



Ethics Office

*Building Trust
Inside and Out*

Transparency

Good Governance

Integrity

Managing Conflicts

Understanding the Legal and Ethical Requirements

Excellence

Model Conduct

Protecting Public Interest

Ask Ethics: (213) 241-3330

www.lausd.net/ethics

→ Overview

- Conflict of Interest Equation
- Case Studies

Public service is a public trust.

“ No responsibility of government is more fundamental than the responsibility of maintaining the **highest standards of ethical behavior** by those who conduct the public business.

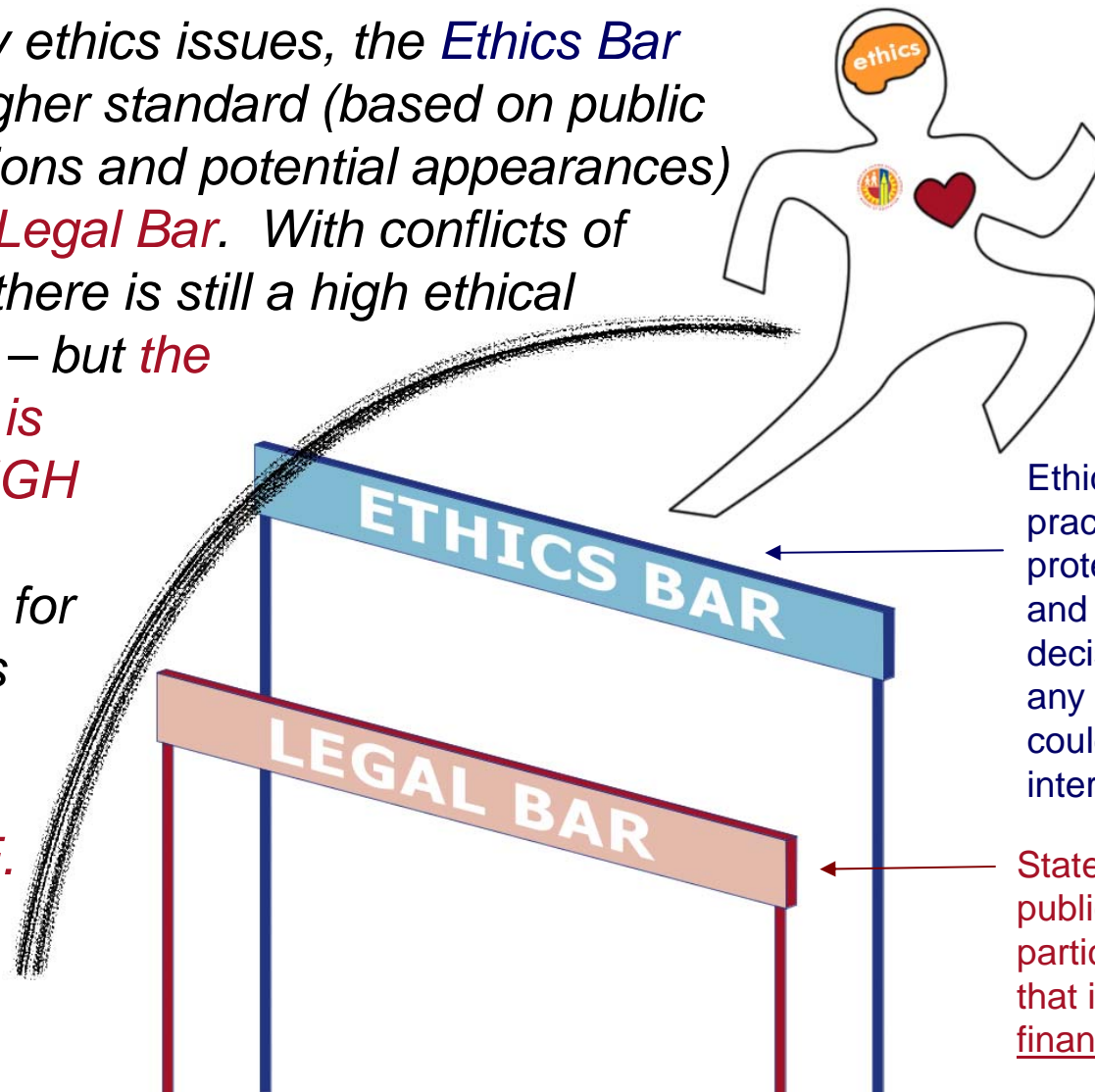
For the **basis of effective government is public confidence**, and that confidence is endangered when ethical standards falter or appear to falter.”

