

# ***CONFLICT OF INTEREST HANDBOOK***



PREPARED BY:

OFFICE OF GENERAL COUNSEL  
THE CALIFORNIA STATE UNIVERSITY

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## **Table of Contents**

I.	Introduction.....	1
II.	Political Reform Act of 1974.....	1
A.	The General Prohibition .....	1
1.	What It Is.....	1
2.	Conflicting Personal Financial Interests .....	1
3.	When Disqualification is Required.....	2
B.	CSU Conflict of Interest Code .....	3
1.	Form 700 (Disclosure).....	3
2.	Training.....	4
3.	Restrictions Regarding Honoraria, Gifts and Travel .....	4
4.	Enforcement.....	8
III.	Contract Conflicts .....	8
A.	Government Code §§ 1090 <i>et seq.</i> .....	8
B.	Restrictions on CSU Employees Contracting with the CSU and Other State Agencies.....	9
IV.	Miscellaneous “Conflicts” .....	11
A.	Use of Nonpublic Information for Personal Gain .....	11
B.	Gift of Public Funds .....	11
C.	Salary as Compensation in Full.....	11
D.	Consulting into Another Contract .....	12
E.	Legislator/Federal Officer May Not Be CSU Employee.....	12
F.	Incompatibility of Public Offices .....	12
G.	Outside Employment.....	12
H.	Federal Lobbying and Ethics.....	12

## **Table of Contents**

I.	Restrictions Concerning Student Loan Programs.....	13
J.	Restrictions Concerning Study Abroad Programs.....	13
K.	Auxiliary Organizations.....	13
V.	Conclusion .....	13

# **Conflict of Interest**

## **Handbook**

### I. **Introduction**

The purpose of conflict of interest laws is to prohibit public employees from personally benefitting at the expense of the public interest. There is a wide variety of different conflict of interest statutes, the bulk of which are addressed in this handbook.

While the Political Reform Act of 1974 (Government Code §§ 81000 *et seq.*) is often regarded as the principal conflict of interest law, and is the authority for the [CSU Conflict of Interest Code](#), there are a number of other conflict of interest restrictions with which CSU employees should be familiar. All flow from the basic premise that it is a violation of the public trust for public employees to benefit personally from their public positions.

### II. **Political Reform Act of 1974**

The Political Reform Act of 1974 contains a general prohibition against conflicts of interest in public decision making, as well as a provision for the adoption of a CSU conflict of interest code. It prevails over any other conflict of interest law. Gov't Code § 81013. The restrictions of this Act apply to all CSU employees, without regard to whether they are required to file an annual conflict of interest form.

#### A. **The General Prohibition**

##### 1. **What It Is**

“No public employee at any level of state or local government shall make, participate in making or in any way attempt to use his [or her] official position to influence a governmental [CSU] decision in which [s/he] knows or has reason to know [s/he] has a financial interest.” Gov't Code § 87100. Any person who willfully violates the general prohibition is guilty of a misdemeanor. Gov't Code § 91000. *This prohibition applies to all CSU employees.*

##### 2. **Conflicting Personal Financial Interests**

###### a. **Personal Finances**

A personal financial interest extends beyond the public employee's own finances or investments. A public employee has a personal financial interest in a university decision if it is reasonably foreseeable that the decision will have a material financial effect on the employee, or a member of his/her immediate family, in any one of five economic interests. Gov't Code § 87103.

b. **Five Economic Interests**

- (1) **Business Investment.** Any business entity in which the employee has a direct or indirect investment worth \$2,000 or more, including ownership of stock by the employee or the employee's spouse or dependent child.
- (2) **Real Property.** Any real property in which the employee has a direct or indirect interest worth \$2,000 or more. The employee's home is not included in this calculation but any other investment property would be.
- (3) **Income.** Any source of income that provides \$500 or more in value promised to, or received by, the employee within 12 months prior to the time when the decision is made.
- (4) **Business Position.** Any business entity in which the employee is a director, officer, partner, trustee, employee, or holds any position of management.
- (5) **Gift.** Any donor of, a gift or gifts totaling \$520 or more, received, or promised to the employee within 12 months prior to the decision being made. Meals, travel costs, or anything else of value are included in the \$520. (This amount is tied to a consumer price index and is occasionally adjusted.)

