



Everyday Ethics for Local Officials

AB 1234 Self-Study Opportunity: Laws and Ethical Principles Related To Governmental Transparency and Fair Processes

April, June 2006

AB 1234 requires elected and appointed officials to take two hours of ethics training if they receive compensation for their services or are reimbursed for their expenses.¹ The ethics training requirement may also apply to agency employees designated by the agency's legislative body.²

There are many ways to satisfy this requirement, including in-person training and self-study activities. Furthermore, like all ethics laws, AB 1234 is a floor, not a ceiling. Local officials can demonstrate their commitment to ethics in public service by going beyond AB 1234's minimum requirements.

As a special service, *Western City* and the Institute for Local Government (ILG) are offering this article for *one hour* of AB 1234 self-study credit (or the first half of the minimum requirement). To claim self-study credit, log on to www.ca-ilg.org/AB1234selfstudy, print out and take the test, then mail it to the address indicated with a \$25 processing fee. This fee covers grading the test, providing the correct answers (and explanations) and your proof of participation certificate.

Scope of This Self-Study Exercise

This article covers the first two areas of ethics training required by AB 1234:

1. Laws related to personal financial gain by public officials (including bribery and conflict of interest laws); and
2. Laws related to office-holder perks (also known as perquisites), including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds.³

It also covers ethics principles that are related to these laws and public service ethics in general.

The June 2006 "Everyday Ethics" column will provide a self-study opportunity to complete AB 1234 ethics training concerning governmental transparency and fair process laws.

Note that public service ethics laws are extraordinarily complex. The learning objective of both self-study and in-person AB 1234 training courses is to familiarize local officials with situations where they need to consult agency counsel, the attorney general or the Fair Political Practices Commission about what the law requires.

Furthermore, the ethics laws and training requirements of AB 1234 are *minimum* standards. Just because a course of action is legal doesn't mean that it is ethical or that the public or media will perceive it to be so. Local officials are strongly encouraged to go beyond the minimum ethics training standards created by AB 1234 and participate in additional educational activities related to their legal and ethical obligations as public servants.

Laws Addressing Financial Gain

The principle underlying the financial gain laws is that the possibility of personal financial gain or loss cannot be a factor in your decisions as a public official. The laws in this area are designed to promote the general ethical values of *responsibility* and *trustworthiness*. Public servants have a responsibility to act always in the public's interest, and the public must be able to trust that they will.

The following laws are designed to avoid both the reality and the appearance of personal financial gain influencing public servants' actions.

- **Bribery.** Requesting, receiving or agreeing to receive money in exchange for an official action is a crime. Under the state's criminal laws, a "bribe" includes anything of value; it also includes receiving "advantages." The advantage can be a future one and need not involve the payment of money.⁴ The federal definition of bribery is even broader.⁵
- **Disqualification Based on Financial Interests.** A public official may not make, participate in or influence a governmental decision that will have a fore seeable and material financial effect on the official, the official's immediate family or any of the official's economic interests.⁶ Note the breadth of the prohibition: It does not just apply to voting but the entire process leading up to voting. See "Financial Interests Affected by an Agency Decision: When to Seek an Attorney's Advice" at left for a list of the kinds of financial interests that can give rise to potentially disqualifying conflicts of interests.

- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.⁷ The law is very strict on this point. Such contracts are void - meaning that the public agency will not have to pay the official for the benefits provided to the agency under the contract.⁸ Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract.
- **Prohibition Against Property Acquisition in Redevelopment Areas.** Generally speaking, public officials who have input into redevelopment project areas may not acquire property in those areas.⁹ Any existing interests must also be disclosed.¹⁰
- **Helping Prospective Employers.** A public official may not influence agency decisions when the interests of a prospective employer are at stake.¹¹ This situation arises when someone is negotiating or has any arrangement concerning prospective employment with someone who has business before the agency.
- **Revolving Door.** Effective July 1, 2007, elected officials and top-level managers cannot represent private individuals or entities for pay before their agencies for one year after leaving office.¹²

Note that some local agencies have adopted even more restrictive prohibitions.

The consequences of violating these requirements can be severe. They include criminal felony or misdemeanor prosecutions under state and sometimes federal laws. Conviction can involve substantial fines, jail time and loss of office. Civil fines can also add up. For example, the administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation. In most instances, officials targeted for civil enforcement actions will pay tens of thousands of dollars in defense costs - significantly more in criminal cases.

There can also be other kinds of negative consequences. For example, if an official violates prohibitions against self-dealing related to contracts, the official may have to refund amounts paid under the contract. If a decision is tainted by the participation of someone who should have disqualified herself, the decision is subject to invalidation.

