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Ethics in Government

Joint Legislative Committee

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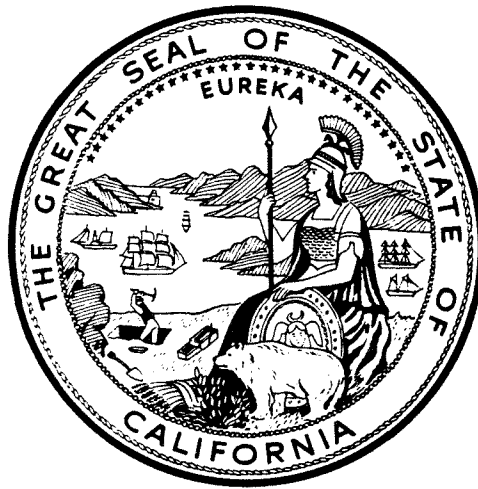
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ETHICS IN GOVERNMENT

A Report on the Activities of the
Joint Legislative Ethics Committee
to the California State Legislature



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California Legislature

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CHAIRMAN

MEMBERS

SENATOR ROBERT PRESLEY
VICE CHAIRMAN

SENATORS

WILLIAM CRAVEN
JOHN DOOLITTLE

ASSEMBLY MEMBERS

PHILLIP ISENBERG
MAXINE WATERS

PREFACE

This report of the activities of the Joint Legislative Ethics Committee was prepared pursuant to Section 8954 of the Government Code to provide the Members and their staff with an understanding of the Code of Ethics and the role of the committee.

This publication provides general information only and does not have the force and effect of law. In the case of any conflict, the applicable law, regulation, or rule shall apply. Interested persons should obtain the most up-to-date information available because of possible changes in the law or procedures since the publication of this report.

This report is not part of the record of any past or present investigation, inquiry, or proceeding before the committee and does not contain any confidential records as contemplated by Section 8953 of the Government Code.

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California Legislature

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I. INTRODUCTION

With the passage of Proposition 112 (SCA 32) on June 5, 1990, the voters have acknowledged their support for an ethics reform package that is tied to the creation of a Citizens Compensation Commission, which shall have the exclusive power to set the salaries and all fringe benefits, except retirement, for Members of the Legislature and other related state officers. It also prohibits Members and other elected state officers from receiving any honoraria and imposes restrictions on gifts, lobbying activity, and the sources of income of these officers.

Similarly in 1966, the people adopted Proposition 1A (ACA 13) which created a full-time legislature, raised the salary of Members to \$16,000 a year, commencing January 2, 1967, and amended the state constitution to provide that the Legislature could only raise its salary by 5% as specified. Tied to that proposition becoming operative was AB 173, which passed the Assembly and Senate on July 7, 1966, and enacted the California Legislature's first Code of Ethics and created the Joint Legislative Ethics Committee (Articles 2 and 3 (commencing with Sections 8920 and 8940, respectively) of the Government Code). Although it has been nearly 24 years since the passage of Proposition 1A (ACA 13), the passage of Proposition 112 (SCA 32) represents another major step in legislative ethics reform.

At present, the role of the committee is to investigate and make findings and recommendations to each house concerning alleged violations of the conflict of interest provisions contained in the Code of Ethics by both Senate and Assembly Members and their employees. (subd. (a), Sec. 8924, Gov. C; Joint Rule 45). To this end, the committee is charged with the duty to determine whether any Member or legislative employee has an interest, financial or otherwise, direct or indirect, or

engages in any business or transaction or professional activity, or incurs any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed in the laws of this state (subd. (a), Sec. 8920, Gov. C.).

The Code of Ethics (Article 2 (commencing with Section 8920) of the Government Code) and Joint Rule 44, enumerate a number of specific activities with certain exceptions which constitute interests that may be in substantial conflict with the proper discharge of a Member's duties in the public interest and of his or her responsibilities as prescribed in the laws of this state (subd. (b), Sec. 8920, and Secs. 8921 and 8922, Gov. C.). The Code of Ethics also prohibits any person from inducing or seeking to induce any Member to violate any provision of the code (Sec. 8925, Gov. C.). Any person who knowingly and willfully violates any provision of the Code of Ethics is guilty of a misdemeanor and any person who conspires to violate any provision of the code is guilty of a felony (Sec. 8926, Gov. C.).

In addition to the Code of Ethics, the committee also may investigate alleged violations of those conflict of interest provisions of the Political Reform Act of 1974 (commencing with Section 81000) of Title 9 of the Government Code which are contained in Article 1 (commencing with Section 97100) of Chapter 7 of the Government Code. Because the remedies provided in Chapters 3 (commencing with Section 83100) of the Government Code and 11 (commencing with Section 9100) of the Government Code are not applicable to elected state officers for violations or threatened violation of these provisions, the Fair Political Practices Commission may refer complaints against Members to the committee. The committee then makes an independent evaluation to determine whether the allegations contained in the complaint constitute a violation under the Code of Ethics. SB 1738 and Proposition 112, under the jurisdiction of the Fair Political Practices Commission, amend these provisions to prohibit a Member from making, participating in making, or in any way attempting to use his or her official position to influence specified governmental decisions in which the Member knows or has reason to know that he or she has a financial interest. These new provisions apply the remedies provided in Chapter 3 (commencing with Section 83100) of the Government Code.