3. **When Disqualification is Required**

If it is foreseeable that the employee will be involved in or influence a university decision that will affect any of these five types of economic interests, the employee has a conflict of interest. The Fair Political Practices Commission, the agency assigned to administer and interpret the Political Reform Act, has provided an analysis to determine when an employee has a conflict of interest that would require the employee to be disqualified from being part of the decision-making process. See: <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf> at page 7. For assistance with this analysis with respect to a particular decision, please contact University Counsel or the [FPPC](#) helpline (866-ASK-FPPC).

Where a conflict of interest exists, the employee must publicly announce the financial interest creating the conflict, *and* must also disqualify himself or herself from involvement in the decision. At a minimum, announcement of a conflict requires that the employee notify his/her direct supervisor and may require that the employee publicly announce the conflict during a public meeting and leave the room. University Counsel should be consulted.

Even where specific criteria are not met and a true conflict of interest does not exist, CSU employees should be sensitive to the *appearance of conflict*, and

should carefully consider whether to participate in a decision-making process whenever they have a financial interest at stake.

The disqualification rule applies to all CSU employees—regardless of whether they file a Form 700.

**B. CSU Conflict of Interest Code**

The Political Reform Act requires CSU to adopt a formal conflict of interest code. The CSU Conflict of Interest Code requires employees who are most likely to be involved in university decision-making to file an annual disclosure form. The purpose of this form is to alert employees to their personal interests that might be affected while they are performing their official duties. Disclosure also helps inform the public about potential conflicts of interest.

**1. Form 700 (Disclosure)**

Every employee in a position designated by the code must complete an annual statement of economic interests called a [Form 700](#). A list of designated positions is published by the CSU every year, and is occasionally amended to reflect changes in position names and decision-making authority.

CSU assigns disclosure categories to each designated employee position, depending on the level of the position and the likelihood that the person holding it will be drawn into particular conflict situations. The disclosure categories identify the types of personal economic interests which the employee must disclose. Each employee in a position designated by the code will receive a Form 700 every year and a cover letter that identifies his/her specific disclosure categories.

The combined list of designated positions and disclosure categories constitutes the [CSU Conflict of Interest Code](#).

Designated employees must file a Form 700 by April 1 each year with the campus filing officer. In addition to the annual filing, the Form 700 must also be filed when the employee first comes in to a designated position, and when the employee leaves a designated position. Failure to file a Form 700, or disclose a reportable interest may result in a penalty being assessed against the individual employee including monetary penalties for as much as \$5,000 per violation or three times the amount illegally obtained.

The Form 700 is a public document and must be made available for public inspection within two business days of any request. Copies of the Form 700 can be provided to the public at a cost of \$.10 per page. The forms must be kept for seven years.

2. **Training**

Employees in positions designated by the code are required to participate in conflict of interest ethics training upon assuming office and every two years thereafter.

3. **Restrictions Regarding Honoraria, Gifts and Travel**

The CSU Conflict Code also prohibits the receipt of any honoraria and gifts over \$520. Gov't Code §§ 89500 *et seq.*; 2 CCR § 18730. A detailed discussion of these limitations is included in the FPPC publication: [Limitations and Restrictions on Gifts, Honoraria, Travel and Loans](#).

a. **Honoraria Prohibition: Speeches, Publications, Conferences, etc.**

With limited exception, an employee in a position designated by the code cannot accept payment for a speech, publishing an article, serving as an emcee or simply participating in a conference, meeting, event or other gathering, from a source that s/he has or will be required to disclose on his/her Form 700.