Laws on Personal Advantages And Perks

The principle underlying the "no perks" laws is that your status as a public servant and your access to public resources should not afford you special privileges. There are two categories of "no perks" laws. One relates to perks that others provide public officials (for example, gifts). The other involves advantages that officeholders provide themselves (for example, use of public resources).

The laws in this area are designed to promote the general ethical values of *fairness*, *responsibility* and *trustworthiness*. For example, receiving perks from others undermines the public's trust that decision-makers are treating everyone who comes before them fairly and making decisions solely in the public's interests.

When officeholders give themselves perks, it undermines the public's trust that these officeholders are careful, public-minded stewards of taxpayer resources. To the extent that some of these perks involve political advantages, they undermine the fairness of campaigns and elections.

Generally speaking, the "no perks" laws bar some transactions and require disclosure of others, including the following:

Loans. Officials cannot receive loans from those within the agency¹³ or with whom the agency contracts (except for bank or credit card indebtedness made in the regular course of the company's business).¹⁴ Personal loans of more than \$500 from others must meet certain requirements (for example, they must be in writing and clearly state the date, amounts and interest payable).¹⁵

Gifts. With certain exceptions, a public official must disclose most gifts of \$50 or more on his or her Statement of Economic Interests and may not receive gifts from any one source that total more than \$420 in a single year.¹⁶ Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.¹⁷

Travel Passes From Transportation Companies. State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.¹⁸ The penalty for violating the prohibition against accepting travel passes from transportation companies is severe - immediate forfeiture of office.¹⁹

Travel Expenses From Non-Transportation Companies. Gifts of travel expenses (for example, airfare, lodging, meals and entertainment) from non-transportation companies are generally subject to the gift rules and must be reported on your Statement of Economic Interests as such.

Receiving Gratuities or Rewards. It is a crime to receive any kind of gratuity or reward for performing your duties as a public servant.²⁰

Honoraria. State law regulates the degree to which public officials may receive payments for giving a speech, writing an article or attending a public or private conference, convention, meeting, social event, meal or similar gathering.²¹ Generally such payments - known as honoraria - are prohibited. The assumption is that such communications are part of a public official's service.

Personal Use of Public Resources. State law forbids public officials from using public resources for personal purposes.²² "Public resources" include such things as staff time, office equipment (telephones, fax machines, photocopiers and computers) and office supplies (stationery, stamps and other items). "Personal" use of public resources includes activities that are for personal enjoyment, private gain or advantage.²³ "Use" means the use of public resources that is substantial enough to result in a gain in advantage for the user and a loss to the local agency that can be estimated as a monetary value.²⁴

Expense Reimbursement. The general rule is that local agency officials may be reimbursed only for actual and necessary expenses.²⁵ Effective Jan. 1, 2006, cities, counties and special districts that reimburse their elected and appointed officials must adopt expense reimbursement policies that specify the kinds of activities that will be reimbursable.²⁶ Local agencies must use expense report forms, and all expenses must be documented with receipts.²⁷ These documents are public records subject to disclosure.²⁸

Limits on Public Official Compensation. Typically there is a legal limit on elected public official compensation levels, either in state or local statutes. Public officials, particularly elected ones, may collect and retain only such compensation as the law allows.²⁹ As protectors of the public purse, courts generally take a strict approach to public official compensation limits.³⁰

City and county officials typically receive a monthly salary for their service. Special district directors tend to be compensated by a daily stipend. With certain exceptions, this stipend compensates such directors for:

- A meeting of any "legislative body" as defined by the Brown Act;
- A meeting of an advisory body; and/or
- Conference attendance or educational activities, including ethics training.³¹

Special districts may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.³²

Use of Public Resources for Political Purposes. The same statutes that prohibit the use of public resources for personal benefit also prohibit the use of such resources for campaign purposes.³³ The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures.

Mass Mailings at Public Expense. State law forbids sending mass mailings at public expense.³⁴ The Fair Political Practices Commission has defined "mass mailings" as sending more than 200 identical pieces that contain the name or pictures of elected officials except as part of a standard letterhead.³⁵ (For more information, see "Career-

Saving Tips on Mass Mailings," February 2006, *Western City*; available online at www.westerncity.com.)

Gifts of Public Resources or Funds. California's Constitution forbids gifts of public funds. This prohibits, for example, paying for spouses to accompany public officials.³⁶ It can also be an issue when a public agency contemplates charitable contributions.³⁷

Soliciting Political Support From Agency Employees. Soliciting campaign funds from agency officers or employees is also unlawful,³⁸ as is conditioning employment decisions on support of a person's candidacy.³⁹ Compensation decisions may not be tied to political support either.⁴⁰

Speak with your agency counsel about the specifics of these requirements as they may apply to your situation.

