


**Ethics and Public
Service**

Laws and Principles

 INSTITUTE FOR
LOCAL GOVERNMENT

We

**Local
Government**

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MISSION




Trusted
Impartial
Practical
Easy to Use

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Resource Areas



Sustainability
Ethics
Public Engagement
Local Government 101
Intergovernmental Collaboration

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Objectives

1. Rules relating to public service *and* when to ask questions
2. Beyond the rules/integrity
3. Satisfy training requirements
(AB 1234 + MCLE)



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Examples/Illustrations

- Horror/extreme stories from elsewhere
- Why rules exist/trip up areas
 - Many rules adopted in response to scandal
- Part of climate of distrust



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Overarching Goals

- Your success and happiness as a public servant
- Avoid being bogged down by charges of improper conduct
- Not just a matter of law or common sense

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Session Logistics

- **2 hour session**
 - Required content (lots!)
 - Breadth versus depth
- **Questions**
- **Proof of participation**
 - Sign in
 - Certificates

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Ethics versus Ethics Laws



What's Legal?

What's Ethical?



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What Was Wrong with What Happened in Bell?

- On the part of elected officials?
 - They were recalled
 - Facing criminal charges of misappropriation
- On the part of staff
- What are the limits to pursuit of self interest in public service?



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Los Angeles Times

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Advertisement

Sergeant who reported Bell corruption wins whistle-blower settlement

Police Sgt. James Corcoran, who said he was forced into retirement in retaliation for reporting corruption in Bell, wins \$400,000 and has been reinstated to the force.

August 04, 2012 | By Jeff Gottlieb, Los Angeles Times

Comments 22 | Email | Share | +1 | 1 | Tweet 0 | Recommend 36

A Bell police sergeant who said he was forced into retirement in retaliation for reporting corruption in the city has received \$400,000 and been reinstated to the force.

The size of the settlement of James Corcoran's whistle-blower lawsuit is far less than what he might have received at trial, experts agreed.

Retired U.S. District Judge Dickran Tervizian, who served as mediator, said Bell could have lost more than \$3 million if the case had gone to trial, according to a memo that City Atty. Dave Aleshire wrote to City Council members.

"He thought that, given everything out there about Bell and how it operated and the idea of a whistle-blower, the management of Bell was a very unsympathetic defendant and the jury would want to send a message to the city," Aleshire told The Times.

ABOUT

- **Ethics = what we *ought* to do**
- **Laws = what we *must* do**
 - Minimum standards
 - Penalties
- **Key Concept: Legal ≠ ethical**



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What We *Ought* to Do = Values/Integrity



- ✓ **Trustworthiness**
- ✓ **Loyalty**
- ✓ **Responsibility**
 - ✓ Public's interest
 - ✓ Accountability
- ✓ **Respect**
 - ✓ Civility
- ✓ **Fairness**

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What We *Ought* to Do

Two questions to ask:

1. Best for me or best for the public?

2. How will it look?

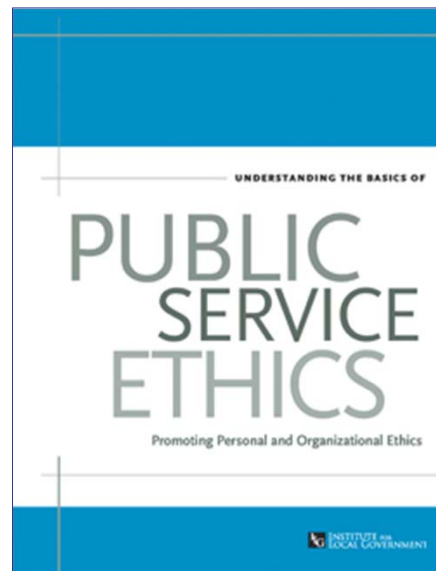
- February Everyday Ethics article
- www.ca-ilg.org/EverydayEthics