The *exceptions* to the honoraria prohibition are:

- (1) Payment for transportation, food, and necessary lodging for giving a speech, participating in a seminar, or serving on a panel *within California* from any source, or *outside of California* if provided by a 501(c)(3) nonprofit agency.
- (2) Payments made as part of separate, non-CSU employment.
- (3) Under certain circumstances, the return, donation or reimbursement of an honorarium. *See 2 CCR § 18930 et seq.*

Honorarium payments can always be made to the CSU or donated to a nonprofit organization without raising a conflict issue if: (1) the donation is made directly to CSU or nonprofit; (2) the employee does not make the donation a condition of his/her speech, article, or attendance; (3) the employee does not claim a deduction for the donation; (4) the employee is not identified in connection with the donation and (5) the donation has no reasonably foreseeable financial effect on the official or on any member of his/her immediate family. Of course, speeches can be given at any event for free.

b. **Prohibition on Gifts**

A CSU employee may not accept gifts worth more than \$520 in a calendar year from a source that s/he has been or will be required to disclose on his/her Form 700. With limited exception the reported value of a gift is the fair

market value on the date it was received. Frequently the donor is the only source that can provide information as to fair market value and must be consulted.

Gifts given to the CSU or a CSU auxiliary do not violate this prohibition. Gifts provided to a family member of an employee may be deemed a gift to the employee unless there is an independent and established relationship between the donor and the family member. 2 CCR §18943.

If the value of a gift or gifts exceeds \$50, it must be reported on the employee's Form 700 if it is received from a source that is reportable based on the employee's disclosure categories. It makes no difference that the employee transfers the gift to another employee. An employee may, within 30 days of receipt of a gift, return that gift to the donor, reimburse the donor for the cost, or donate the gift unused to a public entity, or to a charitable organization in which neither the employee or his/her family member is an officer, without taking a tax deduction, to avoid violation of the prohibition on gifts. 2 CCR §§ 18941.

c. **Travel Payments**

Payment of travel costs for CSU employees by another party constitutes a gift. In most instances, designated employees must disclose gifted travel worth \$50 or more on his/her Form 700, and cannot receive any gift (travel or otherwise) in which the aggregate value exceeds \$520 from the same source within a twelve-month period. Before accepting any travel gift, employees should carefully consider whether doing so will result in disqualification from participating in an important decision involving the donor.

Air transportation is valued as follows:

Commercial Aircraft: the value is the actual cost of the ticket.

Private Aircraft: the value is determined by taking the fair market value of the normal charter fare or rental charge for a comparable plane, divided by the number of passengers who shared the flight. 2 CCR §18946.5.

The actual cost of any other benefit provided to the employee on the flight including food, beverages, or entertainment is treated as a separate gift unless the benefit is included as part of the fare.

In some situations, an employee may accept a travel payment without being subject to the \$520 gift threshold. Even if the gift threshold does not apply, the employee may still have to report the travel payment on his/her Form 700 and may be disqualified from making decisions concerning the donor.

Examples of these common travel scenarios include situations where:

(1) Travel is *not subject to the \$520 gift threshold* and is *not reportable*:

- The travel payment is from a source that is not reportable based on the employee's assigned disclosure categories.
- The travel payment is from another government agency and travel is for education or training purposes.
- The travel payment is from a non-profit 501(c)(3) entity for which the employee provides equal or greater consideration.
- The travel payment is made to fulfill the terms of a contract.

(2) Travel is *not subject to the \$520 gift threshold*, but *must be reported* and may *disqualify* the employee from decisions regarding the donor:

- The travel is reasonably related to an issue of state, national or international policy and is either:
  - a) in connection with a speech given by the employee within the United States and limited to the day before and following the speech, or
  - b) provided by a government agency (including foreign government) an educational institution or nonprofit organization (national or foreign).

d. **Gifts to CSU—Not the Individual**

There are limited circumstances where gifts that afford a personal benefit to a CSU employee can be considered a gift to the CSU, and therefore need not be reported on the employee's Form 700. Mostly, these are travel gifts, including accommodations and food associated with the travel. See HR 2017-08.

To qualify as a gift to the CSU, the following strict statutory requirements must be met:

- Travel payments must be pre-approved in writing by the campus representative appointed to handle such gifts;
- The designated campus representative must receive and control the gift and make the determination of which CSU employees will

travel. The donor may not designate by name, title, class or otherwise who will travel or use the gift;

- The travel must be for a limited purpose to constitute official CSU business; **AND**
- CSU must report the payment on a [Form 801](#). If the value of the payments received by the campus is \$2,500 or more in a quarter year, the campus must post the Form 801 on its website and provide it to the FPPC within 30 days of the close of the quarter.