The committee recognizes that it has been charged with the responsibility of overseeing those conflict of interest provisions embodied in the Code of Ethics applicable to Members and their employees. But it also acknowledges that with the passage of Proposition 112 and the institutionalization of ethics education, the committee may assume a more active role in the process of informing Members and legislative employees of their responsibilities and ethical obligations under the Ethics in Government Act of 1990 (SB 1738). The committee hereby submits this report to the leadership of both houses and the public for consideration and review.

II. HISTORY OF THE COMMITTEE

Since 1970, the Joint Legislative Ethics Committee has received and acted upon thirty (30) complaints. Between 1970 and 1980 the committee held a series of closed session meetings to discuss four legislative complaints. Two of these matters resulted in formal public hearings.

In addition, the committee held a public hearing on January 29, 1981 to discuss proposed changes to the Code of Ethics. This resulted in SB 884 (Presley) (Chapter 74, Statutes of 1982), which amended the Code of Ethics to prohibit any Member of the Legislature from accepting or agreeing to accept any employment, fee, or other thing of monetary value in consideration of appearing, agreeing to appear, or taking any other action on behalf of another person before any state board or agency.

SB 884 also imposed additional duties on the committee with respect to making determinations and findings of fact and reporting these to each house of the Legislature. It also provided that the committee may recommend to each house what actions, if any, should be taken against a Member who violates the Code of Ethics and that the house in which the Member serves shall have 90 days after receiving the findings and report of the committee within which to take action with respect to that Member.

The bill also required greater detail in specifying the contents of the written complaint and provided that no complaint may be filed with the committee after 12 months, instead of 6 months, from the date of the alleged violation. It also made certain documents public records and opened to public inspection.

Between 1982 and 1988, the committee acted upon fourteen (14) complaints, five of which became the subject of a formal Legislative Counsel opinion prior to the recommendation of any formal action by the committee.

Since May 25, 1989, the committee has met five times. During this period of time, the committee reviewed, revised, and acted upon proposed committee procedures for conducting investigations and formal hearings. On March 26, 1990, the committee held a formal public hearing and adopted a set of procedures and rules for conducting its business and issuing written and oral advisory opinions. Five of the committee's meetings

were devoted to the consideration of what formal action, if any, would be taken regarding certain complaints that had been received by the committee.

Within the last ten months, the committee has considered twelve (12) written statements of alleged misconduct, four of which have been the subject of a formal written opinion issued by the committee's chief counsel. Of these, ten (10) were disposed of without the need of any hearing by the committee and six of the statements alleged conduct that was not within the jurisdiction of the committee. All of these matters are routinely disposed of by the formal action of the committee pursuant to Section 8954 of the Government Code. Under the committee's new procedures, the committee may authorize a preliminary inquiry pursuant to subdivision (b) of Section 8943 and Section 8954 of the Government Code.

III. CONFLICT OF INTEREST AND THE
ETHICS IN GOVERNMENT ACT OF 1990

With the passage of both SB 1738 (Chapter 84, Statutes of 1990) and Proposition 112 (SCA 32), effective January 1, 1990, under the Political Reform Act of 1974, a Member of the Legislature shall be prohibited from making, participating in making, or in any way attempting to use his or her official position to influence specified governmental decisions in which the Member knows or has reason to know that he or she has a financial interest (Secs. 87102, 87102.5, and 87102.6, Gov. C., effective January 1, 1990).

In this regard, the Code of Ethics generally prohibits a Member from participating, by voting or any other action, on the floor of either house, in committee, or elsewhere, in the passage or defeat of legislation in which the Member has a personal (financial) interest, except as specified (para. (5), subd. (b), Sec. 8920, Gov. C.).

To the extent that Sections 87102, 87102.5, and 87102.6 of the Government Code and the Code of Ethics may encompass the same or similar conduct regarding legislation in which a Member has a financial interest, conduct which violates these new provisions may also constitute a violation of the Code of Ethics. A Member who violates the Code of Ethics may be subject to criminal penalties.

The penalties under Sections 87102, 87102.5, and 87102.6 of the Government Code are limited to the remedies provided in Chapter 3 (commencing with Section 83100) of the Government Code, which includes the payment of a fine of up to \$2,000 for each violation. These remedies are civil in nature.

IV. ETHICS EDUCATION: CONFLICT OF INTEREST

OUTLINE

Areas to be covered relating to conflict of interest under the Code of Ethics:

Section 8920(a), Gov. C.

1. What kind of interests are prohibited under the Code of Ethics?

A. Direct Interests

- 1) Financial
- 2) Personal
- 3) Other

B. Indirect Interests

- 1) Financial
- 2) Personal
- 3) Other

2. What kind of business transactions or professional activities are covered under the Code of Ethics?

- A. Business transactions
- B. Professional activities
- C. Other transactions or activities
- D. Exceptions

3. What kind of obligations are covered under the Code of Ethics?

- A. Financial
- B. Personal
- C. Other

Section 8921, Gov. C.

