



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

Brown Act and Conflicts of Interest

Presented by:

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YOUNG, MINNEY & CORR, LLP
SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

WWW.MYCHARTERLAW.COM

FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

Sacramento Office: 655 University Avenue, Suite 150, Sacramento, CA 95825

Los Angeles Office: 5200 Lankershim Avenue, Suite 370, North Hollywood, CA 91601

San Diego Office: 591 Camino De La Reina, Suite 910, San Diego, CA 92106

Walnut Creek Office: 500 Ygnacio Valley Road, Suite 190, Walnut Creek, CA 94596

Janelle A. Ruley

Partner

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Janelle Ruley has been an ardent charter rights advocate since 2007 and has assisted in the establishment or continued operation of hundreds of charter schools. Janelle's primary focus is on charter development, renewal and revocation defense. She has represented charter schools in numerous venues, including before administrative agencies, the courts, school districts, county boards of education, and the State Board of Education.

In her daily practice, Janelle regularly counsels clients regarding charter development, charter petition appeals, charter material revisions, drafting MOUs, negotiations with granting agencies, compliance with public transparency laws and related policy development, as well as Local Control Funding Formula/LCAP issues, student admissions, lottery requirements and a wide range of safe school issues.

Janelle is a frequent presenter at CCSA-sponsored events, as well as the annual APLUS+ Conference.

PRACTICE AREAS

Board Governance
Charter Development
Charter Defense
Independent Study
Public Law
Student Rights & Discipline

EDUCATION

- University of the Pacific, McGeorge School of Law (J.D.)
- Dartmouth College (B.A.)

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Of Counsel

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Wayne brings a distinguished legal career in public service to Young, Minney & Corr, LLP ("YMC"), having served as the Executive Director of the California Fair Political Practices Commission ("FPPC"), a Deputy Attorney General specializing in public corruption at the California Department of Justice, the Commissioner of the California Department of Corporations, and, immediately prior to joining YMC, Wayne was Chief Counsel for the California State Auditor.

Wayne is also a seasoned appellate advocate having argued several cases before the California Courts of Appeal and in Federal District Court. Wayne also served as lead counsel in over 25 jury trials in Superior Court, including the prosecution of a sitting Municipal Court judge.

Wayne was also a member of the Governor's Cabinet while serving as the Executive Director at the Office of Criminal Justice Planning, and served as the Chief Counsel and Legislative Director at the Victim Compensation and Government Claims Board.

Wayne has specialized in conflict of interest and other transparency in government laws, employment law, and grand jury investigations regarding public corruption. He has advised California State Boards and Commissions regarding Open Meeting law, governance, ethics, and policy development. As Chief Counsel for the California State Auditor, Wayne provided legal and policy advice to the State Auditor, the Legislature, and audit staff. He also oversaw the investigations unit that reviewed Whistleblower Protection Act complaints and findings of improper governmental activities.

Wayne has been a guest lecturer at the U.C. Berkeley School of Law, Boalt Hall, and has assisted with the moot court and mock trial programs at U.C. Davis School of Law, King Hall. During the last three years, Wayne has also taught and coached High School Mock Trial.

PRACTICE AREAS

Board Governance
Charter Development
Charter Defense

EDUCATION

- University of the Pacific, McGeorge School of Law (J.D.)
- California State University, Sacramento (B.A.)

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BROWN ACT AND CONFLICTS OF INTEREST

Presented by:
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THE CHARTER LAW FIRM

Disclaimer

- This webinar cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- During the webinar and after we are happy to answer questions as time permits. Please use the question box.
- Sign up for our legal alerts on our website to receive updated information on the topics discussed today:
www.mycharterlaw.com.

