

## **Supplemental Information Concerning 1998 Conflicts of Interests Pamphlet**

There have been several noteworthy occurrences since the publication of the Attorney General's 1998 Conflicts of Interests pamphlet. Below is a brief summary of the most important issues.

### **Renumbering of regulations:**

Chapter I of the pamphlet concerning conflict of interests under The Political Reform Act makes numerous references to the regulations of the Fair Political Practices Commission. Subsequent to the publication of the pamphlet, the Commission re-organized and re-numbered its regulations. For your reference, enclosed is a Commission regulation that converts the original numbering system into the new one.

### **Litigation enjoining Proposition 208:**

Chapter V of the pamphlet concerning enforcement under the Political Reform Act includes a discussion of amendments enacted by Proposition 208 in 1996. Subsequent to the preparation of the pamphlet, Proposition 208 was enjoined by a federal district court, and this matter is still in litigation.

### **Contractual conflicts of interest; amendment of section 1091(b)(2):**

Chapter VI of the pamphlet discusses Government Code section 1090 which prohibits officials from participating in the making of public contracts in which they have a financial interest. Section 1091 provides limited exceptions to this general prohibition. Subdivision (b)(2) of that section was amended effective January 1, 1999 to provide as follows:

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

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes 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 the 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 the officer. Time of employment in that 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 the transfer or change in organization. For 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 the contracting party.

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

### **§18700. Basic Rule; Guide to Conflict of Interest Regulations.**

(a) No public official at any level of state or local government may 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 he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless that effect is indistinguishable from the effect on the public generally. A conflict of interest is disqualifying if the public official's participation is not legally required.

(b) To determine whether a given individual has a disqualifying conflict of interest under the Political Reform Act, proceed with the following analysis:

(1) Determine whether the individual is a public official, within the meaning of the Act. (See Cal. Code Regs., tit. 2, § 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act.

(2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See Cal. Code Regs., tit. 2, § 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.

(3) Identify the public official's economic interests. (See Cal. Code Regs., tit. 2, § 18703.)

(4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See Cal. Code Regs., tit. 2, § 18704.)

(5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See Cal. Code Regs., tit. 2, § 18705.)

(6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on

each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See Cal. Code Regs., tit. 2, § 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act.

(7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the reasonably foreseeable material financial effect on the public official's economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See Cal. Code Regs., tit. 2, § 18707.)

(8) Determine if the public official's participation is legally required despite the conflict of interest. (See Cal. Code Regs., tit. 2, § 18708.)

Note: The Commission's conflict-of-interest regulations were significantly restructured and renumbered in October 1998. The following table may be used to locate provisions of law in the restructured regulations based upon a citation to the previous section numbering:

<b><i>Regulation before October 1998 amendments</i></b>	<b><i>Regulation after October 1998 amendments</i></b>
18700(a)	18701(a)
18700(a)(1)	18701(a)(1)
18700(a)(2)	18701(a)(2)
18700(b)	18702.1
18700(c)	18702.2
18700(c)(1)	18702.2(a)
18700(c)(2)	18702.2(b)
18700(c)(2)(A)	18702.2(b)(1)
18700(c)(2)(B)	18702.2(b)(2)
18700(d)	18702.4(a)
18700(d)(1)	18702.4(a)(1)
18700(d)(2)	18702.4(a)(2)
18700(d)(3)	18702.4(a)(3)

18700.1	18702.3
18700.1(a)	18702.3(a)
18700.1(b)	18702.4(b)
18700.1(c)	18702.3(b)
18701(a)	18708(a)
18701(b)	18708(b)
18701(b)(1)	18708(b)(1)
18701(b)(2)	18708(b)(2)
18701(b)(3)	18708(b)(3)
18701(b)(4)	18708(b)(4)
18701(c)	18708(c)
18701(c)(1)	18708(c)(1)
18701(c)(1)	18708(c)(2)
18702(a)	none
18702(a)(1)	none
18702(a)(2)	none
18702(a)(2)(A)	none
18702(a)(2)(B)	none
18702(a)(2)(C)	none
18702(a)(2)(D)	none
18702(a)(2)(E)	none
18702(a)(3)	18704
18702(a)(4)	18703
18702(b)	18705(b)
18702(c)	18707(a)(1)
18702(d)	18707(a)(2)

18702(e)	18707(a)(3)
18702.1(a)(1)--source of income	18705.3(a)
18702.1(a)(1)--nexus	18705.3(c)
18702.1(a)(1)--source of gift	18705.4(a)
18702.1(a)(2)--business entities listed on certain exchanges and in which official has invested \$10,000 or more	18705.1(a)
18702.1(a)(2)--all other business entities	18705.1(a)
18702.1(a)(3)--generally	18704.2
18702.1(a)(3)(A)--materiality when directly involved	18705.2(a)
18702.1(a)(3)(A)	18704.2(a)(1)
18702.1(a)(3)(B)	18704.2(a)(2)
18702.1(a)(3)(C)	18704.2(a)(3)
18702.1(a)(3)(D)	18704.2(a)(4)
18702.1(a)(3)(E)	18704.2(a)(5)
18702.1(a)(4) (definition)	18703.5
18702.1(a)(4) (materiality)	18705.5
18702.1(b)	18704.1(a)
18702.1(c)	18705(c)
18702.1(c)(1)	18705(c)(1)
18702.1(c)(2)	18705(c)(2)
18702.1(d)	18705.3(c)
18702.2	18705.1(b)
18702.3	18705.2(b)
18702.4	18705.2(c)
18702.5	18705.3(b)(2)

18702.6	18705.3(b)(3)
18703 (generally)	18707 (generally)
18703(a)	18707(b)
18703(b)	18707.1
18703(b)(1)	18707.1(a)
18703(b)(2)	18707.1(b)
18702(b)(3)	18707.1(c)
18703(c)	18707.6
18703.1	18707.2
18703.2	18707.3
18703.3	18707.4
18703.5	18707.5
18704	18703.3(b)
18704.3	18703.3(c)
18705	18702.4(c)
18706	18703.1(c)
18720	18701(b)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103, Government Code.