John F. Kennedy

Managing Conflicts

High Legal and Ethical Standards

For many ethics issues, the *Ethics Bar* sets a higher standard (based on public expectations and potential appearances) than the *Legal Bar*. With conflicts of interest, there is still a high ethical standard – but *the legal bar is VERY HIGH and the penalties for violations are VERY SEVERE.*



Ethics policies and best practices caution officials to protect their own integrity and the integrity of their decisions by safeguarding any decision-making that could benefit their personal interests of any kind.

State law strictly prohibits a public official from participating in any decision that impacts that official's financial interests.

Managing Conflicts

Summary of Rules

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In addition to LAUSD policy, conflicts of interest are stringently regulated by state laws.

California Political Reform Act of 1974



*“Public officials, whether elected or appointed, should perform their duties in an **impartial manner, free from bias** caused by their own financial interests or the financial interests of the persons who have supported them.”*

California Government Code 1090



*A public official “**shall not be financially interested in any contract** made by them in their official capacity, or any body or board of which they are members.”*

LAUSD Code of Ethics



*“A conflict of interest can exist anytime our position or decisions provide us a financial benefit or improper advantage... We will **not make decisions or use our position for personal benefit** or to gain an improper advantage.”*

Conflicts and the Political Reform Act

Principle: Public officials need to be disqualified from government decision-making* in which they they have a financial interest.

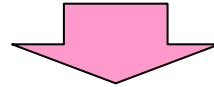
Financial Interest Defined (includes official, domestic partner, and dependent child):

- Any business entity where an official has a direct or indirect investment
- Any real property where an official has a direct or indirect interest
- Any source of income within the 12 months prior to a time when a decision is made
- Any source of loans garnered on private terms
- Any position with a business entity, including director, officer, or employee even if unpaid
- Any gift exceeding what is allowable
- Any other interest that creates a material financial effect that is distinguishable from an effect on the general public

* The decision making process also includes providing advice by way of research, investigation, preparing reports or analyses, and influencing decision-making.

Conflicts in Contracts & Grants (Gov. Code 1090)

- **Conflict Prohibition:** *“Public Officials 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.”*



- **Contracts made in violation of 1090 are void and cannot be enforced.** (Thomson V. Call (1985) 38 Cal. 3d 633, 646.)
Moreover, when Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. In fact, the agency can also seek repayment from the Contractor of any amounts already paid and the agency can refer the matter to the appropriate authorities for prosecution.
- **Making a Contract is Broadly Defined:**
“An official participates in the making of a contract if the official is involved with its preparation at any stage in the process. **The contract making process begins at the time the idea for the contract is conceived** and continues through the actual execution of the contracts. Participating in a contract includes planning, determining the scope of the contract, drafting plans and specifications, setting contract terms, evaluating applicants and negotiations.”
– Source: California Attorney General
- **1090 violations can result in felony convictions. However, a violation can be avoided if the contract is never executed, or if an official is wholly disqualified from making the contract.**

* Contracts are also broadly defined and include job orders, purchase orders, Memoranda of Understanding, grants and other forms of agreements that bind the agency.

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Application to Consultants

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Does a consultant count as a “public official”?

YES!

