

SECTION 4:
Administrative
Policies
and Procedures

Guidelines Relating to Conflict-of-Interest Advice

I. GUIDELINES

These guidelines are intended to outline the consistent processes for Commissioners to seek conflict-of-interest advice from OC LAFCO's general counsel and provide consistency on how matters are handled involving potential conflicts of interest involving Orange County Local Agency Formation Commission ("OC LAFCO") decisions made by a Commissioner. Commissioners are charged individually with responsibility for compliance with conflict-of-interest laws but may consult with OC LAFCO's general counsel to assist Commissioners to make decisions free from bias caused by personal financial interests.

II. LEGAL AUTHORITY

The California Political Reform Act (Government Code Section 81000 et seq.; the "Act" and the regulations of the Fair Political Practices Commission ("FPPC") implementing the Act (2 Cal. Code of Regs. Section 18110 et seq.) prohibit Commissioners' participation in decisions in which they have a financial interest. Government Code Section 10901 prohibits OC LAFCO's entering into contracts in which Commissioners have financial interests.

III. BACKGROUND

The Act makes Commissioners individually responsible for understanding and following the duties and responsibilities of their office. These duties include determining whether they have disqualifying conflicts of interest in OC LAFCO decisions. AB 1234 (Government Code Section 53235) requires that all Commissioners receive regular training on recognizing, reporting, and avoiding conflicts of interest. In addition to this training, Commissioners may research and learn conflict of interest laws on their own, consult publications by the FPPC, seek informal or informal advice from the FPPC, or seek assistance from OC LAFCO general counsel. Only good faith reliance on formal advice from the FPPC can serve as a complete defense in an enforcement proceeding. Because OC LAFCO general counsel represents OC LAFCO as an agency governed by the Commission as a corporate body, individual consultations with general counsel are not separately protected by the attorney-client privilege.

IV. PROCESS

A. OC LAFCO Commissioners (or their authorized representatives) subject to the Act and Government Code Section 1090 may seek conflict of interest advice from OC LAFCO general counsel regarding their participation or disqualification in OC LAFCO decisions. Examples of authorized representatives include Commissioners, their

staff, agency counsel, and personal attorneys.

- B. General counsel is not available to provide advice about the actions of someone other than the Commissioner seeking advice about his or her own conduct. (For example, counsel cannot provide advice to Commissioner A about the implications of Commission B's financial interests.) However, at the request of the Commission, general counsel may provide the Commission advice about the validity of its decisions under Government Code Section 1090.
- C. General counsel is not available to provide advice relating to past conduct, to investigate conflicts of interest, or to enforce conflict of interest laws.
- D. Commissioners seeking assistance in determining whether they have a disqualifying interest under either the Act or a prohibited interest in a contract under Section 1090 may contact general counsel to: (i) obtain advice from general counsel, or (ii) seek general counsel's assistance in obtaining an advice letter from the FPPC. General counsel is authorized to engage experts, such as appraisers or business consultants in an amount not to exceed \$5,000, if counsel deems such experts are necessary to provide this assistance.
- E. General counsel will respond directly to the individual Commissioner seeking advice and shall not share the advice with the entire Commission, unless the advice provided to the individual Commissioner is that the Commissioner has a disqualifying interest, and it appears that the Commissioner intends to participate in an OC LAFCO decision notwithstanding that advice.
- F. When a member of the public or a Commissioner submits an inquiry about whether a Commissioner has a disqualifying interest under either the Act or a financial interest in a contract under Section 1090, that inquiry will be forwarded to the entire Commission, with a copy to general counsel. It shall be the responsibility of the individual Commissioner who is the subject of the inquiry to determine whether he or she will seek advice from general counsel, the FPPC, or his or her own counsel in addressing these inquiries.

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