The consequences of violating the "no-perk" laws can also be severe. For example, the prohibitions against the personal use of public resources are punishable by a \$1,000 per day fine plus three times the value of the resource used.⁴¹ Criminal penalties include a two- to four-year prison term and disqualification from office.⁴² Prosecution under the federal income tax evasion laws is also a possibility.⁴³ Again, this does not include the costs of hiring defense lawyers, which can run into tens of thousands of dollars or more.

Going Beyond the Law

Understanding and complying with public service ethics laws is a challenge, but the public expects even more of its public servants. Rather than making decisions purely on the fly, how can public officials maximize the likelihood that they will meet or exceed the public's expectations for ethical conduct?

One way is to think in terms of ethical values. Some key values related to public service include responsibility, trustworthiness, respect and fairness. Assess decisions you have to make against these standards.

In addition, you can ask yourself these kinds of questions:

- What decision, behavior or course of action will best promote the public's trust in my leadership and that of my agency?
- Would I want to read about a certain course of action on the front page of my local newspaper?
- How do I want to be remembered as a public official? What would make my family and parents proud of my work and legacy?

For example, even if you are not legally required to disqualify yourself from participating in a decision, you may want to voluntarily abstain from participating if you believe the public would reasonably question whether you could put personal relationships and interests aside in making a given decision.

Conclusion

Former British Prime Minister Benjamin Disraeli once observed, " ? all power is a trust; ? we are accountable for its exercise." As extensive and complicated as they are, the rules related to public service ethics are a reflection of that overarching quest for accountability and trust.

Financial Interests Affected By an Agency Decision:

When to Seek An Attorney's Advice

Talk with your agency attorney when an action by your 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 you or your spouse or domestic partner.

Real Property. A direct or indirect interest in real property of \$2,000 or more that you or your immediate family (spouse or domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase, especially when any of these are located within 500 feet of the subject of your decision.

Personal Finances. Your or your immediate family's (spouse or domestic partner and dependent children) personal expenses, income, assets or liabilities.

Gift Giver. A giver of a gift of \$420 or more to you in the prior 12 months, including promised gifts.

Lender/Guarantor. A source of a loan (including a loan guarantor) to you.

Contract. You or a member of your family would have an interest (direct or indirect) in a contract with the agency.

Business Management or Employment. An entity for which you serve as a director, officer, partner, trustee, employee or manager.

Business Investment. An interest in a business in which you or your immediate family (spouse or domestic partner and dependent children) 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 otherwise related to a business if you:

- Have a direct or indirect investment worth \$2,000 or more; or
- Are a director, officer, partner, trustee, employee or manager.

Business Entity Owning Property. A direct or indirect ownership interest in a business entity or trust of yours that owns real property.

Campaign Contributor. A campaign contributor of yours (if you are sitting on an appointed decision-making body). For example, this applies if you are a planning commissioner running for city council.

Other Personal Interests and Biases. You have important (but non-financial) personal interests or biases (positive or negative) about the facts or the parties that could prevent you from making a fair decision.

What Will Happen Next?

Your agency attorney will advise you whether a) you can participate in the decision and, b) 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 state attorney general to weigh in. Keep in mind the attorney's duty is to promote compliance with the ethics laws - not try to find ways around them.

The "Leave the Room" Requirement

If you are disqualified from participating on a specific agenda item under the conflict of interest rules established by the Political Reform Act, you must:⁴⁴

- At the meeting, publicly identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public;
- Not attempt to influence the decision in any way (this includes pre-meeting discussions with staff or colleagues);
- Refrain from discussing or voting on the matter (you should ask for the item to be considered separately if it is on the consent calendar); and
- Leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter is on the consent calendar.

There are limited exceptions that allow a disqualified official to remain in the room and participate in the discussion as a member of the public when one's "personal interests"

are at stake. Consult with your agency attorney about what kinds of personal interests qualify.

Going Beyond the Minimum in Understanding Public Service Ethics

Like all ethics laws, AB 1234 sets minimum standards. The enforcement mechanism for complying with AB 1234's requirements relies on public opinion and media attention. Records of officials' compliance with AB 1234 (such as proof of participation certificates) are public records and must be maintained for at least five years.⁴⁵

In addition to maintaining records on compliance with the minimum standards imposed by AB 1234, local agencies may also want to maintain records of any training and study that local agency officials have engaged in beyond AB 1234's minimum requirements. This will enable those inquiring to ascertain the agency's and individual's full scope of commitment to understanding the ethical and legal obligations associated with public service.