4. Limitations: What is an interest which is in substantial conflict with the proper discharge of a Member's duties in the public interest and of his or her responsibilities as prescribed in the laws of this state?

- A. The Member has a reason to believe that he or she will derive a direct monetary gain or suffer a direct

monetary loss by reason of his or her official activity:

- 1) Financial interest
- 2) Personal interest
- 3) Other - nonfinancial

B. Exceptions: The benefit or detriment accrues to the Member to no greater extent than any other member of the following:

- 1) Any business
- 2) Profession
- 3) Occupation
- 4) Group

C. Other exceptions: Section 8922, Gov. C.

- 1) Remote Interests: A Member's relationship to a potential beneficiary interested in a public contract may be a remote interest which is not otherwise prohibited by law.
 - a. A nonsalaried officer of a nonprofit corporation, except as specified.
 - b. An employee or agent of the contracting party as specified.
 - c. Other remote interests as defined (Sections 1091, 1091.1 or 1091.5, Gov. C.).
- 2) The receipt of a campaign contribution regulated, received, reported, and accounted for pursuant to Title 9 (commencing with Section 81000) of the Government Code is not prohibited if the contribution is not made on the understanding or agreement, in violation of law, that the person's vote, opinion, judgment, or action will be influenced thereby.

Section 8920(b), Gov. C.
Prohibited Activities

5. Members and legislative employees are prohibited from doing any of the following:

A. Acceptance of other Employment as specified:

- 1) Impairs independence of judgment.
- 2) Conflicts with official duties

- 3) Standard - Reasonable person - The Member has reason to believe.
 - 4) Or other employment requires or induces the Member to disclose confidential information acquired in the course of his or her official duties.
 - 5) What confidential information is covered under the Code of Ethics?
- B. The willful and knowing disclosure, for monetary gain, of confidential information acquired by the Member in the course of his or her official duties is prohibited.
- C. The use of such confidential information for the purpose of monetary gain is also prohibited.
- D. The acceptance or agreement to accept, or a partnership with any person who accepts or agrees to accept, any employment, fee, or other valuable consideration, for appearing, or agreeing to appear, or taking any other action on behalf of any person before any state board or agency is also prohibited.
- 1) Exceptions:
 - a. Attorney representation.
 - b. Inquires on behalf of constituents.
 - c. Advocacy without compensation: trading advocacy for campaign contributions would be prohibited.
 - d. Intervention on behalf of others to require a state board or agency to perform a ministerial, nondiscretionary act.
 - e. Advocacy on behalf of the Member himself or herself.
 - f. Other partnership or firm compensation in which the Member does not share either directly or indirectly in any fee, less any expenses attributable to the fee resulting from the transaction.
- E. The receipt or agreement to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process is prohibited.
- 1) Exception for speeches or published works is modified by SB1738 to the extent that "honorariums" are banned. A Member may no longer receive fees for any speech given or article published. Books are not covered.

- F. The participation by the Member in the passage or defeat of legislation in which the Member has a personal interest is prohibited.
- 1) This includes the following:
 - a. Voting - on the floor or in committee.
 - b. Any other committee or legislative action to pass or defeat the legislation.
 - 2) Exceptions:
 - a. Disclosure - The Member shall file a statement of his personal interest to be entered on the journal as specified before he or she may vote for final passage of the legislation.
 - b. Nondisclosure - The Member may be excused, as specified, from voting for the final passage of legislation in which he or she has a personal interest without any entry in the journal if the Member believes that he or she should abstain from voting.

These prohibitions do not apply to persons who are members of the state civil service as defined in Article VII of the California Constitution.

Section 8924, Gov. C.

6. The Code of Ethics applies to all legislative employees:
- 1) Articles 2 and 3 which are applicable to Members also apply to employees of either house of the Legislature.
 - 2) Legislative employees may serve in an elective or appointive office of any regional or local public agency.

Section 8925, Gov. C.

7. All persons are prohibited from inducing or seeking to induce any Member or legislative employee to violate the Code of Ethics.

Section 8926, Gov. C.

8. Criminal penalties:

- 1) Misdemeanor violation.
- 2) Conspiracy: felony violation

V. SUMMARY: A COMPARATIVE VIEW

The committee has, within the last ten months, disposed of 12 written statements of alleged misconduct and has responded to numerous inquiries and other complaints of alleged conflict of interest.

In contrast, the U.S. Senate Ethics Committee, during its 26 year history has held only four public hearings regarding alleged misconduct by four U.S. Senators. Moreover, the Senate Code of Conduct as originally conceived was much broader than California's Code of Ethics and encompassed four major areas:

1. Outside employment of officers and employees.
2. The raising and permissible use of campaign contributions by Senators and senatorial candidates.
3. The political fund-raising activities of Senate employees.
4. Financial disclosure by Members, officers, and designated employees of the Senate and senatorial candidates.

Although the original Senate Select Committee on Standards and Conduct undertook several investigations from 1969 to 1977, the Senate Code of Ethics was criticized for being too weak. Its financial disclosure rules were considered insufficient, partly because of their almost total confidentiality. Although there were numerous proposals for change, none of these were accepted.