Failure to comply with any of these requirements will result in the gift being classified as personal to the individual who traveled, and likely will need to be reported on his/her Form 700.

Travel payments are limited to the amount of CSU's own reimbursement rates. Additionally, the duration of the travel must be limited to the time necessary to accomplish the purpose for which it was provided.

For additional guidance on CSU travel gifts see FPPC publication: [Limitations and Restrictions on Gifts, Honoraria, Travel and Loans](#).

e. **Tickets and Passes to Events**

There are circumstances where receiving a ticket or pass does not result in a gift to the employee and need not be reported on the employee's Form 700. See HR 2017-08.

A ticket or pass is **not** a gift to the employee where:

1. The ticket or pass is provided by a source for which the employee performs a ceremonial role or function on behalf of CSU; or
2. The recipient of the ticket or pass is not identified by the third party, but is selected by CSU; and
3. The ticket or pass is distributed per CSU policy to meet one of the stated public purposes.

CSU must record the distribution of tickets or passes on a [Form 802](#) and post the form, or a summary of the information on the form on its website and email the FPPC the link displaying this information no later than 45 days from the distribution of the tickets. Failure to comply with this requirement will result in the ticket or pass being classified as personal to the individual and reportable on his/her Form 700.

f. **Tickets to Nonprofit and Political Fundraising Events**

A CSU employee may accept for his/her personal use tickets or other admission privilege to a fundraising event for a nonprofit or political organization as follows:

- (1) **501(c)(3) Organization Fundraiser**: the 501(c)(3) organization may provide two tickets per event to an official that shall be deemed to have no value. Additional tickets for admission, or tickets provided by someone other than the 501(c)(3) organization, are valued as set forth below in Section II.B.f.(3).
- (2) **Political Fundraiser**: the committee or candidate may provide two tickets to the event that shall be deemed to have no value. Additional tickets for admission are valued as set forth below in Section II.B.f.(3).
- (3) **Other Nonprofit Fundraiser**: the value of the ticket is the nondeductible portion of the admission (i.e., the ticket price less the amount donated to the organization). If no face value is listed, the gift is the pro rata share of the cost of the food and beverage, plus the cost of any items given to the attendees. See 2 CCR §18946.4.

4. **Enforcement**

Violations of the Conflict of Interest Code are punishable by disciplinary action (Gov't Code § 91003.5), civil action (§ 91004 *et seq.*), and criminal prosecution (§ 91000).

III. **Contract Conflicts**

A. **Government Code §§ 1090 et seq.**

Government Code § 1090 is an early statute that strictly prohibits CSU employees from making a contract with CSU in which s/he has a personal financial interest. Section 1090 ***voids*** any contract where the CSU employee has any personal financial interest in the contract, including being an officer, employee, agent, attorney, broker, supplier, landlord, or tenant of the contracting party:

However diverse and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, [Section 1090 is violated]. *People v. Daysher* (1934) 2 Cal.2d 141, 146; *People v. Honig* (1996) 48 Cal. App.4th 289, 315.

In *Thompson v. Call* (1985) 38 Cal.3d 633, the California Supreme Court stated that the purpose of this statute is to make certain that “every public officer [is] guided solely by the public interest.” The statute therefore targets the **appearance** of conflict in addition to actual conflicts of interest:

It follows from the goals of eliminating temptation, avoiding the appearance of impropriety, and assuring the [public] of the [public] officer’s undivided and uncompromised allegiance that the violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved. Nor is an actual loss to the public agency necessary for a section 1090 violation. *Id.* at 648.

The “making of a contract” under this statute can include preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and solicitation of bids, in addition to the actual formation of a contract. *Millbrae Ass’n for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; 77 Ops.Cal.Atty.Gen. 112 (1994).

The reach of this statute is very broad and the consequences draconian. It is not enough for a CSU employee to disqualify himself or herself from the decision-making process. See *Thompson*, 38 Cal, 3d 633; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569. **The contract is still void** and the employee is subject to disciplinary, civil and criminal consequences.

