefits of registered domestic partners*

GOVERNMENT CODE

1090-1099 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-91014 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition, designated employee*

82028 *Definition, gift*

82030 *Definition, income*

82033 *Definition, interest in real property*

82034 *Definition, investment*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

89506 *Ethics; travel*

91000-91014 *Enforcement*

PENAL CODE

85-88 *Bribes*

REVENUE AND TAXATION CODE

203 *Taxable and exempt property - colleges*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission, especially:*

18700-18707 *General prohibitions*

18722-18740 *Disclosure of interests*

18750.1-18756 *Conflict of interest codes*

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261

Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469

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

92 Ops. Cal. Atty. Gen. 26 (2009)

92 Ops. Cal. Atty. Gen. 19 (2009)

89 Ops. Cal. Atty. Gen. 217 (2006)

86 Ops. Cal. Atty. Gen. 138(2003)

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)

63 Ops. Cal. Atty. Gen. 868 (1980)

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

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

Institute of Local Government: <http://www.ca-ilg.org>

Bylaw
adopted: September 8, 2016

WATERFORD UNIFIED SCHOOL DISTRICT
Waterford, California