(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee’s outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.

(Amended by Stats.1996, c. 710 (S.B.1375), § 8.)

Notes of Decisions

10. Law enforcement, generally.
A sheriff’s deputy chief who is a city councilman may be assigned to perform law enforcement duties within the city. 78 Op.Atty.Gen. 363, December 29, 1995.

Chapter 3

OFFICIAL BONDS

Article 1

GENERAL

Section 1458. Bonds of supervisors and certain others.

§ 1450. Filing time

Library References

California Practice Guide: Insurance Litigation, Croskey, Kaufman et al., see Guide’s Table of Statutes for chapter paragraph number references to paragraphs discussing this section.

§ 1458. Bonds of supervisors and certain others

The bonds of supervisors, treasurers, county clerks, auditors, sheriffs, tax collectors, district attorneys, recorders, assessors, surveyors, superintendents of schools, public administrators, and coroners shall be approved by the presiding judge of the superior court before the bonds can be recorded and filed.

(Amended by Stats.1996, c. 872 (A.B.3472), § 34.)

Additions or changes indicated by underline; deletions by asterisks
§ 1097

Note

8. Admissibility of evidence

Evidence that defendant public official allegedly had good motive in making official contracts in which he had financial interest, and evidence concerning extent to which state benefitted from those contracts, was irrelevant in prosecution for violation of conflict-of-interest statutes. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

Conflict-of-interest statutes establish standard of official conduct that does not depend upon such things as fraud, dishonesty, unfairness or loss to state, and which may be violated regardless how fair or benevolently government contract may be; such matters are not relevant in prosecution under those statutes. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

State educational official charged with violation of conflict-of-interest statutes, arising from his making official contracts in which he had financial interest through nonprofit corporation that paid him rent and his wife substantial salary, could not introduce evidence that corporation could have or would have paid same salary, benefits, and rent without government contracts; whether corporation would have received sufficient private donations was speculative, and such evidence was irrelevant, as it was sufficient that defendant knew he had indirect financial interest in corporation and nevertheless made contracts in his official capacity that benefited corporation. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

Department of Education (DOE) official who was charged with violating conflict-of-interest statutes by virtue of making official contracts with nonprofit corporation that paid him rent and his wife substantial salary could not introduce evidence that DOE's chief counsel told defendant's deputy that contracts did not appear to be illegal; counsel knew virtually nothing of true circumstances surrounding contracts, opinion he offered was not based upon facts as they existed, and opinion was contingent, that is, counsel saw no problem if defendant's wife was not receiving benefits directly or indirectly. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

9. Instructions

It is not error in prosecution of public official for violation of conflict-of-interest statutes to refuse his requested pattern jury instruction stating that necessary mental state was knowingly possessing financial interest in contracts entered into in his official capacity; however, error was harmless, as definitional instructions expressly advised jury that defendant must not only willfully make contract in which he had financial interest, but that he also had to do so "knowingly." People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

Public official charged with violation of conflict-of-interest statutes for making official contracts in which he had financial interest was not entitled to have jury instructed in accordance with pattern jury instruction pertaining to sufficiency of circumstantial evidence to prove specific intent or mental state; his knowledge of all facts giving rise to prohibited financial interest in contracts was overwhelmingly established and for most part was conceded in his own testimony, and thus, those facts did not rest substantially upon circumstantial evidence. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

10. Sufficiency of evidence

Evidence supported convictions of Superintendent of Public Instruction for violation of conflict-of-law statutes, arising from his relationship with nonprofit corporation from which he received rent and from which his wife received substantial salary; defendant put in place contracts by which state paid school districts for continuation of their employees' salary and benefits while they worked for corporation, and it was reasonably likely that corporation's growing success during periods in which defendant was providing assistance through state contracts would not only lure to his immediate benefit but could provide source of substantial family income into indefinite future. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

Evidence in prosecution for violation of conflict-of-interest statutes supported finding that defendant public official's written agreements with school districts, whereby state provided funds for payment of district employees through district, while they were on leave, of absence, in order to work for nonprofit corporation that paid rent to defendant and substantial salary to his wife, were "contracts," rather than "grants," documents were set up in form of contracts and stated that they were contracts; and defendant did not follow usual procedures that accompanied award of grant money. People v. Honig (App. 3 Dist. 1996) 65 Cal.Rptr.2d 555, 48 Cal.App.4th 253, rehearing denied.

Article 4.7

INCOMPATIBLE ACTIVITIES

Section

1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining.

§ 1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or incompatible with his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

Additions or changes indicated by underline; deletions by asterisks ** *