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There are many ways to satisfy this requirement, including in-person training and self-study activities. Furthermore, like all ethics laws, AB 1234 is a floor, not a ceiling. Local officials can demonstrate their commitment to ethics in public service by going beyond AB 1234's minimum requirements.

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Scope of This Self-Study Exercise

This article covers *half* of AB 1234's required elements, including:⁴⁸

- Governmental transparency laws, including financial disclosure laws and laws protecting the public's right to participate in meetings and access public records (the Brown Act and Public Records Act); and

- Laws related to fair processes, including common law bias, due process, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participation in decisions involving family members.

The April 2006 "Everyday Ethics" column covered the balance of AB 1234's requirements, including:⁴⁹

- Laws related to personal financial gain by public officials (including bribery and conflict of interest laws); and
- Laws related to office-holder perks, including gifts and travel restrictions, personal and political use of public re-sources, and prohibitions against gifts of public funds.

Note that public service ethics laws are extraordinarily complex. The learning objective of both self-study and in-person AB 1234 training courses is to familiarize local officials with when they need to consult agency counsel, the attorney general or the Fair Political Practices Commission (FPPC) about a given situation or course of action.

Transparency Laws

The principle underlying the governmental transparency laws is that the public trusts what it can observe. Furthermore, the prospect that actions will be publicly known can be a deterrent against actions that might undermine public trust. Thus, the laws in this area are designed to promote the general ethical values of *trustworthiness* and *responsibility*.

There are two basic categories of transparency laws. One relates to activities of the individual official. For example, these laws require specified officials to periodically disclose their personal financial interests (so the public can assess whether those interests played a role in the official's decisions). They also require officials to disclose campaign and charitable fund-raising activities.

The other kind of transparency laws require governmental processes to be transparent to the public. These laws require that governmental decisions be made in public and that the public has the opportunity to weigh in on those decisions. They also require that most public records be open to public inspection.

This self-study exercise discusses both kinds of transparency laws.

Financial Disclosure Laws

There is an adage about one's life being an open book. Nowhere is this truer than for public officials and their finances. When you become a public official, the public gets to learn a great deal about your financial life. California voters created these disclosure requirements when they approved the Political Reform Act in 1974.⁵⁰

The disclosure requirements apply to nearly every local elected official and department head. Members of commissions, boards, committees and other local agency bodies with significant decision-making authority are also subject to disclosure requirements. An agency may require additional staff positions to disclose their economic interests under the agency's local conflict of interest code. Such employees are known as "designated employees."

The following kinds of economic interests must be disclosed if they meet certain minimum thresholds:⁵¹

- Sources of income;
- Interests in real property;
- Investments;
- Business positions; and
- Gifts.

This disclosure is made on forms called "Statements of Economic Interests" and "Form 700." Copies of these forms are generally provided by one's agency. Interactive versions of the forms are available online at www.fppc.ca.gov.

These forms are filed upon assuming office, on an annual basis while in office and upon leaving office.

Charitable Fund Raising

The disclosure laws are not limited to an official's personal financial interests. There are extensive disclosure requirements relating to an official's *campaign* fund-raising activities, of course.⁵² However, a sometimes-overlooked disclosure obligation relates to an official's *charitable* fund-raising activities. The theory is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

This disclosure requirement is triggered when an elected official gets someone to contribute \$5,000 or more to a legislative, governmental or charitable cause during a calendar year.⁵³ Within 30 days of reaching the \$5,000 threshold, the elected official must file a report with his or her agency (typically with the filing officer).

Conducting the Public's Business In Public

California's open meeting laws⁵⁴ provide legal minimums for local governmental transparency in decision-making. Decision-making bodies - which include the governing board as well as many committees and advisory bodies - must conduct their business in

an open and public meeting to ensure that the public is fully informed about local decisions.⁵⁵

Key things to keep in mind include:

- **Meetings.** A "meeting" is any situation involving a majority of the governing body in which business is transacted or discussed.⁵⁶ In other words, a majority of the governing body cannot talk privately about an issue for consideration before the body no matter how the conversation occurs, whether by telephone, e-mail or at a local coffee shop.⁵⁷
- **Serial Meetings.** One thing to watch out for is unintentionally creating a "serial" meeting - a series of communications that results in a majority of governing body members having conferred on an issue. For example, if two members of a five-member governing body consult outside of a public meeting (which is not in and of itself a violation) and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling governing body members in a way that reveals the members' positions to one another.⁵⁸
- **Permissible Gatherings.** Not every gathering of governing body members is a problem. For example, a majority of the governing body may attend the same educational conference or a community meeting not organized by the local agency.⁵⁹ Nor is attendance at a social or ceremonial event in and of itself a violation.⁶⁰ The key rule to keep in mind is a majority of the governing body members cannot meet and discuss agency business except at an open and fully noticed public meeting.
- **Closed Sessions.** The open meeting laws include provisions for nonpublic discussions under very limited circumstances.⁶¹ Because of the complexity of the open meeting laws, close consultation with an agency's legal advisor is necessary to ensure that the requirements related to and the limitations on closed sessions are observed.