#### B. **Restrictions on CSU Employees Contracting with the CSU and Other State Agencies**

There are four prohibitions on CSU employees contracting with the CSU set forth in the Public Contract Code:

1. A CSU employee may not "contract on his or her own individual behalf as an **independent contractor** with any [CSU] department to provide services or goods." Pub. Cont. Code §10831.
  - Although Public Contract Code §10831 exempts employees with teaching and research responsibilities from this prohibition, state and federal law provide that an individual cannot be both an employee and an independent contractor for the same employer at the same time. This restriction applies to all employees and obviates the exception in the Public Contract Code for employees with teaching and research responsibilities. *Dynamex Operation West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Lab. Code §2750.3. Additionally, CSU policy provides that all CSU campuses and the State of California must be treated as a single

employer. Accordingly, an individual employed by a CSU campus who seeks to perform services at any CSU campus (including their home campus) or at another state agency cannot be an independent contractor at any CSU campus or state agency. See HR/Salary 2019-16.

2. A CSU employee may not engage in any activity for compensation which is sponsored or funded by the CSU through or by a CSU contract. (This restriction may not apply to certain employees with teaching or research responsibilities or those acting within the course and scope of their CSU employment.) Pub. Cont. Code §10831.
  - The contract is subject to the restrictions against serving as an independent contractor set forth in Section III.B.1.
  - While an employee with teaching and research responsibilities may be financially interested in a contract for the limited purpose of engaging in an activity for compensation which is sponsored or funded by the CSU through or by a CSU contract, the employee may not be involved in the University's decision to enter into that contract. *See People v. Lofchie* (2014) 229 Cal.App.4th 240, 255; Gov't Code §1090. The employee entering into the contract remains subject to the general prohibition in the Political Reform Act to not "make, participate in making or in any way attempt to use his [or her] official position to influence a governmental [CSU] decision in which [s/he] knows or has reason to know [s/he] has a financial interest." Gov't Code § 87100.
3. For two years following retirement or separation from CSU employment, no former CSU employee "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 [CSU] department." Pub. Cont. Code §10832(a).
  - For other post-retirement employment restrictions see Govt. Code §§ 7522.56 and 7522.57; See also HR 2017-04.
4. For 12 months following retirement or separation from the CSU, no former CSU employee may contract with the CSU if he or she was employed by the CSU "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 ... or separation." Excepted from this restriction are contracts for

expert witness services and contracts to continue attorney services. This prohibition relates to CSU contracts and not a resumption of CSU employment (*e.g.*, a retired annuitant does not come under this restriction), nor does it address contracts with auxiliary organizations. Pub. Cont. Code §10832(b).

- For other post-retirement employment restrictions see Govt. Code §§ 7522.56 and 7522.57; See also HR 2017-04.

#### IV. **Miscellaneous “Conflicts”**

Additional rules forbid other forms of private gain from public service.

##### A. **Use of Nonpublic Information for Personal Gain**

Education Code § 89006 provides that it is unlawful to utilize nonpublic information received by reason of CSU or CSU auxiliary employment, or a CSU or CSU auxiliary contract, for personal gain not contemplated by the terms of the employment or contract. This restriction applies to all officers, employees, and contractors of CSU, and CSU auxiliaries. Violation of this prohibition is punishable as a misdemeanor. Penal Code §19.4.

##### B. **Gift of Public Funds**

California Constitution, Article 16, § 6 prohibits making gifts of any public funds. The state must receive commensurate value whenever its resources are used, including time, equipment, materials, supplies and facilities.

Government Code § 8314 additionally prohibits the use of state resources for nonstate purposes, except uses that are “incidental and minimal” (*e.g.* de minimis personal telephone or photo copy use, see campus policy). There are civil penalties for violation of this section.

##### C. **Salary as Compensation in Full**

California Constitution Article 4, §17 prohibits the payment of bonuses or other forms of extra compensation to a public employee after service has been rendered. A similar restriction for state appointed officers exists in Government Code § 18000 which states: “[t]he salary fixed by law ... is compensation in full for that office and for all services rendered in any official capacity or employment whatsoever ....” Neither section prohibits the identification of incentive awards prior to performing a government service.

