



Everyday Ethics for Local Officials

Leading By Values: When Your Decision Will Affect a Friend or Supporter

April 2002

QUESTION

I am an elected official in a small community. In a few weeks, I will be voting on a proposal that will dramatically reduce a good friend's property value. The friend was one of my earliest and most enthusiastic supporters when I made the decision to run for office; he even made a small contribution to my campaign. Frankly, I feel loyal to him. But many people in the community are supportive of the proposed use and it will bring much-needed revenue to the community. What is the ethical thing to do?

ANSWER

As a public official, you were elected to exercise your best judgment on behalf of everyone in your community. Your decision-making analysis should reflect this and be free of personal bias. This is where having a keen sense of your – and the community's – ethical values can help you sort through your options.

In terms of our typology of ethical dilemmas, this is a bit of a hybrid. On one hand, this can be viewed as a conflict between your responsibility to act in the community's overall best interests and your loyalty to your friend and supporter—a right-versus-right ethical dilemma. On the other, you may worry that deciding against your friend's interests will jeopardize your friendship and his support for you—a “personal” cost ethical dilemma.

Moreover, this is a situation where the law does not provide an answer. For example, it may be legal for you to vote on this proposal. However, if everyone in the community knows how close the two of you are, will you be able to put aside your personal loyalties and assess the merits of the project objectively? Will the community believe that you have done so?

Responsibility versus Loyalty

A useful threshold question to always ask yourself is: What decision will benefit the community as a whole? This is a core part of your responsibility as an elected official:

You were elected to serve the interests of the community as a whole – not just those of your friends and supporters. Loyalty is an important ethical value to be sure. However, when loyalty conflicts with your responsibility to do what is right for the larger community, loyalty considerations must yield.

At this stage of your analysis, you must set aside your friend's interests. What are the community-wide benefits of the proposal before you? What will the costs be? Do the benefits outweigh the costs? The financial effect on the agency is one consideration in this analysis, but so is the effect of the proposed use on the community's character and quality of life. Will the community as a whole truly be a better place if the use is approved?

Fairness

The fairness of the decision is another aspect of the analysis. The project proponent has a right to fair consideration of his proposal on its merits. Is the proposal consistent with the zoning and other regulations for the neighborhood, for example? Should residents in your friend's neighborhood have understood that this kind of use is permitted? (Conversely, is the proposed use a surprise because it involves a zone change or other deviation from the previous requirements?)

Another line of analysis is whether individuals in the neighborhood of the proposed project being asked to bear a burden that ought to be borne by the community as a whole? How great is the burden compared to the benefit? How would you evaluate the burden if the individuals affected did not include your friend? If the burden is great and the benefits are small, then this project may not be good for the community, regardless of your friend's interests and your relationship with him.

Another aspect of fairness is to look at the process your agency will use to seek public input on the proposal. Will the process be well publicized and timed so as many people as possible can participate?

Fairness and the Law

There also is a legal dimension to the fairness analysis. The law does not, strictly speaking, require you to disqualify yourself because of friendships or campaign contributions. The Political Reform Act generally covers financial relationships and, for purposes of this discussion, we are assuming there are no financial ties between you and your friend.

Moreover, under the Political Reform Act,¹ receiving political contributions generally does not disqualify elected officials from voting on matters brought before them. Of course, there are reporting requirements for campaign contributions, so community members are likely to know that your friend is a campaign contributor.

In addition, there is a doctrine known as “common law bias” that you may want to review with your agency attorney, particularly if you will be sitting in 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 include:²

- **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 council member’s view of the ocean from his apartment.³
- **Party Bias.** An example of party bias is strong animosity about a permit applicant, based on his conduct outside the hearing. Conceivably, a strong personal loyalty to your friend could bias you against the applicant’s interests.
- **Factual Bias.** An example of factual bias is information that a council member might receive outside the public hearing, causing the council member to have a closed mind to any factual information presented in the hearing. This is a variation of the *ex parte* communications doctrine, which suggests that in quasijudicial matters all communications to you about the merits (or demerits) of the proposed use should occur during the course of the public hearing.

There are basically 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 only you can decide.