The Public's Right to Participate In Meetings

Another element of open meeting laws is the public's right to address the governing body. A public official's role is to both hear and evaluate these concerns, and there are a number of basic rules that govern this right, such as:

- **Posting and Following the Agenda.** The open meeting laws require that the public be informed about the time of and the issues to be addressed at each

meeting.⁶²

- **The Public's Right To Be Heard.** Generally, every agenda must provide an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.⁶³ If the issue of concern is one pending before the legislative body, the opportunity must be provided before or during the body's consideration of that issue.⁶⁴
- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner.⁶⁵

The Public's Right to Access Records

Copies of the agenda materials and other documents distributed to the governing body must also be available to the public.⁶⁶ The public has the right to see any materials that are created as part of conducting the people's business.⁶⁷ These materials include any written item that was prepared, owned, used or retained by a public agency.⁶⁸ They include documents, computer data, e-mails, facsimiles and photographs.⁶⁹

Although there are exceptions to a public agency's duty to disclose records, the safe assumption is that virtually all materials involved in one's service on a public governing body - including e-mails - are public records subject to disclosure.

Fair Process Laws

Not surprisingly, fair process laws promote the ethical value of fairness. This is the concept that everyone has a right to be treated fairly by governmental processes, regardless of who they are or know. The public's perception that decisions are made fairly is a key element of the public's confidence and trust in government and individual public officials.

The Obligation To Be a Fair and Unbiased Decision-Maker

Although California statutes largely determine when public officials must disqualify themselves from participating in decisions, common (judge-made) law still requires a public official to exercise his or her powers free from personal bias - including biases that have nothing to do with financial gain or loss.

In addition, constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a "quasi-judicial" capacity. 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.

For example, a court overturned a planning commission's decision on due process grounds, concluding that a planning commissioner's authorship of an article hostile to a project before the commission gave rise to an unacceptable probability of bias against the project.⁷⁰

Typically, having the official who may have exhibited bias disqualify himself or herself solves the problem.⁷¹ If the problem is not addressed, though, the agency's decision will be at risk of being overturned by the courts.⁷² The agency will have to conduct new proceedings free of the influence of the biased decision-maker.⁷³ If the violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorneys' fees.⁷⁴

Finally, community relations - and the public's views of an official's responsiveness - are seriously undermined when it appears an official is not listening to public input. Even if you disagree with the views being offered, treat the speaker with the same respect you would want if the roles were reversed. Furthermore, at least one court has ruled that officials' perceived inattentiveness during a hearing violated due process principles.⁷⁵

Campaign Contributions and Bias

Generally, the ethics laws with respect to campaign contributions emphasize disclosure rather than disqualification. The emphasis on disclosure enables the public to assess for itself the degree to which an official could be influenced by campaign contributors who appear before the agency. Both financial and in-kind support must be disclosed.

However, under limited (and sometimes counterintuitive) circumstances, certain local agency officials must disqualify themselves from participating in proceedings regarding licenses, permits and other entitlements for use if the official has received campaign contributions of more than \$250 during the previous 12 months from any party or participant.⁷⁶ The restrictions apply if the official is sitting on an appointed (as opposed to elected) body.⁷⁷

In addition, these officials are prohibited from receiving, soliciting or directing a campaign contribution of more than \$250 from any party or participant in a license, permit or entitlement proceeding while the proceeding is pending and for three months after the contribution.⁷⁸

Holding Multiple Public Offices

There is such a thing as too much public service; the law limits the degree to which public officials can hold multiple public offices. The reason is that when one assumes a public office, one takes on responsibility to the constituents of that agency to put their interests first. When one occupies multiple offices in multiple agencies (for example, membership on the city council and serving on the board of another local agency), that role becomes more complicated because of the possibility of conflicting loyalties.⁷⁹

Offices are incompatible if there is any significant clash of duties or loyalties between the offices or if either office exercises a supervisory, auditory or removal power over the other.⁸⁰ Note there can be specific legislative exceptions to incompatible office rules.⁸¹

Competitive Bidding Processes for Public Contracts

Public contracting laws - including those adopted at the local level - are designed to give all interested parties the opportunity to do business with the government on an equal basis. This keeps contracts from being steered to businesses or individuals because of political connections, friendship, favoritism, corruption or other factors. It also ensures that the public receives the best value for its money by promoting competition among businesses.⁸²

Many competitive bidding requirements are locally imposed; for example, by charter cities as part of their municipal affairs authority.⁸³ State law also authorizes local agencies to adopt procedures for acquiring supplies and equipment.⁸⁴ Most of these purchasing ordinances require competitive bids for contracts in excess of designated dollar amounts.

