

**Fair Political
Practices Act
Presentation to LAFCO**

September 2015

County Counsel

Introduction

- **Responsibility of Public Officials in California to disclose financial interests.**
- **And to recuse themselves from participating in any official decision that effects their financial interests.**

PRA

Basic Prohibition

- Public officials may not participate in government decisions in which they have an economic interest.
- If you have a “conflict,” you must:
 - a) DISCLOSE economic interest AND
 - b) then RECUSE yourself from the decision making process.

Gov. Code sec. 87103: Financial interests

- Source of income over \$500 in last 12 months.
- Gifts over \$440 in last 12 months. (Adjusted periodically.) Must also report gifts over \$50.
- Business entity where you're officer, employee, etc.) regardless of income.
- Business entity investments over \$2,000 - includes investments by spouse or children, and also trusts. (Gov. C. 87103(a).)
- Real property over 2,000.

Revised FPPC Regs

- Effective June 16, 2015, FPPC revised regulations went into effect.
- The old “7 step” test is now a “4 step” test.
- Much of analysis under each approach is the same.
- But some changes have occurred re the “public generally” exception.

4 Step Process (§18700(d))

1. Is it reasonably foreseeable the decision will have a financial effect on any of official's financial interests.(Directly effected – presumed material.)
2. Indirect effect: Will the financial effect be material?
3. If yes, can official demonstrate material effect is indistinguishable from public generally?
4. Is official participating in making or influencing a governmental decision.?

Real Property - Interests materially effected

- Interest in real property –Section 18702.2 defines materiality.
 - The financial effect is **MATERIAL** where the **OFFICIAL** has an interest in **PROPERTY** and
 - decision determines parcel's annexation or de-annexation or INCLUSION IN or exclusion from any city . . . DISTRICT or other local government.
 - Hence, by regulation, where a commissioner owns property subject to a LAFCO organization or reorganization, this is a material financial effect.

Public Generally exception; old rule

- Prior to June 16, 2015: Former Section 18701.1
 - decision will effect 5,000 property owners or homeowners in the jurisdiction of the official's agency.”
- FPFC *Miller Advice Ltr.*, Mar. 1999, LAFCO Com could vote on city formation with population of 54,650 people.

Public Generally – New Rule

- Sec. 18703. Effect is indistinguishable if effect is not unique compared to:
 - at least 25 % of
 - all business or non-profits
 - all real property, commercial property or residential property owners
 - all individuals . . .

within the official's jurisdiction.

Official's jurisdiction

- The jurisdiction for LAFCO is the entire county.
- Auditor roughly estimates County has about 130,000 property owners.
- Public generally exception for a property owner – estimated 32,500.
- Exception varies from county to county – more urbanized would have higher.

Can results differ based on hat you wear?

- Role as a special district board member?
The “jurisdiction” is not the same for city and special district commissioners.
- Supervisors – no change.
- Seek advice from your attorney.

