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Conflict of Interests Codes and Conflicts

COI Code
identifies...

- **Who files an SEI (Form 700)**
- **What financial interests each filer discloses**



Two categories
of SEI filers

Statutory filers (Section 87200)
– public officials identified by
statute

Code filers (Section 87300) –
any officer, employee, member,
or consultant designated in the
agency’s conflict of interest
code (“designated employee”)

Designated Employee

- Makes, or participates in making decisions which may foreseeably have a material effect on a financial interest.
 - A public official **makes** a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Regulation 18704(a))
 - A public official **participates in** a governmental decision if the official provides information, an opinion, or a recommendation **for the purpose of affecting** the decision without significant intervening substantive review. (Regulation 18704(b))
- "Designated employee" does not include "any unsalaried member of any board or commission which serves a solely advisory function" (Section 82019(b)(1)).

Code adoption

- Each agency must adopt a COI code
- It is the policy of this Act that COI Codes shall be formulated at the most decentralized level possible but without precluding intra-departmental review – Section 87301
- Notice and opportunity to comment
 - State agency codes adopted following APA
 - Local agency code adoption process similarly, must allow agency officials and employees, as well as residents of the jurisdiction, notice and opportunity to present their views.



Required Provisions

- Identify positions that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. “Designated employees”
- For each designated employee, list the types of interests that that may be affected by a decision made or participated in by the designated employee
- Require designated employees to file SEIs
- Recusal provision

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Model Code

- Model Code in Regulation 18730 that agencies can adopt by reference
- Agency still must identify designated employee positions and financial interests required to be disclosed

Code Review

- Each agency must submit a draft code to its code reviewing body
- Code reviewing body is designated in statute
- Code reviewing body can (1) approve (2) revise and approve or (3) return for revisions and resubmission

Grounds for Rejecting a Code

Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented

Fails to provide to each affected person a clear and specific statement of that person's duties under the code

Fails to adequately differentiate between designated employees with different powers and responsibilities

Balance Disclosure and Right to Privacy

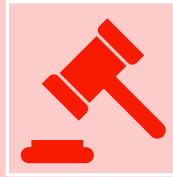


Overbroad disclosure requirements have been struck down by the court when the interest requiring disclosure does not have some relationship to the official's duties.



Carmel-by-the-Sea v. Young (1970) 2
Cal. 3d 259

Amending a Code



Agencies are required to amend their code when necessary due to changed circumstances



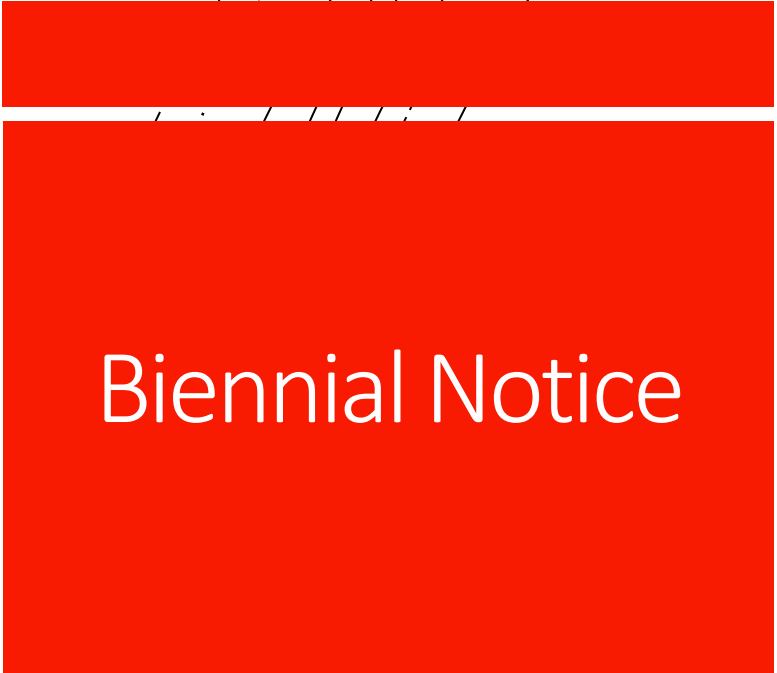
Send amended code to code reviewing body within 90 days of changed circumstances



Agencies have biennial review requirement. Send code reviewing body report every two years detailing any changes to code

Code Review Process at the FPPC

- The FPPC is the Code Reviewing Body for state agencies and multi-county agencies
- Agencies are required to review their conflict of interest codes every two years and inform us if updates are needed.



