

Ethics Law Principles for Public Servants:

KEY THINGS TO KNOW



The California State Association of Counties and the Institute for Local Government partnered to create this resource and provide it to all California counties.

Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises for you under these principles, public officials should consult agency counsel.

Personal Financial Gain

Generally speaking, public officials:

- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Must disclose their financial interests to the public.
- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests.
- Cannot have an interest in a contract made by their agency.
- Cannot be involved in agency decisions affecting a potential future employer once the official and employer each have expressed an interest in a professional relationship.
- Cannot lobby their agency for pay for a year following their departure from the agency.

Perk Issues: Including Compensation, Use of Public Resources and Gifts

Generally speaking, public officials:

- Receive limited compensation for their service to the public.
- Cannot receive compensation for speaking, writing an article or attending a conference.
- Are reimbursed for only those expenses allowed in agency expense reimbursement policies because those expenses have a demonstrable public purpose and necessity.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- Cannot send or be featured in mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Must disclose gifts they receive from each single source that has given gifts worth \$50 or more in a single calendar year.
- May not receive gifts worth a total of \$470 (2017-18 amount) from a single source in a single calendar year.



- May only accept free trips and travel expenses under limited circumstances.
- May not accept free or discounted transportation from transportation companies.
- May not use campaign funds for personal benefits not directly related to a political, legislative, or governmental purpose.

Transparency

Generally speaking, public officials must:

- Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests include such kinds of interests as: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- Disclose information about who has agreed to commit significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- Disclose campaign contributions.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meetings, and listen to the public's views before making decisions.
- Allow public inspection of documents and records generated, owned, used, or retained by public agencies, except when non-disclosure is specifically authorized by law.
- Disclose gifts given to the public agency and how they are ultimately used.

Fair Process and Merit-Based Decision-Making

Generally speaking, public officials:

- Cannot receive loans from other staff, officials or contractors, and must comply with certain requirements for loans from others.
- Cannot engage in vote-trading.
- Have a responsibility to assure fair and competitive agency contracting processes.
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Must conduct public hearings in accordance with fair process principles.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner and dependent children).
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings—such as land use permits—involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed body).
- Cannot solicit agency employee support for their political causes.
- Cannot retaliate against those who whistle-blow.



KEY CONCEPTS

- A public agency's decision should be based solely on what best serves the public's interests.
- The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.
- Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision — including trying to influence a decision — if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel early and often and when an action by the public agency may affect (positively or negatively) any of the following:

- Income. Any source of income of \$500 or more (including promised income) during the prior 12 months for the official or official's spouse/domestic partner.
- Immediate Family. The official's spouse/domestic partner and dependent children.
- Business Management or Employment. An entity for which the official serves as a director, officer, partner, trustee, employee or manager.
- Real Property. A direct or indirect interest in real property of \$2,000 or more that the official or official's immediate family have, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase.
- Gift Giver. A giver of one or more gifts worth a total of \$470 (2017-18) or more to the official in the prior 12 months, including promised gifts.
- Lender/Guarantor. A source or guarantor of a loan to the official.

- Personal Finances. The official or official's immediate family's personal expenses, income, assets or liabilities.
- Contract. A contract that the agency is considering entering into, in which the official or a member of the official's immediate family may have an interest (direct or indirect).
- Business Investment. An interest in a business that the official or the official's immediate family have a direct or indirect investment worth \$2,000 or more.
- Related Business Entity. An interest in a business that is the parent, subsidiary, or is otherwise related to a business in which the official:
 - Has a direct or indirect investment worth \$2000 or more; or
 - Is a director, officer, partner, trustee, employee or manager.
- Business Entity Owning Property. Real property owned by a business entity or trust of the official.
- Campaign Contributor. A campaign contributor of the official (applies to appointed decision-making bodies only).
- Other Personal Interests and Biases. The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the California Attorney General's Office to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether the officials are acting solely in the public's interest. If questions will be asked, officials should consider excusing themselves voluntarily from that particular decision-making process.



Beyond the Law: Ethics and Values

- Ethics is what one ought to do in a given situation. It's the kind of conduct that would make the world a better place if everyone engaged in it.
- The law provides only minimum standards for ethical conduct. Just because a course of action is legal doesn't mean it is what one ought to do.
- What one ought to do is typically tied to a series of values:
 - Trustworthiness
 - Respect
 - Responsibility
 - Compassion
 - Loyalty
 - Fairness

ILG developed a Good Governance Checklist to help local officials identify ways they can go above and beyond legal requirements to promote public trust and confidence.

To access the checklist visit:

www.ca-ilg.org/goodgovernance.

AB 1234 Trainings

California law requires local officials to periodically receive training on public service ethics laws and principles (AB 1234). ILG offers trainings and self-test options to help local officials comply with this law. ILG offers two, one-hour self-study exercises as an option for local officials to satisfy AB 1234 requirements. The self-study materials can also be used to make up for time missed at in-person sessions if the official either arrived late or left early. Find out more at: www.ca-ilg.org/ab1234selfstudy.

ILG can also come to your community to train your local officials and staff. Contact ILG at ethicsmailbox@ca-ilg.org for more information on how to schedule an ethics workshop.

The Institute is grateful to the following firms for making this document possible in 2016:

Aleshire & Wynder, LLP

Best Best & Krieger

Burke Williams & Sorensen, LLP

Hanson Bridgett LLP

Liebert Cassidy Whitmore

Meyers Nave

Murphy Austin

Renne Sloan Holtzman Sakai LLP

Richards, Watson & Gershon



About the California State Association of Counties

The primary purpose of CSAC is to represent county government before the California Legislature, administrative agencies and the federal government. CSAC places a strong emphasis on educating the public about the value and need for county programs and services.

www.counties.org



The Institute for Local Government is the nonprofit research affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association.

Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Local Government Basics
- Ethics and Transparency
- Public Engagement
- Sustainable Communities
- Collaboration and Partnerships

www.ca-ilg.org

© 2016 by The Institute for Local Government. All rights reserved.

1400 K Street, Suite 205, Sacramento, CA 95814

(916) 658-8208 • FAX (916) 444-7535

Hard copies available for purchase.