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Public Entities, Officers, and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; conflict of interest

Government Code §1091 (amended).
AB 2252 (Hauser); 1984 STAT. Ch 113
(Effective May 10, 1984)

Existing law prohibits public officers and public employees from having a financial interest in a contract made in their official capacity unless the interest is remote¹ and disclosed.² Chapter 113 provides that an owner, officer, employee, or agent of a firm that renders service to the contracting party in the capacity of stockbroker, insurance agent or broker, or real estate agent or broker has a remote interest if he does not receive remuneration, consideration, or commissions as a result of a contract.³

Under prior law, only *nonsalaried* officers of a nonprofit corporation had a remote interest in contracts into which they entered.⁴ With the enactment of Chapter 113, *any* officer or employee of a nonprofit corporation is deemed to have a remote interest.⁵

1. CAL. GOV'T CODE §1091(b) (persons who are deemed to have a remote interest).

2. *Id.* §1091(a). An officer who has an interest in a contract may be less than impartial and resulting decisions may be contrary to public policy. *Stockton P. & S. Co. v. Wheeler*, 68 Cal. App. 592, 602, 229 P. 1020, 1024 (1924); *see generally* I B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §481 (8th ed. 1973) (discussion of public policy).

3. CAL. GOV'T CODE §1092(b)(5). *See Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68 Cal. App. 3d 201, 137 Cal. Rptr. 118 (1977) (partner/shareholder who was also a member of the county board of supervisors held to have a remote interest with regard to his share of an insurance agency found not to be a contracting party). *See also* Assemblyman Dan Hauser, Press Release, May 10, 1984, Conflict of Interest Bill (copy on file at the *Pacific Law Journal*) (additional public officials deemed to have a remote interest).

4. 1980 Cal. Stat. c. 110, §1, at 263 (amending CAL. GOV'T CODE §1091). *See generally Review of Selected, 1973 California Legislation*, 5 PAC. L.J. 470 (1974) (discussion of prior law).

5. CAL. GOV'T CODE §1091(b)(1). *See also id.* §1091.5(a)(8) (exception for non-compensated officer).

Public Entities, Officers, and Employees; ex-felons

Government Code §1029 (amended).
AB 3482 (Harris); 1984 STAT. Ch 387

Existing law provides for the disqualification of any person from holding office or being employed as a peace officer when that person has been convicted of a felony, or of an offense in another state which would be a felony in this state.¹ Prior to the enactment of Chapter 387, an ex-felon was required to be disqualified if hired prior to the enactment of existing law² for a position in a probation department requiring responsibility for the custody of wards.³ Chapter 387, however, permits the employment of ex-felons in a position having custodial responsibilities in an institution operated by a probation department when (1) disclosure of the conviction was made prior to employment, and (2) at the time of the hiring, the position was not declared by law to be a class prohibited to persons convicted of a felony.⁴ Under Chapter 387, however, the final decision regarding the continued employment of the ex-felon remains in the discretion of the hiring authority.⁵

1. CAL. GOV'T CODE §1029. *But see id.* §1029(b),(c) (excepting from the disqualification any person convicted of a felony, other than a felony punishable by death, who has been granted a full and unconditional pardon, and those duly appointed, employed, or deputized in time of disaster).

2. CAL. GOV'T CODE §1029 (formerly §1028, added by 1949 Cal. Stat. c. 761, §1, at 1492; renumbered §1029, and amended by 1957 Cal. Stat. c. 66, §1, at 635).

3. 65 OPS. ATTY. GEN. 95 (1982). This opinion stated that the 1980 amendment to California Penal Code section 830.5 applies prospectively and retrospectively to disqualify persons with felony convictions from holding a job in an institution operated by the probation department that requires custody of wards. *Id.* See 1981 Cal. Stat. c. 1142, §2, at 4533 (amending CAL. GOV'T CODE §1029).

4. Compare CAL. GOV'T CODE §1029(d) with 1981 Cal. Stat. c. 1142, §2, at 4533 (amending CAL. GOV'T CODE §1029).

5. See CAL. GOV'T CODE §1029(d); telephone conversation with Mr. Leo Youngblood, Assembly Research Consultant, August 13, 1984 (discussing a possible effect of Chapter 387) (copy on file at the *Pacific Law Journal*).