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2023 State Agency Biennial Notice

Name of Agency: _____
Mailing Address: _____
Contact Person: _____ Phone No: _____
Email: _____ Alternate Email: _____
No. of Employees* _____ No. of Form 700 Filers* _____

**Including board and committee members*

This notice identifies whether a state agency must amend its conflict of interest code due to changed circumstances. The biennial review examines current programs to ensure that the agency's code requires disclosure by agency officials who make or participate in making governmental decisions. The code must also include disclosure categories that are tailored to work functions and ensure that officials report their financial interests that could foreseeably be affected by the official's decisions.

Each agency must identify whether an amendment is required or whether the agency's current conflict of interest code meets the requirements outlined in Government Code Section 87302.

Please identify which statement accurately defines your agency's status.

- This agency has reviewed its conflict of interest code. The current code designates all positions which make or participate in making governmental decisions. The designated positions are assigned accurate disclosure categories that require disclosure of investments, business positions in business entities, interests in real property and sources of income. Disclosure categories accurately relate to the job duties of the designated position. The code incorporates FPPC Regulation 18730 so that all relevant Government Code Sections are referenced.
- This agency has reviewed its conflict of interest code and has determined that an amendment is necessary. An amendment may include the following:
 - New positions which involve making or participating in making of decisions which may foreseeably have a material impact on a financial interest
 - Current designated positions need renaming or deletion
 - Statutorily required provisions of the code need to be addressed
 - Disclosure categories need revision

Note: Amendments to the agency's conflict of interest code should be submitted to the FPPC within 90 days.

I verify that this notice accurately identifies the status of the agency's conflict of interest code as required pursuant to Government Code Section 87306.

Signature of Chief Executive Officer _____ Date _____

Please return this notice no later than March 1, 2023 to the FPPC at biennialnotice@fppc.ca.gov or 1102 Q Street, Suite 3000, Sacramento, CA 95811.

www.fppc.ca.gov
FPPC Advice: advice@fppc.ca.gov (866.275.3772)
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FPPC is the Code Reviewing Body

**692 Multi-
County
Agency Codes**

**224 State
Agency Codes**

Reviewing and Updating the Code

- When updates are needed we begin a collaborative process with the agency to work on the update:
 - Provide resources detailing what is required to be included in a code
 - Request a draft code and other documentation from the agency regarding the positions, including organizational charts, duty statements, and reasoning for why positions are included.
 - Collaboratively determine if positions are properly listed with appropriate disclosure categories based on information obtained from the agencies

The Collaborative Process

- During the collaborative process our staff reviews the draft code and accompanying documents and works with the agency to make revisions if necessary.
- Some of the questions we ask:
 - Are positions in the draft code of the type that normally do not make or participate in making governmental decisions?
 - Are any positions from the organizational chart not listed in the draft code that look like they should be?
 - Is there anything else out of the ordinary?
 - Do similar positions in the code have similar disclosure requirements?
 - Is an appropriate level of disclosure assigned?
 - For example, does a manager of a position have a lower level of disclosure than someone they manage?

Conflict of Interest Code Resources

- **Website:**
- <https://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes.html>
- **Detailed Information Sheets:**
- [Documents/TAD/COIC%20Documents/State%20COIC%20Documents/How to Amend State Agency Conflict of Interest Code.pdf](#)
- **Detailed Sample Disclosure Categories:**
- <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/COIC%20Documents/State%20COIC%20Documents/Sample Disclosure Categories State Agencies.pdf>
- **Informational Webinars:**
- <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Training-and-Outreach/State%20Agency%20%20speakers%20%20pers.pdf>

Failure to Adopt or Amend

- If an agency fails to timely adopt or amend a COI, the code reviewing body can issue an order directing the agency to file, or adopt a code for the agency
- If the code reviewing body doesn't take action within 90 days of the agency's filing/amending deadline, the FPPC may issue an order, or adopt a code for the agency in consultation with the agency
- The superior court can grant relief
 - If a code is not adopted within 6 months of an agency's deadline to submit to the code reviewing body
 - If a code is not amended within 9 months of a change in circumstance

Petition to amend code

- Agency officers, employees, members, and consultants, as well as residents of the jurisdiction can petition the agency to amend its code
- Agency must respond to the petition within 90 days
- Petitioner may appeal a petition that is denied to the code reviewing body
- Code reviewing body can either dismiss the appeal or “issue an appropriate order” within 90 days
- Superior court can grant relief from code reviewing body decision



Citizens' Bond
Oversight
Committee

Is a member of a citizens' bond oversight committee required to file a Statement of Economic Interests?

Analyze whether a CBOC member makes, or participates in making decisions which may foreseeably have a material effect on a financial interest.