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YM&C Firm Overview

- Partners have over 100 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than a majority of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance

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Overview



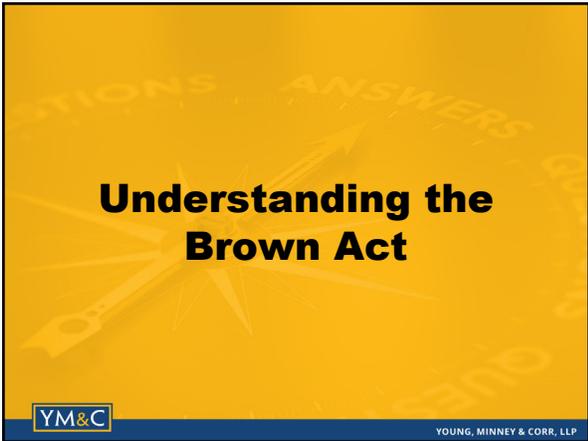
Areas Covered:

- Extensive Brown Act training
- SB 126 (compliance with public laws and Board meeting rules), proposed AB 361 (teleconferencing rules), and AB 824 (student on Board) requirements
- Conflict of Interest rules and Form 700 filing rules

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Understanding the Brown Act



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Education Code 47604.1



**Charter School Transparency Law
Effective January 1, 2020**

- Makes express law that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090 being applicable to charter schools and entities managing/operating charter schools.

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Education Code 47604.1



Location for charter school board meetings:

- **Single charter school:** shall meet within the boundaries of the county in which the charter school is located.
- **Multiple charter schools in same county:** Meet within boundaries of county and a two-way teleconference location shall be established at each school site.
- **One nonclassroom-based** charter school that does not have a facility or operates one or more resource centers shall meet within the boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside.
- A two-way teleconference location shall be established at each resource center.



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Education Code 47604.1



- **Board that manages two or more charter schools that are not located in the same county** shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools reside.
- A two-way teleconference location shall be established at each school site and each resource center.
- The governing body of the entity managing the charter schools in multiple counties shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.



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Education Code 47604.1



- Allows an employee of a charter school to be on the charter school board as long as they *abstain from voting on or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.*
- But extreme caution required due to vague way that statutory language was crafted and the need to comply with other laws.



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Purpose of The Brown Act



What Is the Purpose of the Brown Act?

- ▶ To Foster Broad Public Access



"... The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."



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Meetings



Brown Act Applies to Meetings of the Board

- ▶ Basic Definition



When any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of Charter School business



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Meetings



Board Committees - Nearly all Committees Must Comply with the Brown Act

Exception

A Committee that is:

- ▶ Advisory (not decision making)
- ▶ Composed of only Board members
- ▶ Less than a quorum of the Board
- ▶ Must not be a standing committee



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Meetings



Serial Meetings

Serial Meetings Are Prohibited

- ▶ Majority of Board members
- ▶ Engaging in a series of communications
- ▶ Outside Board meeting
- ▶ Through direct communications or intermediaries or technology
- ▶ To discuss, deliberate, or take action on any item of business (including relaying comments or position of other Board members)



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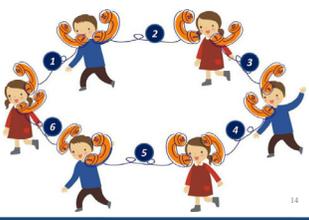
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Meetings



Serial Meetings

- ▶ Hub or Chain
- ▶ Technology may result in meetings at times you might not expect
 - ☐ E-mails
 - ☐ Text messages
 - ☐ Social media
 - ☐ Website postings
 - ☐ Online forums
 - ☐ Telephone calls
 - ☐ Faxes



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Meetings



Serial Meetings

Limit on One-Way Communications

While an employee or official may engage in separate conversations or communications with other members of the Board in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the Board the comments or position of any other member or members of the Board.

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Meetings



Teleconference Meetings

Six Additional Requirements:

1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.



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Meetings



Teleconference Meetings *(cont'd)*

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the Charter School's "jurisdiction."

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Governor's Executive Order and SB 361



A charter school board may hold teleconference meetings without adhering to all the requirements of the Brown Act. Executive Order N-29-20 allows the following flexibility in teleconference meetings:

- ▶ The agenda does not need to provide notice of each teleconference location nor do agendas need to be posted at each location;
- ▶ A quorum of board members need not be located in the Charter School jurisdiction; and
- ▶ Governing board members may participate in a teleconference meeting from places that are not publicly accessible.



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Governor's Executive Order



The charter school board may take advantage of this additional flexibility in teleconference meetings so long as the school complies with the following:

- ▶ The public has access via internet and/or telephone to the Board meeting and can provide public comment in some electronic form.
- ▶ The charter school uses its sound discretion and makes reasonable efforts to adhere, as closely as possible, to the other provisions of the Brown Act in order to maximize transparency and provide public access.



