

Everyday Ethics for Local Officials

Navigating the Perils of Public Service

Part One



The vast majority of public servants are selfless, well-intended and community-minded individuals. However, occasionally an agency will find itself dealing with individuals who are either unfamiliar with or disregard the norms and laws governing public service.

What is a conscientious fellow public servant to do if he or she suspects wrongdoing? While it's difficult to give advice that addresses every situation, the following eight-step process provides an analytical framework. In addition, this article offers a number of resources to help local officials achieve the difficult balance between not turning a blind eye to potential wrongdoing while avoiding unjustly accusing someone of it.

The first thing you should do in any situation is consult your agency counsel. Dealing with possible wrongdoing can be a very lengthy and personally demanding process, and it's essential to seek legal counsel before planning your course of action. Once you have the advice of counsel, there are eight steps to take in addressing a public servant's suspected or potential wrongdoing. These are explored in detail, step by step, in the following pages.

Suggested Steps to Take When You Suspect a Colleague Has Crossed Over the Ethical Line

- 1.** Stop. Examine your motivations.
- 2.** Figure out what the “wrong” might be.
- 3.** Determine what the consequences might be of letting the situation go unaddressed.
- 4.** Speak with others to see if they share your concerns.
- 5.** Discuss the issue with the individual (or have a trusted confidant do so).
- 6.** Determine whether an internal investigation is appropriate.
- 7.** Determine whether external enforcement authorities should be contacted.
- 8.** Consider steps to prevent the situation from recurring.

Step 1. Stop. Examine Your Motivations.

Ethics is about promoting fidelity to universal values (for example, trustworthiness, respect, responsibility and fairness). In public service, it's also about fostering the public's confidence in its governing institutions, their employees and public servants. A key goal is assuring the public that governmental decisions are made based on the public's interests — not narrow private or self-serving ones.

When considering what you should do about someone else's perceived ethical or legal lapse, reflect on your motivations. Ask yourself whether your goal is truly to

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Read *Western City Next Month* for Part Two

This is the first installment of a two-part article. Part Two will appear in the September issue.

This column is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources for local officials on public service ethics. For more information, visit www.ca-ilg.org/trust.

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promote more ethical conduct in public service and increase public confidence in government. If the issue is a violation of the law, is it a technical “gotcha” violation or does the violation truly represent a betrayal of the public’s trust? Even if you are confident about the technical aspects, the laws that address these issues are very complicated, and you should consult your agency’s counsel before moving forward.

There can be at least four motivations for calling a perceived transgression to light:

- 1. Organizational Loyalty** – Individuals in this category are truly loyal to the organization and report concerns in order to remedy problems that could ultimately harm the organization. In addition, many people are strongly committed to simply doing the right thing.
- 2. Disillusionment** – Some people may be motivated to speak out against perceived transgressions because their expectations exceed organizational realities. An important question to ask is whether these expectations reflect a full analysis of ethical considerations, including the fact that some ethical dilemmas reflect a conflict between competing legitimate ethical values. An example of such conflict is the tension between absolute fidelity to being honest (related to the value of trustworthiness) and avoiding unnecessarily hurting someone’s feelings (related to the value of compassion).
- 3. Defensiveness** – Some people believe “the best defense is a good offense.” They could be employees who anticipate disciplinary proceedings for poor performance or perhaps an elected official who fears that a transgression of his or her own is about to be revealed. The goal is not to vindicate ethical or legal principles but to lay a foundation for claiming retaliation when fault is found with their own conduct.
- 4. Desire to Harm** – Some individuals reveal or claim wrongdoing either to hurt or embarrass rivals or an organization or as a form of retribution for perceived mistreatment.

If your motivations fall into the latter two categories, carefully consider whether you are making an unethical use of ethics. The practice of co-opting ethics for personal or political advantage has come to be known as “vigilante ethics.” Vigilante ethics is a destructive dynamic that ultimately damages the public trust by impugning the motivations of public servants or would-be public servants for personal reasons that have nothing to do with creating a more ethical environment.

Vigilante ethics can also be an inherently short-term strategy. People reap what they sow. Ultimately, an environment characterized by ethical charges and counter-charges ends up reflecting badly on everyone.

Step 2. Figure Out What the “Wrong” Might Be.

Ethics Versus the Law. As you contemplate the nature of the “wrong” you observed, it can be helpful to keep in mind the distinction between the law and ethics. Following the law is what people *must* do; there are penalties and other consequences associated with violating the law. The chart on the following pages explains some of the ways local officials can find themselves at odds with the laws governing public service.

Ethics tends to be what people *ought* to do based on commonly held values: trustworthiness, respect, fairness, compassion, loyalty and responsibility (including public servants’ responsibility to act in the best interests of the community as a whole). While there are many laws that reflect these values (for example, laws making it illegal to lie in government documents), conduct can be technically within the law but nevertheless unethical. If you believe a colleague’s conduct may be unethical — even if it’s not unlawful — you need to carefully consider *why* you think it’s unethical.