Political Reform Act: Under the Act, public official is not only elected and appointed officials, but also any *“member, officer, employee or consultant of a state or local government agency.”* A contractor or consultant is subject to the Act when the individual is:

- delegated specified decision-making authority; or
- while acting in a “staff capacity,” either participating in the making of a decision or performing the duties of an employee of a government agency

Government Code 1090: The Courts have said that 1090 is intended to apply to *“independent contractors who perform a public function and to require of those who serve the public temporarily the same fealty expected from permanent officers and employees.”*

- **Overview**
- **Conflict of Interest Equation**
- **Case Studies**

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Understanding the Conflict Equation

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Your participation in a decision involving your outside interest is what constitutes a conflict.

Conflict of Interest Equation:

Your Financial or Other Personal Interest
+
LAUSD Decision Involving that Interest
+
Your Participation in that Decision

CONFLICT OF INTEREST CONCERN

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Understanding the Conflict Equation

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Individuals and organizations that have or will benefit you are potentially conflicting interests.

Conflict of Interest Equation:

Your Financial or other Personal Interest

+ LAUSD Decision Involving that Interest

+ Your Participation in that Decision

CONFLICT OF INTEREST CONCERN

Interests you should watch include (but are not limited to):

- Sources of income to you within the past 12 months. Income includes:
 - Wages, commissions, and royalties
 - Valuable gifts or travel payments
 - Personal loans (not publicly available)
 - Scholarships
- Investments in, ownership of, or management positions in businesses
- Real property investments
- Future employers
- Your spouse, domestic partner or other family members
- Close friends and business associates

Managing Conflicts

Understanding the Conflict Equation

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Individuals and organizations that have or will benefit you are potentially conflicting interests.

Conflict of Interest Equation:

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**CONFLICT OF
INTEREST CONCERN**

From hiring and
contracting decisions to
purchasing,
programmatic, and
policy decisions -
decision-making is a
basic function of doing
business at our district.

The primary type of
decisions that do not
count? Ministerial,
clerical, and secretarial
decisions.

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Understanding the Conflict Equation – Art of Disqualification

You are “disqualified” from participating in decisions that involve your outside interests.

Conflict of Interest Equation:

Your Financial or other
Personal Interest

+ LAUSD Decision
Involving that Interest

+ **Your Participation
in that Decision**

**CONFLICT OF
INTEREST CONCERN**

You must abstain from ANY involvement whatsoever - including using your position, giving advice, making recommendations or marketing - that affects your outside interest. The rule is to avoid the perception of self gain or advantage.

Remember: Being formally disqualified* is your demonstration that you are working to proactively avoid a conflict!

*Consult the LAUSD Ethics Office for advice on how to implement a formal disqualification.


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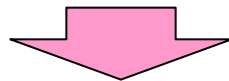
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Courtroom Case Study #1: Benefits to the Agency

“But Your Honor, my decision benefited the children!”

Case:	<i>People v. Honig (1996)</i>	
Defendant:	State Superintendent of Public Instruction, Bill Honig	
Plaintiff:	People of the State of California	
Situation:	Highly regarded State Superintendent Bill Honig asked his staff to approve grants that benefited his wife’s non-profit.	
His Defense:	The money from the grants was entirely used to support the non-profit’s efforts to promote parental involvement in K-12 schools.	
Why Defense Failed:	Despite his undisputed commitment to serving the children of California and a lack of any significant personal gain resulting from the grants – the court found that Honig was criminally responsible for his actions, despite how well-intended they may have been.	
Consequence:	Honig was: ordered to pay \$47,000 back to the state, required to perform hundreds of hours of community service, permanently barred from holding public office, and suspended from practicing law for 2 years. Still, the highest cost may have been the permanent damage to his reputation and legacy.	



It is a violation of law to have a financial conflict of interest, regardless of any potential benefits to the children, the public or the agency.

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Courtroom Case Study #2: Indirect Personal Benefit

“But Your Honor, I didn’t directly benefit from the decision!”