For public works projects, state law defines when general law cities and counties must use competitive bidding. For general law cities, public works projects of more than \$5,000 are subject to the state's competitive bidding requirements.⁸⁵ For county projects, the threshold is based on population: \$6,500 (counties with populations of 500,000 or more); \$50,000 (counties with populations of 2 million or more); and \$4,000 (all other counties).⁸⁶ Note that it is a misdemeanor to split projects to avoid competitive bidding requirements.⁸⁷

In order to give all interested parties an opportunity to do business with the agency and get the best price for the public, the agency has to publicize the opportunity. This is typically accomplished by publishing a notice inviting bids in a newspaper of general circulation that is printed or published in the jurisdiction, or if there is none, posting the notice in at least three public places in the jurisdiction.⁸⁸ Trade publications can also be a helpful way to reach a wide segment of the contracting industry.

Decisions Involving Family Members

The Political Reform Act requires public officials to disqualify themselves from participating in decisions that will increase or decrease their immediate family's expenses, income, assets or liabilities.⁸⁹ "Immediate family" includes one's spouse or domestic partner and dependent children.⁹⁰ The notion is that it's very difficult for any person to be fair and unbiased when one's family's interests are concerned; of course, it's also difficult for the public to perceive the official to be fair and unbiased about close family members.

Because of this, some jurisdictions have adopted additional restrictions on hiring or appointing relatives of public officials. These are known as anti-nepotism policies. It can be wise to avoid questions about family relationships by voluntarily not participating in decisions that affect family members, even if the law or local agency regulations allow you to participate.

Beyond the Law

At some point in your service as a public official, you will likely face two common types of ethical dilemmas:

- **Personal Cost Ethical Dilemmas.** This involves situations in which doing the right thing may (or will) come at a significant personal cost to you or your public agency. These also can be known as "moral courage" ethical dilemmas.⁹¹
- **Right-Versus-Right Ethical Dilemmas.** This type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values.⁹²

Of course, some dilemmas are a combination of both: a conflict between competing sets of "right" values (right versus right) and a situation in which doing the right thing involves personal or political costs.

Personal Cost Ethical Dilemmas

With these kinds of dilemmas, the costs can be political - such as the loss of a political supporter or perhaps even one's prospects for re-election. Or the cost can be financial; for example, a missed opportunity for financial gain or material benefit. Issues related to the proper use of public resources fall into the "personal cost" type of ethical dilemma, inasmuch as these dilemmas typically involve whether one is going to forgo a tempting political or personal benefit. Finally, the cost can be more directly personal; for example, when one fears a particular course of action may jeopardize a friendship or one's job. In these situations, the answer is relatively simple. *The bottom line is that being ethical means doing the right thing regardless of personal costs.*

Right-Versus-Right Ethical Dilemmas

Right-versus-right ethical dilemmas can be more difficult to resolve. An easy example, however, is when a political supporter urges you to do something that conflicts with your own best sense of what will serve your community's interests. In this dilemma, there is a conflict between your responsibility to do what is in the public's best interest and your loyalty to your political supporter. *Responsibility* and *loyalty* are both bona fide ethical values.

The key is, as a public servant, the ethical value of responsibility (and the responsibility to do what is in the public's best interest) trumps the ethical value of loyalty. This is

when thinking about the public's perception of the right thing to do can be a useful dilemma-resolution strategy.

The Means and the End

In politics, there is a great temptation to engage in ends-means thinking in which one might be persuaded to conclude that good or desirable ends justify the means. As both Dr. Martin Luther King Jr. and Mahatma Gandhi observed, the means *are* the end in a democracy and good ends cannot come from questionable means.

Public officials are stewards of the public's trust in both their institutions and their leaders. A fair and open process is central to that trust. As a leader, conscientious attention to laws and principles of fair and open government will help you pursue both good means and good ends.

For More Information:

The following resources offer more information about ethics laws and principles.