The Nature of an Ethical Dilemma.

Some kinds of actions are clearly unethical, while others involve a more searching analysis. There are two kinds of ethical dilemmas. One involves conflicts between two “right” sets of values. The



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other involves situations in which doing the right thing comes at a personal cost. Think critically about the kind of ethical dilemma your colleague faced and the kinds of competing considerations that had to be weighed.

Does Your Agency Have a Code of Ethics?

Referring to an agency code of ethics can be helpful in such an analysis. A code of ethics highlights the kind of values that are important for those who serve the agency and how those values apply in the public service context. Furthermore, because there can be room for disagreement about what kind of conduct violates the letter or spirit of the code, it’s useful if the code provides practical examples of the kind of conduct that is consistent with its provisions (and, by negative implication, what kind of conduct is not). For more information about local ethics codes, visit www.ca-ilg.org/ethicscodes.

To What Extent is Ethics an Important Part of the Organizational Culture?

Even if the agency doesn’t have a formal ethics code, the community or the organization’s leadership may have communicated in other ways their expectations about the importance of ethics and values in decision-making and behavior. If your agency has a strong culture of ethics, it is easier to identify actions that are out of step with the organization’s norms. In such a culture, leaders “walk the ethics talk” and there is a history of making difficult choices based on ethical considerations.

For further information about the kinds of organizational behaviors that foster a culture of ethics, visit www.ca-ilg.org/culturechecks.

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Looking for Footnotes?

A fully footnoted version of this article is available online at www.westerncity.com/articles.

Step 2. Figuring Out What the “Wrong” Might Be

Links to all publications referenced under “For More Information” are available in the electronic version of this article online at www.ca-ilg.org/perils.

Issue: Does the situation involve an official ...	Law Potentially Violated	Enforcement Mechanism(s)	For More Information <i>Remember, your agency's attorney is an excellent resource. Seek their counsel in these situations too.</i>
P E R S O N A L F I N A N C I A L G A I N			
Incompletely disclosing their financial interests?	Political Reform Act	Local agency attorney, Fair Political Practices Commission (FPPC), district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; FPPC publication, <i>Your Duty to File: A Basic Overview of State Economic Disclosure Law</i> ; Institute for Local Government (ILG) publication, <i>A Local Official's Reference on Ethics Laws</i>
Participating in or influencing decisions in which they have a disqualifying financial interest?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; FPPC publication, <i>Can I Vote? Conflicts of Interest Overview</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Influencing agency decisions relating to prospective employees?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Having an interest in a contract to which the official's agency is a party?	Prohibition against interests in contracts	Local agency attorney, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Receiving advantages or anything of value in exchange for their decisions (bribery)?	State and federal criminal bribery laws	District attorney or U.S. Attorney	ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Acquiring property interests within their agency's redevelopment area?	Redevelopment law	Grand jury	ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
P E R K S			
Not disclosing gifts from a single source aggregating to \$50 or more in a year?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	FPPC publications, <i>Limitations on Gifts, Travel and Loans for Local Officials and Receiving Gifts as a Public Official</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Receiving gifts aggregating to more than \$360 from one source in the past 12 months?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	FPPC publications, <i>Limitations on Gifts, Travel and Loans for Local Officials and Receiving Gifts as a Public Official</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Not disqualifying themselves from participating in decisions involving someone who gave them a gift worth more than \$360 during the preceding 12 months?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	FPPC publications, <i>Limitations on Gifts, Travel and Loans for Local Officials and Receiving Gifts as a Public Official</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Receiving loans over \$250 from those within the agency or who do business with the agency?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	FPPC publications, <i>Limitations on Gifts, Travel and Loans for Local Officials and Receiving Gifts as a Public Official</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Receiving compensation for speaking, writing an article or attending a conference?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	FPPC publications, <i>Limitations on Gifts, Travel and Loans for Local Officials and Receiving Gifts as a Public Official</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Participating in decisions that affect personal interests?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; FPPC publication, <i>Can I Vote? Conflicts of Interest Overview</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Sending mass mailings at public expense?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Using public agency resources for personal or political purposes?	Government Code and Penal Code	Grand jury, district attorney, private lawsuit	ILG publications, <i>A Local Official's Reference on Ethics Laws</i> and <i>Of Cookie Jars and Fishbowls: A Public Official's Guide to Use of Public Resources</i>
Making gifts of public resources or funds?	California Constitution	Private lawsuit	ILG publication, <i>Of Cookie Jars and Fishbowls: A Public Official's Guide to Use of Public Resources</i>
Accepting free transportation from transportation companies?	California Constitution	Removal from office through a lawsuit known as a quo warranto action, involving the attorney general	Attorney General publication, <i>Conflicts of Interest (2004)</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>