Since 1977, S. Res. 110, as adopted, expanded and amended the Senate Rules of Conduct to include public financial disclosure, conflicts of interest, political activities of staff, employment practices, restrictions on the acceptance of gifts, the use of the congressional franking privilege and the radio and television studios, unofficial office accounts, foreign accounts, foreign travel, and outside earned income and employment.

In Summary, the Joint Legislative Ethics Committee has continued to respond to complaints of alleged misconduct and has made numerous inquiries regarding alleged violations under the Code of Ethics. Moreover, the committee has adopted procedures and rules, issued written advisory

opinions to Members, and is presently participating in the process of educating Members and their staff concerning the new ethics reforms.

VI. APPENDICES

APPENDIX A

VII. CODE OF ETHICS

PROHIBITIONS

SECTION 8920 OF THE GOVERNMENT CODE

- (a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.
- (b) No Member of the Legislature shall do any of the following:
 - (1) Accept other employment which he has reason to believe will either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.
 - (2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain.
 - (3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of monetary value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before any state board or agency.

This subdivision shall not be construed to prohibit a member who is an attorney at law from practicing in that capacity before any court or before the Workers' Compensation Appeals Board and receiving compensation therefor. This subdivision shall not act to prohibit a member from acting as an advocate without compensation or making inquiry for information on behalf of a constituent before a state board or agency, or from engaging in activities on behalf of another which require purely ministerial acts by the board or agency and

which in no way require the board or agency to exercise any discretion, or from engaging in activities involving a board or agency which are strictly on his or her own behalf. The prohibition contained in this subdivision shall not apply to a partnership or firm of which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from the transaction. The prohibition contained in this subdivision as it read immediately prior to January 1, 1983, shall not apply in connection with any matter pending before any state board or agency on or before January 2, 1967, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 2, 1967. The prohibition contained in this subdivision, as amended and operative on January 1, 1983, shall not apply to any activity of any Member in connection with a matter pending before any state board or agency on January 1, 1983, which was not prohibited by this section prior to that date, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 1, 1983.

- (4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California.
- (5) Participate, by voting or any other action, on the floor of either house, in committee, or elsewhere, in the passage or defeat of legislation in which he has a personal interest, except as follows:
 - (i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and, notwithstanding that interest, he is able to cast a fair and objective vote on that legislation, he may cast his vote without violating any provision of this article.
 - (ii) If the member believes that, because of his

personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

The provisions of this section do not apply to persons who are members of the state civil service as defined in Article VII of the California Constitution.

DEFINITIONS

SECTION 8921 of the GOVERNMENT CODE

A person subject to this article has an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this article, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. He does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this article, if any benefit or detriment accrues to him as a member of a business, profession, occupation, or group to no greater extent than any other member of that business, profession, occupation, or group.

EXCEPTIONS

SECTION 8922 of the GOVERNMENT CODE

A person subject to the provisions of this article shall not be deemed to be engaged in any activity which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state, or have a personal interest, arising from any situation, within the scope of

this article, solely by reason of any of the following:

- (a) His relationship to any potential beneficiary of any situation is one which is defined as a remote interest by Section 1091 or is otherwise not deemed to be a prohibited interest by Section 1091.1 or 1091.5.
- (b) Receipt of a campaign contribution regulated, received, reported, and accounted for pursuant to Title 9 (commencing with Section 81000), so long as the contribution is not made on the understanding or agreement, in violation of law, that the person's vote, opinion, judgment, or action will be influenced thereby.

EMPLOYEES

SECTION 8924 of the GOVERNMENT CODE

- (a) No employee of either house of the Legislature shall, during the time he is so employed, commit any act or engage in any activity prohibited by any provision of this article. The provisions of this article and Article 3 (commencing with Section 8940) which are applicable to a Member of the Legislature are also applicable to any employee of either house of the Legislature.
- (b) Nothing in this part shall be construed to prohibit an employee of either house of the Legislature from serving in an elective or appointive office of any regional or local public agency.

PENALTIES

SECTION 8925 of the GOVERNMENT CODE

No person shall induce or seek to induce any Member of the Legislature to violate any provision of this article.

SECTION 8926 of the GOVERNMENT CODE

Every person who knowingly and willfully violates any provision of this article is guilty of a misdemeanor. Every person who conspires to violate any provision of this article is guilty of a felony.

APPENDIX B

VIII. JOINT LEGISLATIVE ETHICS COMMITTEE

COMPOSITION

SECTION 8940 of the GOVERNMENT CODE

The Joint Legislative Ethics Committee is hereby created. The committee shall consist of three Members of the Senate and three Members of the Assembly who shall be selected in the manner provided for in the Joint Rules of the Senate and Assembly. Of the three members appointed from each house, at least one from each house shall be a member of the political party having the largest number of members in that house and at least one from each house shall be a member of the political party having the second largest number of members in that house. The committee shall elect its own chairman. Vacancies occurring in the membership of the committee shall be filled in the manner provided for in the Joint Rules of the Senate and Assembly. A vacancy shall be deemed to exist as to any member of the committee whose term is expiring whenever such member is not reelected at the general election.