California Attorney General Publications

<http://caag.state.ca.us/publications/index.htm> (click on "Ethics")

Fair Political Practices Commission Publications

www.fppc.ca.gov/index.html?id=9

Institute for Local Government Ethics Resource Center

www.ca-ilg.org/trust

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 Cal. Gov't Code § 53235(a), (b).

² Cal. Gov't Code § 53234(c).

- ³ Cal. Gov't Code § 53235(a), (b).
- ⁴ *Id.* See also *People v. Anderson*, 75 Cal. App. 365 (1925).
- ⁵ See 18 U.S.C. § 201.
- ⁶ See Cal. Gov't Code §§ 87100 and following.
- ⁷ Cal. Gov't Code § 1090.
- ⁸ Cal. Gov't Code § 1092.
- ⁹ See Cal. Health & Safety Code § 33130.
- ¹⁰ Cal. Health & Safety Code § 33130(a).
- ¹¹ Cal. Gov't Code § 87407.
- ¹² See Cal. Gov't Code § 87406.3.
- ¹³ See Cal. Gov't Code § 87460(a), (b).
- ¹⁴ See Cal. Gov't Code § 87460(c), (d).
- ¹⁵ See Cal. Gov't Code § 87461.
- ¹⁶ Cal. Gov't Code §§ 87200, 87207, 89503; 2 Cal. Code Regs. § 18940.2 (\$420 amount valid through 2010).
- ¹⁷ Cal. Gov't Code § 82028(a).
- ¹⁸ See Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this State ...").
- ¹⁹ See Cal. Const. art. XII, § 7 ("... acceptance of a pass or discount by a public officer ... shall work a forfeiture of that office ...").
- ²⁰ Cal. Penal Code § 70.
- ²¹ See Cal. Gov't Code § 89501 (definition of honoraria).
- ²² See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ²³ Cal. Gov't Code § 8314(b)(1).
- ²⁴ Cal. Gov't Code § 8314(b)(4).
- ²⁵ Cal. Gov't Code § 53232.2.
- ²⁶ Cal. Gov't Code § 53232.2(b).
- ²⁷ Cal. Gov't Code § 53232.3.
- ²⁸ Cal. Gov't Code § 53232.3(e).
- ²⁹ For example, the salary of council members of general law cities is controlled by Government Code § 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary (Cal. Gov't Code § 36516(b)). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council (Cal. Gov't Code § 36516.1. See also Cal. Educ. Code §§ 1090 (county board of education compensation), 35120 (school board member compensation), 72425 (community college board member compensation)).
- ³⁰ *Id.*
- ³¹ Cal. Gov't Code § 53232.1(a).
- ³² Cal. Gov't Code § 53232.1(b).
- ³³ Cal. Penal Code § 424; *People v. Battin*, 77 Cal. App. 3d 635 (1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superseded on other grounds by *People v. Conner*, 34 Cal. 3d 141 (1983). See also Cal. Gov't Code § 8314 ("'Campaign activity' means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. 'Campaign activity' does not include the incidental and minimal use of public

resources, such as equipment or office space for campaign purposes, including the referral of unsolicited political mail, telephone calls and visitors to private political entities.").

³⁴ See Cal. Gov't Code § 89001.

³⁵ See 2 Cal. Code Regs. § 18901.

³⁶ 75 Cal. Op. Att'y Gen. 20 (1992) (finding paying a spouse's expenses to a conference violates both Government Code §1090 and constitutional prohibitions against gifts of public funds). See also 65 Cal. Op. Att'y Gen. 517, 521 (1982) (finding Government Code § 36514.5 does not authorize reimbursement of the expenses of any person other than a member of the city council). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 869-870 (1975) (unauthorized reimbursement is illegal gift).

³⁷ See generally McQuillin, *Municipal Corporations*, § 39.25 (3d rev. ed. 1988) ("Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.")

³⁸ See Cal. Gov't Code § 3205 (except for those communications to a significant segment of the public that happens to include fellow public officials and employees).

³⁹ See Cal. Gov't Code § 3204, which reads as follows: No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

⁴⁰ See Cal. Gov't Code § 3205.5, which reads as follows: No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine.

⁴¹ Cal. Gov't Code § 8314(c)(1).

⁴² Cal. Penal Code § 424.

⁴³ See 26 U.S.C. §§ 7201, 7203.

⁴⁴ See Cal. Gov't Code § 87105.

⁴⁵ Cal. Gov't Code § 53235.2.

⁴⁶ Cal. Gov't Code § 53235(a), (b).

⁴⁷ Cal. Gov't Code § 53234(c).