CBOC Background

- Prop 39, passed in 2000, amended the California Constitution to require a 55% voter approval—rather than the two-thirds approval requirement in effect at the time—and specified accountability requirements for school construction bond measures.
- Accompanying legislation requires the governing board of a school district to establish an independent citizens' oversight committee whenever a school construction bond measure is approved pursuant to Prop 39.

CBOC Members

- Appointed by the governing board.
- Uncompensated
- Include members representative of certain groups. e.g. business community, senior citizens, parents, etc.
- Cannot be district employee, official, vendor, contractor, or consultant
- Subject to 1090 conflict prohibitions and incompatible activities restrictions

CBOC Purpose

The purpose of the citizens' oversight committee shall be to **inform the public** concerning the expenditure of bond revenues. The citizens' oversight committee shall actively **review and report** on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall **advise the public** as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution [(i.e., Prop 39)]. . .

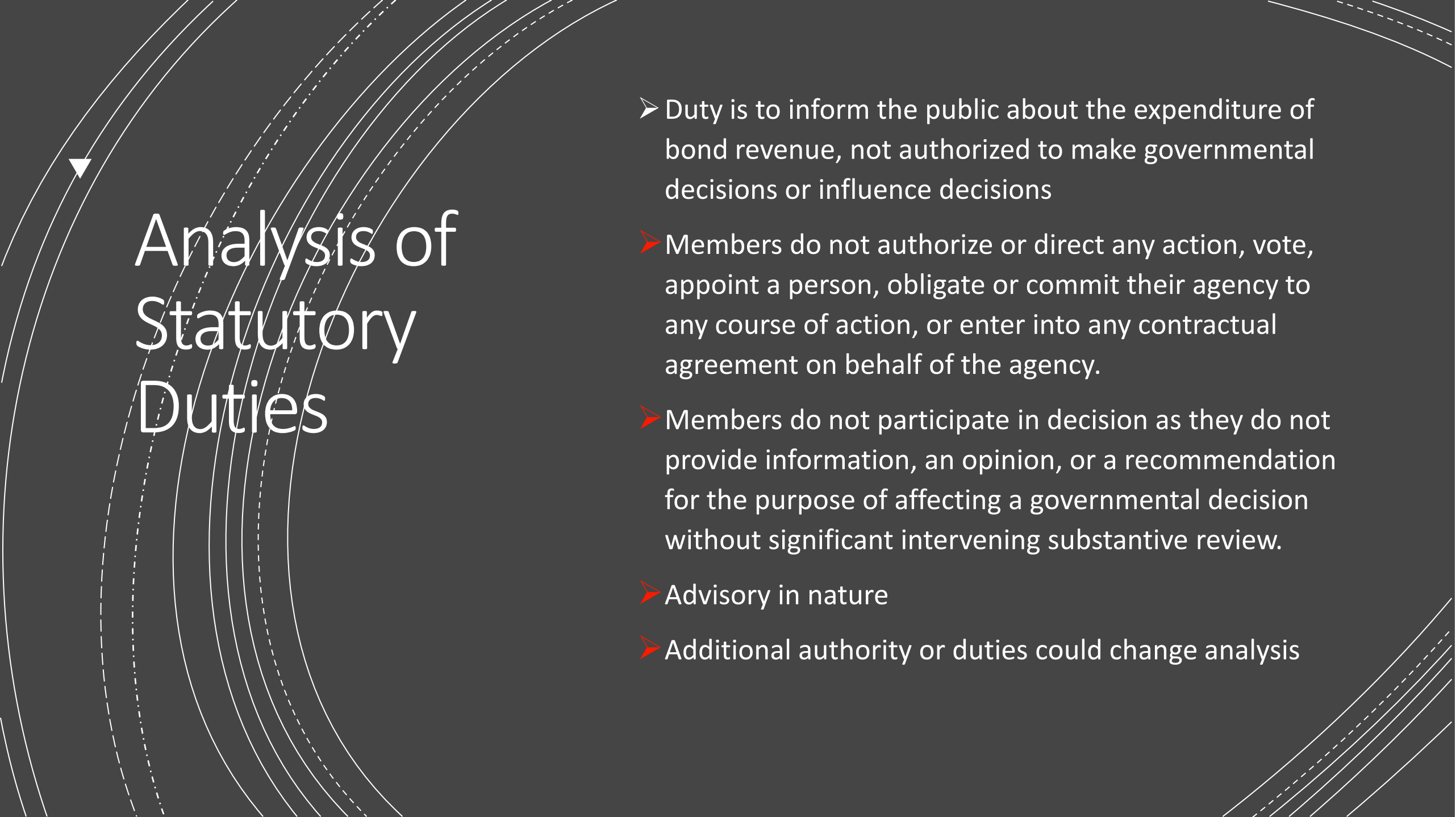
California Education Code 15278(b)



