



Everyday Ethics for Local Officials

Leading by Values: When a Decision Will Affect a Friend or Supporter

April 2002

QUESTION

I am a council member in a small community. In a few weeks I will be voting on a proposal that will negatively affect a good friend's property values pretty dramatically. The friend was one of my earliest and most enthusiastic supporters when I made the decision to run for the council; he even made a small contribution to my campaign. Frankly, I feel a loyalty to him. But much of the community is supportive of the proposed use and it will bring much needed revenues to the community. What is the ethical thing to do?

ANSWER

As an elected official, you were elected to exercise your best judgment on behalf of **everyone** in your community—your decision-making analysis needs to reflect this and be free of personal biases. This is where the WIPLA framework described in the February issue of *Western City* can be of assistance to you.

Whole Community. First ask yourself: **What decision will benefit the community as a whole?** You were elected to serve the community as a whole's interests—not just your friends' interests. At this stage of your analysis, you need to put your friend's interests aside for the moment. What are the community wide benefits of the proposal that will be before you? What will be the costs? How do these two balance (do the benefits outweigh the costs for example)? The financial effect on the city is one consideration in this analysis, but so is the effect of the proposed use on the character and livability of the community. Will the community as a whole truly be a better place because of the decision to approve the use?

Individual Rights. Then look at the **individual rights** at stake in your decision, including your friend's. Is the proposed use a surprise because it involves a zone change (or should those in your friend's neighborhood been on notice that this kind of use was permitted)? Are the individuals (including your friend) being asked to bear burdens that ought to be borne by the community as a whole? How great is the burden relating to the benefit? How would you evaluate the burden if the individuals burdened did not include your friend? If the burden is great and the benefits are small, then it may be that this is not good for the community—irrespective of your friend's interests and your relationship with him.

Process. The next step is to look at the **process** the city will employ to allow public input on the proposal. Will the process be well publicized and timed so as many people who are interested can participate as possible? During the hearing process, are you actively listening to what people are saying, recognizing the validity of all perspectives shared? Do you thank people for taking the time to come share their perspectives and indicate that you will consider their point of view in making your decision? Are you respectful of your fellow council members' views, even if you disagree with their position? Does your conduct during the hearing (and in any one-on-one discussions with constituents) indicate that you are fairly considering all viewpoints and trying to approach your decision with an open mind?

Don't leave your friend out of the process. Encourage him to come to the hearing and share any concerns with the council as a whole. Suggest that he bring any neighbors who share his concerns. Explain to him what your duties are as an elected representative of the whole community and that you and your fellow council members will be making your decision based on the information you receive as part of the public hearing process.

Legality. The **law** does not, strictly speaking, require you to disqualify your self because of friendships or because of campaign contributions. The Political Reform Act generally covers financial relationships and, for purposes of this discussion, we are assuming that there are no financial ties between you and your friend.

Moreover, receipt of political contributions generally does not disqualify city councilmembers from voting on matters before the city council under the Political Reform Act.¹ Of course, there are reporting requirements for campaign contributions so members of the community are likely to know that your friend is also a campaign contributor.

In addition, there is a doctrine known as "common law bias" that you may want to review with your city attorney, particularly if you will be sitting in what is known as a quasi-judicial capacity on this land use matter. Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions, and licenses. Quasi-judicial proceedings tend to involve the application of generally adopted standards to specific situations, much as a judge applies the law to a particular set of facts.

The categories of common law bias include²:

1. **Personal Interest in the Decision's Outcome.** For example, one court found a council member was biased and should not participate in a decision on a proposed addition to a home in his neighborhood when the addition would block the councilmember's view of the ocean from the councilmember's apartment.³

¹ See Cal. Gov't Code § 82030(b)(1) (excluding campaign contributions from the definition of "income" under the Political Reform Act, while noting that such contributions must be reported).

² See *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23, 97 Cal. Rptr. 2d 467 (2d Dist. 2000) (finding no common law bias).

³ See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (2d Dist. 1996) (finding common law bias).

2. **Party Bias.** An example is a strong animosity about a permit applicant based on the conduct that occurred outside the hearing. Conceivably, a strong personal loyalty toward your friend could bias you against the applicant's interests.

3. **Factual Bias.** An example is information a council member might receive outside the public hearing that causes the council member to have a closed mind to any factual information that may be presented in the hearing. This is a variation of the "*ex parte* communications" doctrine, which suggests that, in quasi-judicial matters, all communications to you about the merits (or demerits) of the proposed use should occur in the course of the public hearing.

There are two ways to analyze the common law bias issue. One is whether in your heart you know that you cannot put aside your friendship and make an impartial decision. This is an issue for you to analyze.

The other way to analyze the issue is whether a disappointed applicant will have a legal basis for challenging the council's decision (in the event the proposed use is turned down) as being tainted by bias. The courts approach a review of a council decision with a presumption that the decision-makers acted with integrity and honesty. Anyone challenging the council's decision will have to establish, with evidence, that there was an "unacceptable probability" that decision-makers were biased in any of the above three ways.⁴

This is where you will want to have a candid conversation with your city attorney about what kinds of conversations and relationships you have that might cause others to believe (both the community and a reviewing court) you are not able to serve as an impartial decision-maker. It will not do your friend any good to have the proposed use be rejected and then for the council's decision to be overturned by the courts. Needless to say, such a sequence of events will also be potentially embarrassing for you and the city.

Alternatives. If you and your city attorney both conclude you can serve as an impartial decision-maker, you can proceed to the next step of the analysis. As you consider the impact of your decision on both the whole community and individuals within the community, are there **alternatives** that would create better "win-win" situations (more community benefits or fewer individual burdens)? Have you discussed the availability and feasibility of such alternatives with staff before the meeting at which the decision will be made so they can be prepared with answers at the meeting and help you with the process of trying to make the decision that it both best for the whole community and respectful of individual rights. For example, if there is an undesirable use locating in your friend's neighborhood, are there steps that can be taken to minimize the effects of the use?

Talking the Walk. Now that you have analyzed and approached the decision-making process with these ethical principles in mind, think about explaining your ultimate decision in terms of these values. Explain *why* you feel your decision is best for the whole community and the steps taken to protect individuals' interests (or why the decision is not best for the whole community

⁴ *Breakzone*, 81 Cal. App. 4th at 1234.

and/or unduly treads on individual interests). If financial considerations are a factor, explain why you believe that the extra financial resources will make the community a better place (money is rarely an end in itself).

It is important for your constituents to hear that you have engaged in a reasoned and value-based decision-making process—not one based on a personal relationship.

It is also to have a conversation with your friend about your decision, explaining that you take your duties as a public servant very seriously—particularly your duty to act in the best interests of the community as a whole. If you find that, based on the above analysis you must approve the proposed use, explain that the decision was difficult, because you do value your friendship but you also know that friendship is based on mutual respect and that you trust that part of the reason you are friends is that you each respect and understand where the other is coming from—including the ethical and legal duties you have as an elected official.

This piece originally ran in *Western City* magazine and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.
