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To: CSU Presidents

From: Jackie R. McClain
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Human Resources


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General Counsel

Subject: **CSU Employment and Incompatible Activities**

The California State University (CSU) looks to various statutes and the state constitution for information on incompatible activities for CSU employees. As public employees, CSU employees are public officials subject not only to laws and regulations on incompatible activities but to numerous laws, regulations and court decisions related to conflicts of interest, ethics and use of public information for personal gain. This memorandum is written to provide critical information on key laws, regulations and court decisions that impact CSU employees in these important areas. Please ensure this information is shared with current and future employees. Examples of codes and/or statutes that govern CSU incompatible activities are as follows:

- Using state time, facilities, equipment, or supplies for private gain is prohibited by the California Constitution Article 16, Section 6, and Government Code, Section 8314.
- Using confidential information available by virtue of CSU employment for private gain is prohibited by Education Code, Section 89006.
- Receiving or accepting "extra compensation or extra allowance" from the state for performance of duties as a state employee after service has been rendered is prohibited by the California Constitution Article 4, Section 17.
- Receiving personal gifts or honoraria from anyone seeking to do business with the recipient's appointing authority is governed by the Political Reform Act including the CSU Conflict of Interest Code.

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In addition to the codes and/or statutes noted above that govern CSU employee incompatible activities, provided in Attachment A is additional information on the following for reference:

- Political Reform Act of 1974
- Conflicts of Interest in Contracts
- Private Gain from Nonpublic Information
- CSU Auxiliary Organizations Conflicts of Interest
- Common Law Conflicts of Interest
- Incompatible Activities
- Receiving or Accepting Extra Compensation or Allowance

Questions may be directed to systemwide Human Resources or your campus counsel, as appropriate. This document is available on the Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

JRMcC/gc

Attachment

CSU Employment and Incompatible Activities REFERENCE GUIDE

Important:

The California State University (CSU) looks to various statutes and the state constitution for information on incompatible activities for CSU employees. As public employees, CSU employees are public officials subject not only to laws and regulations on incompatible activities but to numerous laws, regulations and court decisions related to conflicts of interest, ethics and use of public information for personal gain. This reference guide addresses those key laws, regulations and decisions. This list is not exhaustive and additional laws, regulations and court decisions may circumscribe activities of CSU employees.

- **POLITICAL REFORM ACT OF 1974: Government Code § 81000 et seq.**
(Principal codification of California conflict of interest law.)

The people find and declare as follows:

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.
- (b) 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 persons who have supported them.
- (c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided...
- (f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced. (§ 81001)

General Prohibition: Government Code § 87100 et seq.

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (§ 87100)

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made...

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater. (§ 87103)

Conflict of Interest Code: Government Code § 87300 *et seq.*

Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (§ 87300)

Each Conflict of Interest Code shall contain the following provisions:

- (a) Specific enumeration of the positions within the agency...which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable.
- (b) Requirements that each designated employee...file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income.
- (c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of any decision... (§ 87302)

Ethics in Government Act of 1990: Government Code § 89500 *et seq.*

- (c) No designated employee of a state or local government agency shall accept an honorarium from any source if the...employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (§ 89502)
- (c) No...designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the ...employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (§ 89503)
- (f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10). (§ 89503)

Ethics gift level currently is set at \$330 in a calendar year from a single source. (Title 2, California Code of Regulations, Section 18944)

➤ **CONFLICTS OF INTEREST IN CONTRACTS:**

The Government Code and Public Contract Code govern conflicts of interest in contracts. Some excerpts are provided below:

Basic Prohibition: Government Code § 1090 *et seq.*

...[S]tate...officers or employees 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. Nor shall state...employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. (§ 1090)

Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing script, or other evidences of indebtedness, ... who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state. (§ 1097)

Employees as Contractors: Public Contract Code § 10410 *et seq.*

PCC § 10430 makes the following applicable to the CSU effective July 1, 2003 (refer to HR Letter 2003 –09):

No officer or employee...shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or

in which the officer or employee has a financial interest and which is sponsored or funded...by a state contract unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods. (§ 10410)

Ex-employees as Contractors: Public Contract Code § 10411

No retired, dismissed, separated, or formerly employed person of any state agency...may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment. (§ 10411 (a))

For a period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person...may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. (§ 10411 (b))

Consultants as Contractors: Public Contract Code § 10365.5(a)

PCC § 10430 makes the following applicable to the CSU effective July 1, 2003 (refer to HR Letter 2003 –09):

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. (§ 10365.5 (a))

➤ **PRIVATE GAIN FROM NONPUBLIC INFORMATION: Education Code §§ 89006 and 89909**

It is unlawful for any person to utilize any information, not a matter of public record, that is received by that person by reason of his or her employment by, or contractual relationship with, the trustees, the California State University, or an auxiliary organization of the California State University, for personal pecuniary gain, not contemplated by the terms of the employment or contract, regardless of whether the person is

or is not so employed or under contract at the time the gain is realized.
(§ 89006)

It is unlawful for any person to utilize any information, not a matter of public record, which is received by him by reason of his membership on the governing board of an auxiliary organization, for personal pecuniary gain, regardless of whether he is or is not a member of the governing board at the time such gain is realized. (§ 89909)

➤ **CSU AUXILIARY ORGANIZATIONS CONFLICTS OF INTEREST: Education Code § 89906 et seq.**

No member of the governing board of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he is a member, and any contract or transaction entered into in violation of this section is void. (§ 89906)

➤ **COMMON LAW CONFLICTS OF INTEREST: California Court Decisions**
Even though a specific conflict of interest may not be defined in statute, the California courts have condemned conflicts that violate public trust.

A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated...to discharge the responsibilities with integrity and fidelity...[T]hey may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. ... (Terry v. Bender, 143 Cal.App.2d 198, 206 (1956))

An earlier court summarized:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence. ... (Noble v. City of Palo Alto, 49 Cal.App.47, 51 (1928))

➤ **INCOMPATIBLE ACTIVITIES:**

Gifts of public funds are prohibited:

The Legislature shall have no power to ...make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever...(California Constitution, Article 16, Section 6)

Use of state resources for personal purposes is prohibited:

It shall be unlawful for any...any state or local appointee, employee, or consultant, to use or permit others to use public resources for...personal or other purposes which are not authorized by law..."Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call. (Government Code § 8314)

Personal use of public monies is prohibited:

Each officer of this state...and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either: 1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another...Is punishable by imprisonment in the state prison for two, three or four years, and is disqualified from holding any office in this state. (Penal Code § 424)

➤ **RECEIVING OR ACCEPTING EXTRA COMPENSATION OR ALLOWANCE:**
California Constitution, Article 4, § 17

The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law. (§ 17)