Public Entities, Officers, and Employees; immunity

Government Code §831.25 (new).
AB 3114 (Harris); 1984 STAT. Ch 1071

Existing law provides that neither a public entity¹ nor a public employee² is liable for an injury³ caused by a natural condition of any unimproved⁴ public property.⁵ Under case law, the natural condition immunity is inapplicable to nonusers injured on land adjacent to the public property by land failure.⁶ Chapter 1071 abrogates this case law by extending immunity to cases involving injury or damage to property or emotional distress⁷ that is incurred off the public lands and caused by land failure resulting from a natural condition.⁸ In addition, Chapter 1071 provides that public entities and public employees are under no duty to inspect, repair, or warn of the hazardous condition⁹ unless they have actual notice¹⁰ of the probable damage that is likely to occur.¹¹

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1. CAL. GOV'T CODE §811.2 (definition of public entity).
 2. *Id.* §811.4 (definition of public employee).
 3. *Id.* §810.8 (definition of injury).
 4. *Id.* §831.25(b) (deeming property to be unimproved notwithstanding the intervention of minor improvements made for the preservation or prudent management of the property in its unimproved state that did not contribute to the land failure).
 5. *Id.* §831.2.
 6. *See* *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 833, 670 P.2d 1121, 1124, 196 Cal. Rptr. 38, 41 (1983). "The legislative policy underlying the immunity is clear. The public use of governmental property is desirable but governmental agencies might prohibit such use if they were put to the expense of making the property safe, responding to tort actions, and paying damages. . . . It is apparent that the policy has nothing to do with an injury sustained by an adjacent landowner from a tree on government land received." *Id.* CAL. GOV'T CODE §831.25(c) (definition of land failure).
has suffered substantial physical harm).
 8. *Id.* §831.25(a). *But see* *Sprecher v. Adamson Companies*, 30 Cal. 3d 358, 364, 636 P.2d 1121, 1123, 178 Cal. Rptr. 783, 785 (1981) (adhering to California trend of rejecting common-law distinction between natural and artificial conditions and using ordinary negligence principles to determine possessor's liability for harm caused by condition of the land).
 9. CAL. GOV'T CODE §§831.25(a), (d), 830.2 (definition of dangerous condition), 840.2 (conditions of liability of dangerous conditions of public property).
 10. *Id.* §835.2(a) (definition of actual notice).
 11. *Id.* §831.25. *See also id.* §835(b) (conditions of liability); *Morris v. State*, 89 Cal. App. 3d 962, 965, 153 Cal. Rptr. 117, 118 (1979) (the condition of public property is dangerous if there is a substantial risk of harm when used with due care by the public generally).

Public Entities, Officers, and Employees; unemployment insurance recipients—release of confidential information

Civil Procedure Code §2016 (amended); Evidence Code §1040 (amended); Unemployment Insurance Code §§322, 1094, 1095, 2714 (amended).

AB 2350 (Naylor); 1984 STAT. Ch 1127

Prior law prohibited the Employment Development Department¹ (hereinafter referred to as the Department) from disclosing information to law enforcement agencies concerning persons who applied for or have received unemployment benefits.² Chapter 1127 permits the Department to provide law enforcement agencies with the name, address, telephone number, birthdate, social security number, and physical description of any person who has applied for or received unemployment benefits, if a felony warrant has been issued for that person.³ Under Chapter 1127, the information will be released only upon a written request from the agency specifying in writing that a felony warrant has been issued for the arrest of an applicant or recipient of unemployment benefits.⁴ Chapter 1127 requires the Department to notify all applicants for benefits that confidential information in their records will not be protected if a felony warrant is issued against the applicant.⁵

1. The Employment Development Department administers state unemployment offices. CAL. UNEMP. INS. CODE §325.

2. Compare *id.* §§1094(a) and 2714(a) with 1982 Cal. Stat. c. 1080, §1, at 3908 (amending CAL. UNEMP. INS. CODE §1094) and 1983 Cal. Stat. c. 974, §1, at ____ (amending CAL. UNEMP. INS. CODE §2714).

3. CAL. UNEMP. INS. CODE §§1095(k), 2714(b); see also CAL. CIV. PROC. CODE §2016(c) (authorizing pre-trial discovery of this information by law enforcement agencies); CAL. EVID. CODE §1040(c) (authorizing disclosure of this information to law enforcement agencies, despite the official or confidential nature of the information); CAL. UNEMP. INS. CODE §1094(b) (allowing disclosure of this information to law enforcement agencies).

4. CAL. UNEMP. INS. CODE §§1095(k), 2714(b). Chapter 1127 requires any request by a law enforcement agency to be made by the head of that agency or by an employee authorized in writing by the agency head to act on behalf of the agency. *Id.* §§1095(k), 2714(b).

5. *Id.* §§1095(k), 2714(b).