POWERS

SECTION 8941 of the GOVERNMENT CODE

The committee is authorized to make rules governing its own proceedings. The provisions of Rule 36 of the Joint Rules of the Senate and Assembly relating to investigating committees shall apply to the committee. Prior to the issuance of any subpoena by the committee with respect to any matter before the committee, it shall by a resolution adopted by a vote of two members of the committee from each house of the Legislature define the nature and scope of its investigation in the matter before it.

SECTION 8942 of the GOVERNMENT CODE

Funds for the support of the committee shall be provided from the Contingent Funds of the Assembly and the Senate in the same manner that such funds are made available to other joint committees of the Legislature.

SECTION 8943 of the GOVERNMENT CODE

- (a) The committee shall have power, pursuant to the provisions of this article, to investigate and make

findings and recommendations concerning alleged violations by Members of the Legislature of the provisions of Article 2 (commencing with Section 8920).

- (b) The committee may, on its own action, initiate an investigation of a Member of the Legislature. The action may be taken only if the requirements of Section 8954 are satisfied.

COMPLAINTS

SECTION 8944 of the GOVERNMENT CODE

- (a) Any person may file a statement alleging a violation of Article 2 (commencing with Section 8920) with the committee.
- (b) To constitute a valid complaint, the statement shall satisfy all of the following requirements:
 - (1) It shall be in writing.
 - (2) It shall state the name of the Member of the Legislature alleged to have committed a violation.
 - (3) It shall set forth allegations which, if true, would constitute a violation of Article 2 (commencing with Section 8920). These allegations shall be stated with sufficient clarity and detail to enable the committee to make a determination pursuant to Section 8945.
 - (4) It shall be signed by the complainant under penalty of perjury.
 - (5) It shall include a statement that the facts are true of the complainant's own knowledge or that the complainant believes them to be true.
- (c) As used in this article, the term "complaint" means a valid complaint as specified in subdivision (b).
- (d) If a complaint is filed with the committee, the committee shall promptly send a copy of the complaint to the Member of the Legislature alleged to have committed the violation complained of, who shall thereafter be designated as the respondent, and the committee may send a copy of the complaint to the house in which the respondent serves, the Attorney General, the Fair Political Practices Commission, and the district attorney

of the county in which the alleged violation occurred.

- (e) No complaint may be filed with the committee after the expiration of 12 months from the date upon which the alleged violation occurred.

INVESTIGATIONS

SECTION 8945 of the GOVERNMENT CODE

- (a) If the committee determines that the complaint does not allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of Article 2 (commencing with Section 8920), it shall dismiss the complaint and notify the complainant and respondent thereof. If the committee has sent a copy of the complaint to any other person or entity specified in subdivision (d) of Section 8944, the committee shall also notify that person or entity of its determination under this subdivision.
- (b) If the committee determines that the complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of Article 2 (commencing with Section 8920), the committee shall promptly investigate the alleged violation and, if after the preliminary investigation, the committee finds that probable cause exists for believing the allegations of the complaint, it shall fix a time for a hearing in the matter, which shall be not more than 30 days after the finding. If, after the preliminary investigation, the committee finds that probable cause does not exist for believing the allegations of the complaint, the committee shall dismiss the complaint. In either event the committee shall notify the complainant and respondent of its determination.
- (c) If a result of an investigation initiated pursuant to subdivision (b) of Section 8943, determines that probable cause exists for believing that a Member of the Legislature has violated any of the provisions of Article 2 (commencing with Section 8920), the committee shall fix a time for a hearing in the matter, which shall be not more than 30 days after the determination.
- (d) The committee shall make its determination under subdivision (a) or (b) not later than 90 days after first receiving a complaint which contains all of the information required by Section 8944. The committee may, however, seek an extension, not to exceed 90 days, which may be granted by a majority vote of the membership of each house. If the committee has requested a law enforcement agency to investigate the complaint or if the committee knows that the complaint is being investigated by a law enforcement agency, the time limits set forth in this subdivision shall be tolled until the investigation is completed.

- (e) The committee's determination under subdivision (b) or (c) shall be stated in writing, with reasons given therefor, and shall be provided to the house in which the respondent serves, the Attorney General, the Fair Political Practices Commission, and the district attorney of the county in which the alleged violation occurred. The written determination provided pursuant to this subdivision is a public record and open to public inspection.
- (f) Any deliberations of the committee from the time of receipt of a complaint until it decides to dismiss the complaint or to set a hearing shall not be open to the public unless the respondent requests a public meeting.

SECTION 8946 of the GOVERNMENT CODE

After the complaint has been filed the respondent shall be entitled to examine and make copies of all evidence in the possession of the committee relating to the complaint.

HEARINGS

SECTION 8947 of the GOVERNMENT CODE

If a hearing is to be held pursuant to Section 8945 the committee, before the hearing has commenced, shall issue subpoenas and subpoenas duces tecum at the request of any party in accordance with Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2. All of the provisions of Chapter 4, except Section 9410, apply to the committee and the witnesses before it.