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SB 361- Proposed Law (Emergency Legislation)



If there is a state of emergency proclaimed by the Governor, the same suspension of teleconferencing rules apply IF either state or local officials have imposed or recommended measures to promote social distancing or by Board vote finding imminent risk to health or safety of attendees.



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SB 361- Proposed Law (Emergency Legislation)



Additional requirements beyond the Executive Order:

1. Board must provide means of how public comment will be available (internet/by phone);
2. If a technical disruption occurs, no action can be taken;
3. No early requirement for public comment – must allow for "real time" comments during full public comment period;
4. Board must make a finding every 30 days.



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SB 361 Board Finding



The Board Finding must state that:

- The Board has reconsidered the circumstances of the State of Emergency; and
- The State of Emergency continues to directly impact the ability of members to meet safely in person
And/or
- State or local officials continue to impose or recommend measures to promote social distancing.



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Notice Requirements



Notice and Agendas

General Rule: The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed.

With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.



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Notice Requirements



Contents

- ▶ Brief description = usually not more than 20 words
- ▶ How to request disability-related accommodation
- ▶ Location for inspection of docs distributed to Board



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Notice Requirements



When?

- ▶ Regular meetings – 72 hours notice
- ▶ Special meetings – 24 hours notice
- ▶ Emergency meetings – 1 hour notice (rare)

Where to Post?

- ▶ Physically at a publicly accessible location within the jurisdiction during the entire posting period
- ▶ On the website – homepage with a prominent, direct link



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Rights of the Public



Rights to Enable Access and Participation

- ▶ Give oral testimony at meeting
 - Time limits
 - Addressing disruptive speakers
- ▶ Virtual meetings and best practices (stay in control of your meeting!)
- ▶ Audio record and broadcast



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Rights of the Public



Rights to Enable Access and Participation (cont.)

- ▶ Limitations on conditions of public attendance
- ▶ Non-discriminatory facilities (reasonable accommodations under ADA)
- ▶ Copies of agendas and other public writings



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Closed Sessions



What Are the Permissible Closed Sessions?

- ▶ Pending/Anticipated Litigation (conference with legal counsel)
- ▶ Personnel (appointment, employment, evaluation, discipline, dismissal)

EF Caveat: 24-hour written notice to employee is required if Board will hear complaints and/or charges



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Closed Sessions



What Are the Permissible Closed Sessions?

(cont.)

- ▶ Conference with Real Estate Negotiator
- ▶ Conference with Labor Negotiator
- ▶ Public Security
- ▶ Pupil Discipline (Education Code)

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Closed Session



Requirements

- ▶ Use "Safe Harbor" agenda language (GC 54954.5)
- ▶ Prior to Closed Session:
 - EF Board Must Make a Public Announcement of Reasons for Closed Session Prior to Closed Session
- ▶ Public Must Have an Opportunity to Comment
- ▶ After Closed Session:
 - EF Board Must Make a Public Report of Action Taken in Closed Session and Vote or Abstention of Every Board Member
- ▶ Attendance only for necessary personnel
- ▶ Confidentiality is required

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Executive Compensation

directorship, he
 stewardship, he
integrity
 noun 1. adheren
 principles; sou

Executive Compensation

- ▶ Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
 - ▶ Govt. Code 54953: Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken.
 - ▶ Final action in open session




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Student Board Members



AB 824 Creates Education Code Section 47604.2

- Charter School Board managing:
 - A charter school attended by high school students
 - Multiple charter schools including a charter school attended by high school students
- Pupil Petition including signatures of either (a) at least 500 high school students, or (b) at least 10% of regularly enrolled high school students.
- Upon receipt of the petition, the Board, beginning July 1, 2023, will include at least one student Board member voted in by the student body for a one-year term.
- "Preferential voting rights" – "Formal expression of opinion" before Board vote and recorded in minutes; but not counted and no involvement in closed session items. Student Board members receive open session materials.