The other way to analyze the issue is to determine 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 an agency decision with a presumption that the decision-makers acted with integrity and honesty. Anyone challenging the decision will have to establish, with evidence, that there was an “unacceptable probability” that decision-makers were biased in any of the three ways described above.⁴

This is where you will want to discuss candidly with your agency attorney what kinds of conversations and relationships you have had that might cause others (both the community and a reviewing court) to believe that you are not able to serve as an impartial decision maker. It won’t do your friend any good to have the proposed use rejected, only to have the decision overturned by the courts. Needless to say, such a sequence of events could also be embarrassing for you and the agency.

Respect

An important aspect of your leadership as an elected official is how you relate to those who share their thoughts with you – both on the street and during public meetings. Even though you were elected to make decisions, an equally important role is your stewardship of the decision-making process.

That process contemplates that elected officials will consider the public’s views and concerns before making a decision. It is vital that this process be fair, open and respectful. Some points to consider:

- During the hearing process, are you actively listening to what people are saying?
- Do you thank people for taking the time to share their views and indicate that you will consider their points in making your decision?
- Are you respectful of the public’s, your fellow elected officials’ and staff’s perspectives, even if you disagree?
- Does your conduct during the hearing (and in any one-on-one discussions with constituents) indicate that you are fairly considering all viewpoints and working to approach your decision with an open mind?

Acknowledge your friend’s concerns by including him in the process of public deliberation on the project. Encourage him to come to the hearing and share his concerns. Suggest that he bring any neighbors who share his concerns.

Also be upfront with your friend on your views on your duties vis-à-vis the community’s interests as a whole. Explain that you and your fellow decision-makers will be making your decision based on the information you receive as part of the public hearing process.

Alternatives

Also, think about whether there are alternative approaches that would create better “win-win” situations (more community benefits or fewer individual burdens)? Have you discussed the availability and feasibility of these alternatives with staff before the meeting

Quote Unquote

The art of leadership is saying no, not yes. It is very easy to say yes.

– Tony Blair

If the injured one could read your heart, you may be sure he would understand and pardon.

– Robert Louis Stevenson

It is not best that we all should think alike, it is differences of opinion that make horse races.

– Mark Twain

at which the decision will be made? (Meeting with staff beforehand will enable them to be prepared with answers at the meeting and help you with the process of making a decision that is both best for the whole community and respectful of individual rights.) For example, if an undesirable use will be locating in your friend's neighborhood, can steps be taken to minimize its effects?

The Importance of Public Perception

The steps described above should maximize the likelihood that you make an impartial decision based on what's right for the community – not necessarily what's right for your friend. However, you may well find that, despite your efforts and intentions regarding this decision, there will be those who will question your ability to be impartial given your relationship with your friend.

Assuming that your agency attorney has concluded that there is not a legal basis for you to refrain from participating in this decision; you will have to weigh two competing "right sets" of values. One is your responsibility to participate in the decision-making process; the other is your responsibility to promote the public's trust in the integrity of that process.

Ask yourself whether an objective observer would believe you can be impartial given your relationship with your friend. Also pose this question to trusted advisors. Of course, relevant to this question is whether, after engaging in the analysis described above, you are inclined to support the proposal, in spite of its negative effect on your friend's property value. There obviously will be more questions about your impartiality if you are inclined to oppose the proposal, since the public may attribute this opposition to your relationship with your friend.

If you conclude that objective observers could reasonably question your ability to be impartial, consider abstaining from participating in the decision, even if you believe you can be impartial. This demonstrates your commitment to promoting the public's trust and confidence in the decision-making process. It also will contribute to a reservoir of goodwill should your integrity ever be unfairly questioned in future situations.

Walking the Talk

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.

If you choose to participate in the decision, explain why you feel your decision is best for the whole community and articulate the steps taken to achieve both a fair process and a fair decision. For example, if you decide to support the proposal based on the financial benefits, explain why you believe that the extra financial resources will make the community a better place (money is rarely an end in itself).

If you decide to vote against the proposal, explain how you believe the proposed project has a net negative impact on the community overall or unduly treads on individual interests, or both. 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 imperative 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. Explain that you cannot make a decision prior to the hearing, and that your decision must be made after considering all the evidence and testimony presented in the hearing.

You may find that, based on your analysis, the ethical approach is to approve the proposed use. If so, tell your friend that the decision was difficult, because you do value the friendship, but you also know that friendship is based on mutual respect. Explain that you believe one reason you are friends is that you both respect and understand each other's point of view, including your ethical and legal duties 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.

Endnotes:

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).

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