SECTION 8948 of the GOVERNMENT CODE

At any hearing held by the committee:

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to be represented by legal counsel; to call and examine witnesses; to introduce exhibits; and to cross-examine opposing witnesses.
- (c) The hearing shall be open to the public.

SECTION 8949 of the GOVERNMENT CODE

Any official or other person whose name is mentioned at any investigation or hearing of the committee and who believes

that testimony has been given which adversely affects him, shall have the right to testify or, at the discretion of the committee, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains.

SECTION 8950 of the GOVERNMENT CODE

- (a) After the hearing the committee shall state its findings of fact. If the committee finds that the respondent has not violated any provisions of Article 2 (commencing with Section 8920), it shall order the action dismissed, and shall notify the respondent and complainant thereof and shall also transmit a copy of the complaint and the fact of dismissal to the house in which the respondent serves, the Attorney General, the Fair Political Practices Commission, and the district attorney of the appropriate county. The complaint and the fact of dismissal transmitted pursuant to this subdivision are public records and open to public inspection.
- (b) If the committee finds that the respondent has violated any provisions of Article 2 (commencing with Section 8920), it shall state its findings of fact and submit a report thereon, which may include any recommendations as to actions which the committee believes would be appropriate to take against the respondent, to the house in which the respondent serves, send a copy of the findings and report to the complainant and respondent, and the committee shall also report thereon to the Attorney General, the Fair Political Practices Commission, and the district attorney of the appropriate county. The report submitted pursuant to this subdivision is a public record and open to public inspection.
- (c) The house in which the respondent serves shall have 90 days after the receipt of a copy of the findings and report described in subdivision (b) within which to take action with respect to the respondent and may take no action against a respondent after that time regarding the allegations in the complaint which resulted in the findings and report described in subdivision (b).

OTHER PROCEEDINGS

SECTION 8951 of the GOVERNMENT CODE

Nothing in this chapter shall preclude any person from instituting a prosecution for violation of any provision of

Article 2 (commencing with Section 8920) unless that person has filed a complaint with the committee concerning the violation, in which case that person may not file a complaint with the district attorney of the appropriate county to institute a criminal prosecution for the violation until the committee has made its determination of the matter or a period of 120 days has elapsed since the filing of the complaint with the committee.

SECTION 8952 of the GOVERNMENT CODE

The filing of a complaint with the committee pursuant to this article suspends the running of the statute of limitations applicable to any violation of the provisions of Article 2 (commencing with Section 8920) while the complaint is pending.

RECORDS

SECTION 8953 of the GOVERNMENT CODE

The committee shall maintain a record of its investigations, inquiries, and proceedings. All records, complaints, documents, reports filed with or submitted to or made by the committee, and all records and transcripts of any investigations, inquiries or hearings of the committee under this article shall be deemed confidential and shall not be open to inspection by any person other than a member of the committee, an employee of the committee, or a state employee designated to assist the committee, except as otherwise specifically provided in this article. The committee may, by adoption of a resolution, authorize the release to the Attorney General or to the district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the Attorney General or the district attorney. All matters presented at a public hearing of the committee and all reports of the committee stating a final finding of fact pursuant to Section 8950 shall be public records and open to public inspection. Any employee of the committee who divulges any matter which is deemed to be confidential by this section is guilty of a misdemeanor.

SECTION 8954 of the GOVERNMENT CODE

All actions of the committee shall require the concurrence of two members of the committee from each house.

ADVISORY OPINIONS

SECTION 8955 of the GOVERNMENT CODE

The committee may render advisory opinions to Members of the Legislature with respect to the provisions of Article 2 (commencing with Section 8920) and their application and construction. The committee may secure an opinion from the Legislative Counsel for this purpose or issue its own opinion.

ETHICS EDUCATION

SECTION 8956 of the GOVERNMENT CODE
(NEW - EFFECTIVE JANUARY 1, 1990)

- (a) The appropriate legislative ethics committees shall conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct. The curriculum and presentation of the course shall be established by house rules.
- (b) The committees shall conduct at least annually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the Fair Political Practices Commission. This course may be combined with the course described in subdivision (a).
- (c) At least once in each biennial session, each Member of the Legislature and each designated employee of the Legislature shall attend one of these courses.
- (d) The committees shall impose fees on lobbyists for attending the course described in subdivision (b). The fees shall be set at an amount that will enable the lobbyists' participation in the course to be funded from those fees to the fullest extent possible.

APPENDIX C

IX. PROCEDURES

**Procedures of the Joint Legislative Ethics Committee
Pursuant to Article 3
(commencing with Section 8940) of
Chapter 1 of Part 1 of Division 2
of the Government Code**

INTRODUCTION

The role of the Joint Committee is to investigate and make findings and recommendations to each House concerning alleged violations of the conflict of interest provisions contained in the Code of Ethics. To this end, the Joint Committee is charged with the duty to determine whether any Member or legislative employee has an interest, financial or otherwise, direct or indirect, or engages in any business or transaction or professional activity, or incurs any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed in the laws of this state.