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Enforcement



Complaints and Challenges

Notice of Concern

- ▶ Often brought by Charter Authorizer
- ▶ Short turnaround to respond
- ▶ Seek advice from legal counsel on response

Notice and Demand for Cure or Cease and Desist

- ▶ Can be brought by DA or member of the public
- ▶ Board must cure/respond within 30 days
- ▶ Seek advice from legal counsel on response


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Understanding Conflict of Interest Laws

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Conflicts of Interest



Broad Definition

- ▶ A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- ▶ In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.

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Financial Interests



Common Types of Financial Interests Regulated by Conflict Laws

- ▶ Ownership or investment in business entity
- ▶ Investment in real property
- ▶ Source of income
- ▶ Source of gifts
- ▶ Effect on personal finances



⚠ Financial interests of immediate family members of Board Members and employees typically are covered.

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**Government Code
Section 1090**




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**Government Code
Section 1090**



Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract



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**Government Code
Section 1090**



What you need to know about Section 1090

- ▶ If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- ▶ Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- ▶ Thus, this statute is, in most respects, the toughest standard to meet.
- ▶ Violation of GC 1090 is a felony and the contract void!



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Political Reform Act

integrity
noun 1. adherence to principles; sou

DECISIONS

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Political Reform Act

Big Picture

1. Public official
2. Participating in or attempting to influence a governmental decision
3. Public official has qualifying financial interest (*Includes spouse and children*)
4. Financial interest is material

The Official Must Recuse Him or Herself from All Parts of the Decision-Making Process

8P Lots of very detailed regulations have also been adopted by FPPC.

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COI Code

Conflict of Interest Code

- States who must file the Form 700
- Assigns disclosure categories

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Form 700



Form 700

- ▶ Statement of Economic Interests
- ▶ When it must be filed:
 - ▶ Assuming or reappointment to office or position (within 30 days)
 - ▶ Once annually (by April 1st)
 - ▶ Leaving office or position (within 30 days)
- ▶ Penalties for failure to file:
 - ▶ Criminal charges by Atty General or District Atty for deliberate failure to file
 - ▶ Civil or administrative action by FPPC or private citizen

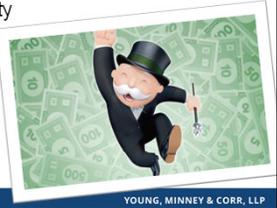
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Political Reform Act



“Financial Interest” for Form 700

- ▶ Investment in business entity of \$2,000 or more
- ▶ Real property investment of \$2,000 or more
- ▶ Income of \$500 or more
- ▶ Business position in entity
- ▶ Gift of \$50 or more



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Form 700



Check the Conflict-of-Interest Code to Determine What You Must Report (Board members: broad disclosure).

- ▶ Typically, All Financial Interests
 - ☞ Not Your Residence
 - ☞ Not Income from a Public Agency
 - ☞ Half of Your Spouse’s Income
 - ☞ Financial Interest within Your Jurisdiction
 - ▶ Property – within 2 miles of jurisdiction
 - ▶ Investments/Business in jurisdiction
 - ▶ Gifts – all gifts inside or outside of jurisdiction



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Form 700



Gifts

- ▶ General rule is that you cannot accept more than \$500 from one source in a calendar year.
- ▶ General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).

1. Many exceptions to both general rules, the most common being:
 - ☞ Special Occasions – Birthdays, Holidays:
 - ▲ Can be gifts from anyone (other than lobbyists) if the gift giving and taking is proportional.
2. Inheritance

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Form 700



Gift (cont.)

3. Family Members:
 - ☞ Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)
4. "BFF's"- Long-term friendships:
 - ☞ Friends for a "period of time" and gift giving and taking must be proportional. (other than a lobbyist)
5. Dating – "bona fide" relationship (other than a lobbyist)
 - ☞ Returning or Donating Gifts vs. Reporting

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Common Law on Conflicts-of-Interest



Prohibition Against Conflicts of Interest

- ▶ Public official engaging in transaction or influencing decision.
- ▶ Creating an appearance of impropriety (financial interest not necessarily required)

Doctrine of Incompatible Offices

- ▶ Public official holding two public offices simultaneously
- ▶ Offices are incompatible with each other (creating divided loyalties); overlapping jurisdictions

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**QUESTIONS AND
RESPONSES**

**THANKS FOR
ATTENDING
TODAY!**

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