⁴⁸ Cal. Gov't Code § 53234(d)(3), (4).

⁴⁹ Cal. Gov't Code § 53234(d)(1), (2).

⁵⁰ This is a requirement of the Political Reform Act. See generally Cal. Gov't Code §§ 87200 and following.

⁵¹ See Cal. Gov't Code §§ 87200-87210; 2 Cal. Code Regs. §§ 18723-18740.

⁵² See generally Cal. Gov't Code §§ 84100 and following; 2 Cal. Code Regs. §§ 18 40 1 and following.

⁵³ See Cal. Gov't Code § 82015 (b)(2)(B)(iii).

⁵⁴ See generally Cal. Gov't Code §§ 54950 and following (for cities, counties, special districts and school districts); Cal. Educ. Code §§ 72 12 1 and following (for community college district governing boards).

⁵⁵ See Cal. Gov't Code 54952.2(a); Cal. Gov't Code § 54954.2(a).

⁵⁶ Cal. Gov't Code § 54952.2(a).

⁵⁷ Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.

- ⁵⁸ Cal. Gov't Code § 54952.2.
- ⁵⁹ Cal. Gov't Code § 54952.2(c)(2).
- ⁶⁰ Cal. Gov't Code § 54952.2(c)(5).
- ⁶¹ See Cal. Gov't Code § 54954.5; Cal. Educ. Code § 71 122.
- ⁶² Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72 12 1.
- ⁶³ Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72 121 .5.
- ⁶⁴ Cal. Gov't Code § 54954.3(a).
- ⁶⁵ Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk* , 900 F.2d 142 1, 1425 (9th Cir. 1990).
- ⁶⁶ Cal. Gov't Code § 54957.5.
- ⁶⁷ See generally Cal. Gov't Code §§ 6250 and following.
- ⁶⁸ Cal. Gov't Code § 6252(d).
- ⁶⁹ Cal. Gov't Code § 6252(e).
- ⁷⁰ *Nasha v. City of Los Angeles* , 125 Cal. App. 4th 471 (2004).
- ⁷¹ See *Fairfield v. Superior Court* , 14 Cal. 3d 768 (1 975); *Mennig v. City Council* , 86 Cal. App. 3d 34 1 (1978).
- ⁷² See generally Cal. Civ. Proc. Code § 1094.5.
- ⁷³ See *Clark v. City of Hermosa Beach* , 48 Cal. App. 4th 1152 (1996) (requiring council to rehear an appeal from the planning commission's decision and provide a fair hearing).
- ⁷⁴ See 42 U.S.C. §§ 1983, 1988.
- ⁷⁵ See *Lacy Street Hospitality Service v. City of Los Angeles* , 22 Cal. Rptr. 3 d 805 (2004) (depublished 2005 Daily Journal D.A. R. 84). This s case may not be cited as precedent and is provided here only as an illustration.
- ⁷⁶ See Cal. Gov't Code § 84308.
- ⁷⁷ See Cal. Gov't Code § 8208(a)(3); 2 Cal. Code Regs. § 18438.1
- ⁷⁸ See Cal. Gov't Code § 84308(b).
- ⁷⁹ See C al. Gov't Code § 1126.
- ⁸⁰ 7 1 Cal. Op. Att'y Gen. 39 (1988).
- ⁸¹ See, for example , Cal. Health & Safety Code § 6480(b) (relating to city officials serving on sanitary districts); Cal. Gov't Code § 6 1 23 1 (relating to irrigation district directors serving on community services district boards). See also 85 Cal. Op. Att'y Gen. 239 (2002) (noting the legislature can create exceptions to the incompatibility doctrine).
- ⁸² See Cal. Pub. Cont. Code § 100.
- ⁸³ *Smith v. City of Riverside*, 34 Cal. App. 3d 529 (1973).
- ⁸⁴ Cal. Gov't Code §§ 54201 and following.
- ⁸⁵ Cal. Pub. Cont. Code §§ 20160-20162.
- ⁸⁶ Cal. Pub. Cont. Code §§ 20120-20123.
- ⁸⁷ Cal. Pub. Cont. Code § 20163.
- ⁸⁸ See, e.g., Cal. Pub. Cont. Code § 20164.
- ⁸⁹ See 2 Cal. Code Regs. § 18703.5.
- ⁹⁰ Cal. Gov't Code § 82029; 2 Cal. Code Regs. § 18229.
- ⁹¹ See Rushworth M. Kidder, *Moral Courage: Taking Action When Your Values Are Put to the Test* (William Morrow, 2005) .
- ⁹² See Rushworth M. Kidder, *How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living* (Simon and Schuster, 1995) 13-49.