DEFINITIONS

- A. "Preliminary inquiry" means an informal review of information as authorized by the Joint Committee for the purpose of reviewing a statement alleging a violation of the Code of Ethics.
- B. "Preliminary investigation" means a review of a procedurally valid statement duly authorized by the Joint Committee, and may include, but is not limited to, the issuance of any subpoena and the taking of oral or written testimony under oath.
- C. "Hearing" means the formal hearing process which follows a Joint Committee determination that the complaint alleges facts which, if true, may constitute a violation.
- D. "Fees for speeches" means any payment for speaking at any event, participating in a panel or seminar, or engaging in any similar activity.

CONFIDENTIALITY

All records, documents, notes, drafts, memoranda, or other materials prepared by the Joint Committee or its staff in the course of any investigation, inquiry, or other proceeding prior to the Joint Committee's determination that a hearing shall be set pursuant to subdivision (c) of Section 8945 are confidential and shall not be released to any complainant, Member, legislative employee, respondent, or any other person unless the requirements of Section 8954 have been met.

STATEMENTS

Investigations, actions and proceedings of the Joint Legislative Ethics Committee (hereafter "Joint Committee") shall be initiated upon receipt of a "Statement" alleging a conflict of interest (hereafter "violation") by a Member or legislative employee of either House of the Legislature. All section references are to the Government Code.

A statement shall be deemed received by the Joint Committee when a written statement alleging a violation of the Code of Ethics is delivered to the Joint Committee Counsel (hereafter "Counsel").

A. Determination of procedural validity.

Without regard to the merits of the allegation, a statement filed with the Joint Committee shall:

- (1) Be in writing.
- (2) State the name of the Member or legislative employee who is alleged to have committed a violation of the Code of Ethics.
- (3) Set forth allegations which, if true, would constitute a violation. The allegations shall be stated with clarity and detail sufficient to enable the Joint Committee to determine whether a possible violation has been alleged.
- (4) Include a statement, signed by the complainant under penalty of perjury, that the facts are true of the complainant's own knowledge or that the complainant believes them to be true.

- (5) Be filed no later than 12 months from the date upon which the alleged violation occurred.
- B. The role of counsel in determining the procedural validity of the statement.
- (1) Counsel shall review each statement to determine whether the procedural requirements have been met.
 - (2) If Counsel determines that the statement is procedurally defective, he or she shall so advise the complainant in writing within fifteen (15) days after he or she received the statement and shall specify the nature of the defect(s). Copies of the written notice and a copy of the statement shall be sent to the Member or legislative employee named in the statement.
 - (3) Joint Committee members shall be notified in writing within fifteen (15) days from the date of counsel's determination.
- C. Notice following determination of procedural validity.

Upon determining that a statement is procedurally valid, Counsel shall notify the Joint Committee, the complainant, and the Member or legislative employee in writing within fifteen (15) days of his or her determination.

COMPLAINTS

Upon a finding that a statement is procedurally valid, it shall thereafter be treated as a complaint. A finding that a statement is procedurally valid is not a determination on the merits and shall not be so characterized by the Joint Committee or its staff.

- A. Determination of other investigations or proceedings. After determining that a statement is procedurally valid, Counsel shall determine whether the facts alleged in the complaint are the subject of an investigation of any federal, state, or local law enforcement agency, or other legislative committee having jurisdiction over the allegations in the complaint.

B. Review of other investigations.

- (1) At regular intervals, and no less frequently than every ninety (90) days, Counsel shall contact the other investigating agency described above to determine the status of its investigation.
- (2) Upon the request of the respondent of the complaint, or upon its own motion, the Joint Committee may direct Counsel to proceed with an investigation even if the other investigating agency has not completed its investigation.

C. Presentation of the complaint to the Joint Committee.

Upon determination by Counsel that a procedurally proper complaint has been received, the Joint Committee shall meet to review the matter. The Joint Committee may do either of the following:

- (1) Defer action until completion of the other investigation.
- (2) Proceed to review the complaint.

D. Review of the complaint.

- (1) If the Committee proceeds to review the complaint it shall first receive, discuss and review the opinion of Counsel as to whether the complaint alleges facts which, if true, may constitute a violation.
- (2) Review by Counsel is not a determination of the merits of the complaint and shall not be characterized as such. The sole purpose of the review is to determine whether a preliminary inquiry is warranted. The decision to conduct a preliminary inquiry by the Joint Committee is likewise not a determination on the merits.

E. Dismissal.

If, upon receipt of Counsel's opinion, the Joint Committee determines that the complaint does not

allege facts which, if true, may constitute a violation, it shall immediately dismiss the complaint and send to the Member or legislative employee and the complainant, a copy of counsel's opinion as notification of its determination.