CBOC Activities –
Receive, Review,
Inspect, Report

In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

- (1) Receiving and reviewing copies of the annual, independent performance audit...
- (2) Receiving and reviewing copies of the annual, independent financial audit ...
- (3) Inspecting school facilities and grounds to ensure that bond revenues are expended ...
- (4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, ...
- (5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:
 - (A) Mechanisms designed to reduce the costs of professional fees.
 - (B) Mechanisms designed to reduce the costs of site preparation.
 - (C) Recommendations regarding the joint use of core facilities.
 - (D) Mechanisms designed to reduce costs by incorporating efficiencies in school site design.
 - (E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

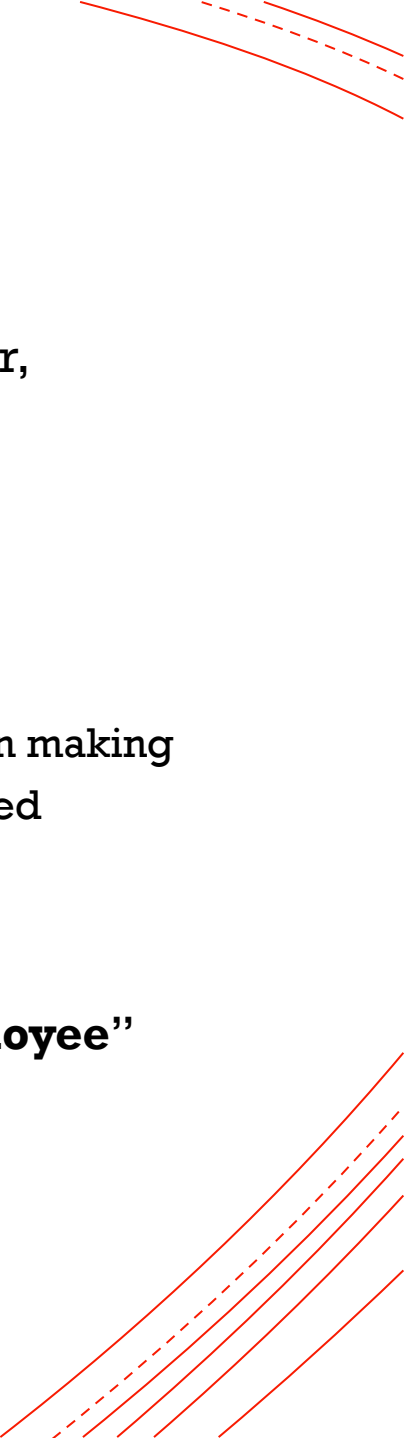


Analysis of Statutory Duties

- Duty is to inform the public about the expenditure of bond revenue, not authorized to make governmental decisions or influence decisions
- Members do not authorize or direct any action, vote, appoint a person, obligate or commit their agency to any course of action, or enter into any contractual agreement on behalf of the agency.
- Members do not participate in decision as they do not provide information, an opinion, or a recommendation for the purpose of affecting a governmental decision without significant intervening substantive review.
- Advisory in nature
- Additional authority or duties could change analysis



Agency Consultants

- “Public official” means every member, officer, employee, or **consultant** of a state or local government agency
 - “Consultant” means a contractor who:
 - (1) Makes a governmental decision or
 - (2) Serves in a staff capacity and participates in making decisions, or performs duties of a designated employee
(See Regulation 18700.3)
 - An agency consultant is a “**designated employee**”
- 

Contract Counsel

Contract city attorneys and agency general counsel will qualify as “consultants” and file SEIs, and are subject to conflict of interest restrictions

Attorneys hired for specific cases or matters may not if they do not meet the criteria of Regulation 18700.3.

Contractors and Conflicts

- If a consultant's recommendation results in additional work not contemplated by the initial contract, a conflict of interest may be present. (In re Maloney (1977) 3 FPPC Ops. 69.)
- A contract city attorney that advises the city to initiate litigation that would increase payments to the attorney's firm under an existing contract does not violate the conflict of interest provisions of the Act so long as the contract under which the attorney renders this advice provides for payment for litigation services. (*Eckis A-93-270*)
- Private attorney hired as construction counsel to agency who advises agency on settlement and litigation of construction claims will qualify as a consultant if the contract term is more than a short duration and the attorney's contact with the agency is more than sporadic (i.e. not limited to one case or a limited number of cases over a limited period of time.) (*Pansky Advice Letter I-14-096*)