D. **Consulting into Another Contract**

A consulting services contractor may not bid on a contract for services, goods, or supplies “that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.” Pub. Cont. Code § 10830.

This prohibition does not apply to architectural, landscape architectural, engineering, environmental, land surveying, or consultation project management firms. Gov’t Code § 4525.

E. **Legislator/Federal Officer May Not Be CSU Employee**

California Constitution Article 4, § 13 forbids California legislators from holding any other State office or employment. Article 7, § 7 forbids paid federal officers from simultaneously being paid State officers, except for limited military service.

F. **Incompatibility of Public Offices**

California courts have determined that a public officer may not accept a second public office with duties that potentially overlap and/or significantly clash with the duties of the first office. The two positions are incompatible, will result in the automatic vacation of the first office. *Chapman v. Rapsey* (1940) 16 Cal.2d 636, 641-644; *People v. Santa Clara* (1996) 49 Cal.App.4th 1471, 1481, 1490; 87 Ops.Cal.Atty.Gen. 153 (2004); 78 Ops.Cal.Atty.Gen. 316 (1995).

G. **Outside Employment**

1. **Management and Executive Employees:** CSU full-time management and executive employees must identify and disclose all outside employment for which they receive compensation to the appropriate administrator. 5 CCR §42740. The Outside Employment Policy is designed to prevent any conflicts of interest or commitment. HR 2016-06.
2. **Faculty:** Outside employment shall not conflict with normal work assignments or satisfactory performance of all duties of the faculty unit employee. See [Article 35](#) of the Collective Bargaining Agreement with the California Faculty Association.

H. **Federal Lobbying and Ethics**

CSU and CSU employees are subject to a detailed set of restrictions under the Lobbying Disclosure Act for gifts and travel provided to members of Congress or their staff. These restrictions are set forth in the ethics rules of the House and Senate. As a general rule, CSU may not provide any gifts, including food or travel, to members of Congress or their staff, unless a specific exception applies (e.g., items of nominal value, such as t-shirts, baseball caps, greeting cards, and

commemorative plaques or trophies). A summary of the full restrictions is found in “[CSU guidance for Congressional gifts and travel 2008](#).” The Office of Federal Relations has posted additional guidance and resources on its [website](#). Knowing violation of these rules can result in civil or criminal penalties.

The Lobbying Disclosure Act also requires CSU to file a quarterly “lobbying activities” report and a semi-annual report of certain contributions.

**I. Restrictions Concerning Student Loan Programs**

CSU has adopted a number of internal safeguards for the administration of student loan programs to avoid the perception of any conflict of interest and promote public confidence. They include restrictions on lenders, procedures for the development of lender lists, and disclosure requirements to prospective student borrowers. Campuses, the financial aid office and university personnel may not accept payments or other benefits from student loan providers. See [AA-2007-12](#).

**J. Restrictions Concerning Study Abroad Programs**

CSU has adopted internal principles to guide its relationships with outside study abroad programs. See [AA-2011-01](#). CSU employees are proscribed from receiving personal benefits from program providers (e.g., the payment of conference, training or registration fees, transportation or lodging costs, advertising or payment for a site visit).

**K. Auxiliary Organizations**

Auxiliary organizations are required to establish and maintain a conflict of interest policy. The legislature has established restrictions on certain contracts and transactions involving auxiliary organization governing board members that could result in, or be perceived as a conflict of interest. See Cal. Educ. Code §89906 *et seq.*

Additionally, an auxiliary organization incorporated as a California nonprofit public benefit corporation must also comply with the California Corporations Code prohibitions on self-dealing transactions in which a member of its governing board has a material financial interest and prohibitions on loans of money or property to, and guarantees of obligations of, its board members or officers. Cal. Corp. Code §§5233 and 5236.

**V. Conclusion**

Even where conflicts of interest are not defined in specific statutes, courts have found they violate the 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 their 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* (1956)143 Cal.App.2d 198, 206.

CSU employees need to be vigilant about conflicts of interest and guided by the overarching principle that they may not derive personal benefit in any way from their employment.

Determining whether an actual or potential conflict of interest exists can be a complicated process. Consultation with University Counsel is strongly encouraged.