PRELIMINARY INVESTIGATIONS

- A. If the Committee determines that the complaint does allege facts which, if true, may constitute a violation, the Joint Committee shall do all of the following:
 - (1) Authorize a preliminary investigation pursuant to subdivision (b) of Section 8943.
 - (2) Notify the Member or legislative employee and the complainant in writing that the Joint Committee has authorized a preliminary investigation pursuant to Section 8953.
 - (3) Provide the Member or legislative employee with a copy of the written complaint.
- B. If, after the preliminary investigation, the Joint Committee finds that probable cause does not exist for believing that any Member or legislative employee has committed a violation, the Committee shall then dismiss the matter and notify the Member or legislative employee and the complainant of its determination in writing.
- C. If, after the preliminary investigation, the Joint Committee finds that probable cause does exist for believing that any Member or legislative employee has committed a violation, the Joint Committee shall proceed pursuant to subdivision (c) of Section 8945.
- D. To determine whether probable cause exists, the Joint Committee may meet to receive and review such evidence as is available. The Joint Committee may request that the complainant and the Member or legislative employee who is the subject of the complaint

or other individuals be available at such meetings.

HEARINGS

A. Notification of hearing.

- (1) If the Joint Committee determines that a hearing is warranted, it shall provide written notice of its determination pursuant to subdivision (e) of Section 8945 and to the Member or legislative employee and the complainant.
- (2) Written notification shall include a statement indicating that the decision to conduct a hearing is not a determination on the merits and should not be interpreted as such.

B. Hearing procedures.

At a hearing held pursuant to this part:

- (1) Oral evidence shall be taken only on oath or affirmation.
- (2) The respondent shall have the following rights:
 - (a) To be represented by legal counsel.
 - (b) To call and examine witnesses.
 - (c) To introduce exhibits.
 - (d) To cross-examine opposing witnesses.
- (3) The hearing shall be open to the public.

CRIMINAL CONVICTIONS

- A. Counsel shall review the criminal conviction of any Member or legislative employee to determine if it involves evidence of a violation of the Code of Ethics. Counsel shall advise the Joint Committee in writing of his or her determination within thirty 30 days from the date that Counsel receives actual notice of the criminal conviction.

- B. If the Joint Committee determines that the criminal conviction merits further inquiry, it shall authorize counsel pursuant to Section 8954 to conduct a preliminary inquiry. Counsel shall also notify the Member or legislative employee in writing of the Joint Committee's determination.
- C. The Joint Committee shall then meet and determine whether the evidence presented to it of the alleged violation states facts sufficient to constitute a violation of the Code of Ethics within the meaning of subdivision (b) of Section 8945.
- D. If the Joint Committee determines that the evidence presented to it of the alleged violation of the Code of Ethics does not merit a preliminary investigation it shall then dismiss the matter and notify the Member or the legislative employee in writing that the matter is closed and no further action by the Joint Committee shall be taken.
- E. If the Joint Committee determines pursuant to Section 8954 that the evidence presented to it does allege facts sufficient to constitute a violation of the Code of Ethics, then the Joint Committee shall do all of the following:
 - (1) Direct Counsel to prepare a Statement pursuant to the section on (Statements) of these procedures.
 - (2) Proceed pursuant to the section on (Preliminary Investigations) of these procedures.
- F. The requirement of subdivision (e) of Section 8944 shall not be a bar to the Joint Committee's jurisdiction under this part.

COMMITTEE INVESTIGATIONS

- A. The Joint Committee may, on its own, initiate an investigation of a Member or legislative employee of either House pursuant to Section 8943 only if the requirements of Section 8954 are satisfied.
- B. Referrals.
 - (1) The Joint Committee may from time to time receive referrals from the following:
 - (a) The Fair Political Practices Commission.
 - (b) The Department of Justice.
 - (c) Other legislative committees or bodies.
 - (d) Other state agencies.
 - (e) Local law enforcement agencies.
 - (2) Counsel to the Joint Committee shall review any matter referred to the committee which alleges a violation of the Code of Ethics pursuant to the foregoing procedures.

APPENDIX D

X. RULES

ADVISORY OPINIONS: WRITTEN AND ORAL

Rule No. 1

The Joint Legislative Ethics Committee encourages any Member or legislative employee to contact the Joint Committee with any questions regarding the propriety of any contemplated activity involving the conflict of interest provisions under the Code of Ethics. Under this rule, the Joint Committee authorizes the Chief Counsel to give consideration to the request of any Member or legislative employee for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member or legislative employee.

Rule No. 2

All such inquires and any written or oral advisory opinion shall be confidential.

Rule No. 3

The Chief Counsel shall not respond to any request regarding a pending matter before the Joint Committee or conduct which is presently under investigation by any duly authorized entity or committee, or any activity which is the subject of litigation in the courts. An "entity" may include a private association, council, committee, law enforcement agency, or any other governmental entity.

Rule No. 4

Any oral advisory opinion shall not be binding on the Joint Committee.

Rule No. 5

Any written advisory opinion shall be binding on the Joint Committee provided that the Member or legislative employee who requested the advisory opinion has acted in good faith and has relied on the specific facts of the advisory opinion so issued.

Rule No. 6

The Joint Committee shall review and approve the issuance of any written advisory opinion.

Rule No. 7

All written advisory opinions shall be issued within thirty (30) days from the date of the request.

Rule No. 8

Written advisory opinions shall be deemed to be public records and may be published in the Senate and Assembly Journals.

Rule No. 9

A Member or legislative employee who acts in good faith on a written advisory opinion issued to him or her by the committee shall not be subject to a committee investigation under the Code of Ethics for so acting, provided that the material facts are as stated in the opinion request.