Case: *Thompson v. Call (1985)*

Defendant: City Councilman Hubert Call

Plaintiff: Bruce Thompson, Taxpayer and Landowner

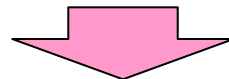
Situation: Through a complex, multi-party transaction, Councilman Call sold a parcel of land that he owned to the city for use in a park that the city planned to build.



His Defense: Councilman Call was open and honest about the fact that he owned the land. He even sold it to a third party before it was sold to the city, precluding him from benefiting directly. Also, Call claimed to have harmed his interest by selling the land at a discount.

Why Defense Failed: California Conflict of Interest law was framed to compel public officials to “scrupulously” avoid even the appearance that their objectivity has been impaired by the potential of personal gain resulting from a decision.

Consequence: Councilman Call was ordered to pay back all of the proceeds from the sale of his land. The city kept the land at no cost.



You may not participate in the making of a contract if you have a financial interest, regardless of whether or not you actually gain any direct personal benefit.

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Courtroom Case Study #3: Ignorance

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“But Your Honor, I didn’t know my actions were illegal!”

Case: *People v. Chacon (2007)*

Defendant: Councilwoman Maria Chacon

Plaintiff: People of the State of California

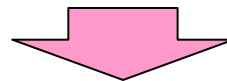
Situation: While serving on the City Council, Councilwoman Chacon sought and accepted a position as city manager, and was hired by the City Council of which she was still a member.



Her Defense: Councilwoman Chacon acted on misinformation she received from the City Attorney, and mistakenly believed that her actions would be legally permissible.

Why Defense Failed: Conflict of interest law can be violated even when a public official does not know that her actions are unlawful. The court found that allowing ignorance to be claimed as an excuse would be contrary to “the strong public policy of strict enforcement of conflict of interest statutes and the attendant personal responsibility demanded of our officials.”

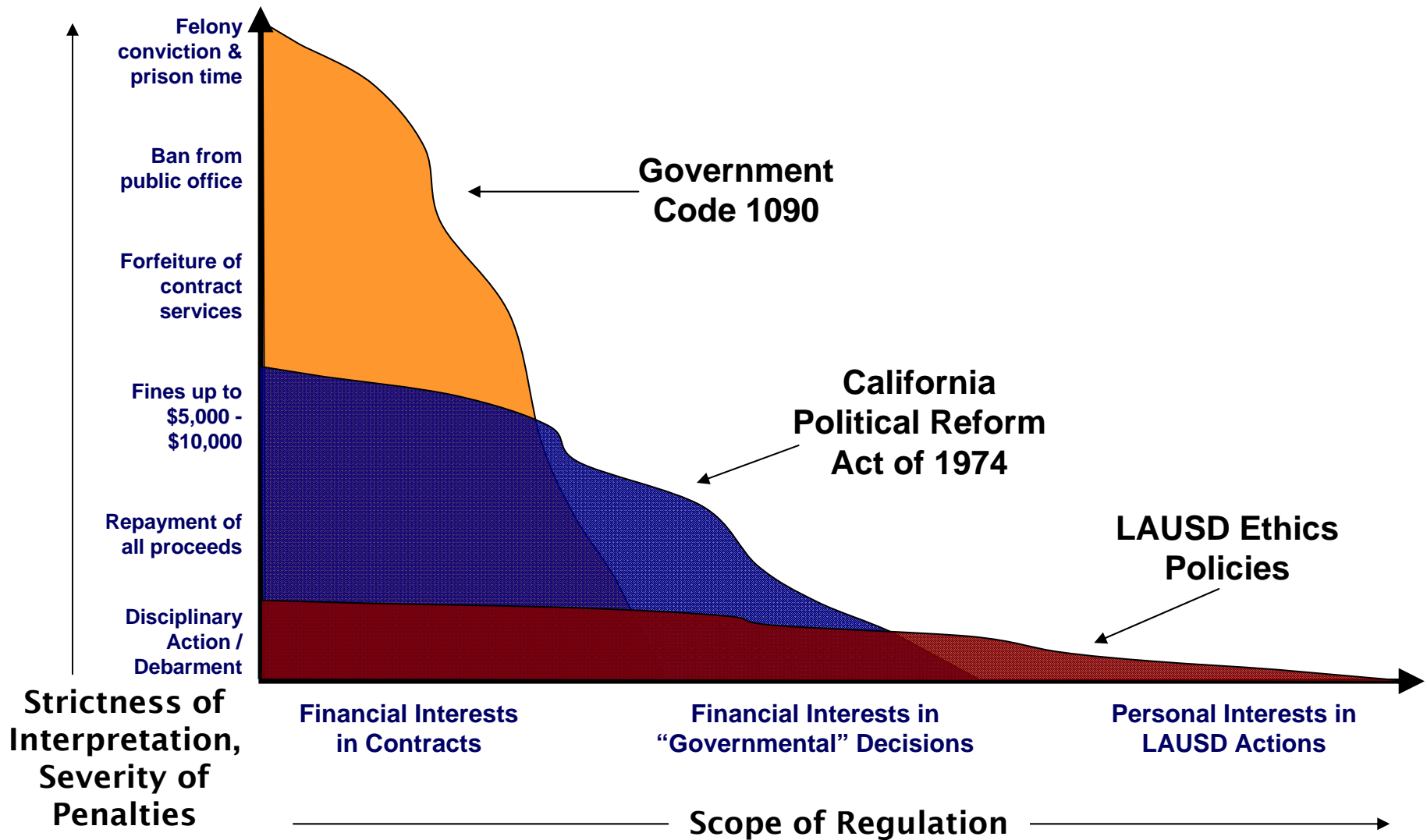
Consequence: Chacon could face fines, jail time, and permanent prohibition from holding public office.