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Issue: Does the situation involve an official ...	Law Potentially Violated	Enforcement Mechanism(s)	For More Information <i>Remember, your agency's attorney is an excellent resource. Seek their counsel in these situations too.</i>
FAIRNESS			
Participating in decisions that will benefit their immediate family (spouse and dependent children)?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest</i> (2004); FPPC publication, <i>Can I Vote? Conflicts of Interest Overview</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Soliciting campaign contributions as an appointed official from permit applicants while the application is pending and for three months afterward?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	Attorney General publication, <i>Conflicts of Interest</i> (2004); FPPC publication, <i>Campaign Contributions May Cause Conflicts for Appointees and Commissioners</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Participating in quasi-judicial proceedings in which they have a strong bias with respect to the parties or the facts?	Common law	Local agency attorney, private lawsuit	Attorney General publication, <i>Conflicts of Interest</i> (2004); ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Holding multiple public offices that involve potentially conflicting loyalties?	Government Code	Removal from office through a lawsuit known as a quo warranto action, involving the attorney general	Attorney General publication, <i>Conflicts of Interest</i> (2004); ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Circumventing the agency's competitive bidding processes?	Public Contract Code, local charters or ordinances	Private lawsuit	<i>Western City</i> article, “Let’s Make a Deal: Securing Goods and Services for Your Agency,” October 2004
GOVERNMENTAL TRANSPARENCY			
Conducting the public's business outside open and publicized meetings, except for the limited circumstances in which closed sessions are allowed?	Ralph M. Brown Act	Local agency attorney, district attorney or private lawsuit	League of California Cities publication, <i>Open & Public 3: A Guide to the Ralph M. Brown Act</i> ; Attorney General publication, <i>The Brown Act</i> ; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Refusing to allow public inspection of documents and other written records or electronic data except when the law allows nondisclosure?	Public Records Act	Local agency attorney, district attorney or private lawsuit	Attorney General publication, <i>Public Records Act Summary</i> (2004); ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
Not disclosing significant (\$5,000 or more) fund-raising activities for legislative, governmental or charitable purposes?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	<i>Western City</i> article, “Fund-Raising Ethics: Brother, Can You Spare a Dime?” February 2004; ILG publication, <i>A Local Official's Reference on Ethics Laws</i>
STAFF-RELATED ISSUES			
Giving direction to staff instead of the city manager?	Local ordinance	Local agency attorney, district attorney	See www.ca-ilg.org/staffrelations .
Discrimination based on protected characteristics (gender, race, religion, sexual orientation) or speech?	State and federal civil rights laws	State Department of Fair Employment and Housing, private lawsuit	California Department of Fair Employment and Housing website (www.dfeh.ca.gov)
Violation of a professional code of ethics for a certain profession?	Professional association	Professional association	See www.ca-ilg.org/staffrelations for a list of professional codes of ethics.
An agency prohibiting whistleblowing or retaliating against an employee for whistleblowing?	Labor Code	District attorney, private lawsuit	<i>Western City</i> article, “For Whom the Whistle Blows,” April 2005

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ELECTION LAW			
Qualifications or requirements for holding office (for example, residency)?	State law, local charters	Elections contest, removal from office through a lawsuit known as a quo warranto action, involving the attorney general	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Misconduct or errors by a precinct board member?	State elections law	Election contest	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Giving bribes or rewards for voting (or other offenses against the election franchise)?	State elections law	Election contest	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Illegal voting (votes cast by those not eligible or votes cast in an unlawful manner)?	State elections law	Election contest	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Eligible voters turned away from voting?	State elections law	Election contest	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Errors in counting ballots?	State elections law	Election contest	California Secretary of State publication, <i>Voter Fraud Protection Handbook</i>
Failure to disclose in a timely manner campaign contribution amounts and sources?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	<i>Win the Right Way</i> , Chapter 8, Complying with the Law; FPPC publications, <i>Candidates: Important Things to Remember</i> and <i>Campaign Disclosure Manual 2: Information for Local Candidates</i>
Failure to identify the source of campaign advertising?	Political Reform Act	Local agency attorney, FPPC, district attorney or private lawsuit	<i>Win the Right Way</i> , Chapter 8, Complying with the Law; FPPC publications, <i>Candidates: Important Things to Remember</i> and <i>Campaign Disclosure Manual 2: Information for Local Candidates</i>

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If you want to know more about dealing with the potential wrongdoer, be sure to attend the session devoted to this topic at the League of California Cities Annual Conference, Oct. 7 in San Francisco from 10:45 a.m. to noon in Room 2009 as part of the City Attorneys Department program. In addition, the entire article with endnotes will be available as a reprint at the session. Mark your calendar now and plan to attend this thought-provoking session.