As public officials, we are each personally responsible for managing against conflicts of interest. We must be diligent to avoid any unintended consequences.

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Penalties - Scope versus Severity

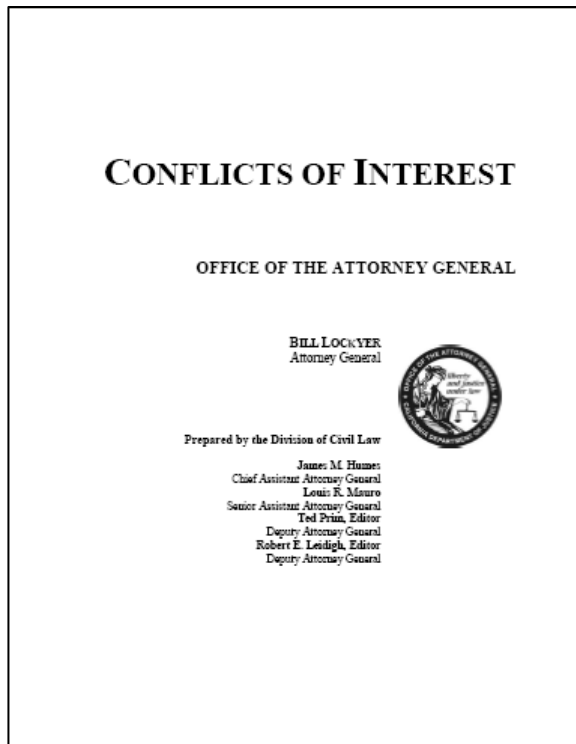


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Next Steps - Increasing Your Own Knowledge

For more information on the purely legal COI standards to which LAUSD employees & consultants are held:



- ❑ Download the definitive guide to CA COI laws on the Attorney General's website: http://ag.ca.gov/publications/coi_2004.pdf
- ❑ Take advantage of the State's online ethics training for local officials: <http://locaethics.fppc.ca.gov/ab1234/index2.html>
- ❑ Visit the FPPC website for more case studies and history of PRA enforcement action at: www.fppc.ca.gov

Remember, you can always consult your LAUSD Ethics Office as well: www.lausd.net/ethics