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www.ca-ilg.org/ppoe



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Questions About Distinction between Ethics and Ethics Laws



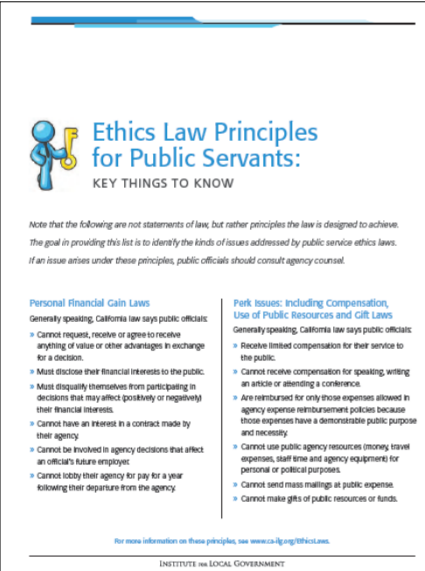
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California's Ethics Laws



- What They Cover
- When You Need to Ask Questions

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Ethics Law Principles for Public Servants:
KEY THINGS TO KNOW

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

Personal Financial Gain Laws
Generally speaking, California law says public officials:

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

Perk Issues: Including Compensation, Use of Public Resources and Gift Laws
Generally speaking, California law says public officials:


- Receive limited compensation for their service to the public.
- Cannot receive compensation for speaking, writing an article or attending a conference.
- Are reimbursed for only those expenses allowed in agency expense reimbursement policies because those expenses have a demonstrable public purpose and necessity.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.

For more information on these principles, see www.ca-ilg.org/ethics.asp.

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New Approach to Handouts

Please give us your feedback!

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Two Law-Based Tools to Promote Ethical Behavior

1. Transparency



2. Prohibitions

➤ Limits of the law

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Penalties for Missteps

- **Loss of freedom**--6 months to 20 years
- **Fines** (up to \$250,000) + restitution + forfeiture
- **Attorneys fees** (\$3K to \$1M+)
- **Personal costs**



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State Ethics Laws



1. **Governmental transparency**
2. **Fair processes**
3. **Personal financial gain**
4. **Personal advantages and perks**

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Transparency Laws

Principles:

- It's the public's business
- The public trusts a process it can see
- Discourages misdeeds



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Financial Interest Disclosure

- **Transparency includes obligation for high level public servants to disclose financial interests**

- Beginning public service
- Annually while in service
- When leave public service

- **Includes “designated employees”**



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More Meeting Transparency Rules



- ✓ **Conduct business in open and publicized meetings**
- ✓ **Allow public to participate in meetings**
- ✓ **Agendas posted on website (new requirement)**

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Conducting Business at Open Meetings

- **A majority may not consult outside an agency-convened meeting**
 - Public has right to observe deliberations
 - Try to influence them
- **Staff can help or hinder compliance**



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Public Records

- **Agendas + writings prepared, owned, used or retained by agency (including electronic)**
- **Penalties: Adverse media attention + costs and litigated**



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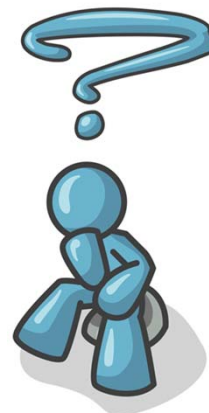
Promoting Public Trust/ Beyond the Minimums

Post Bell Question:

- **What kind of information should be disclosed without being asked?**

The screenshot shows the Institute for Local Government website. At the top left is the logo and name: "INSTITUTE FOR LOCAL GOVERNMENT Promoting Good Government at the Local Level". To the right, a dark grey box contains the text: "ILG is the research and education affiliate of the California State Association of Counties and the League of California Cities." Below this is a navigation bar with links: "Researching an Issue?", "New to Local Public Service?", "Publications", and "About ILG". A search box labeled "Site Search" is on the right. The main content area features a "Back" link and a list of categories: "Analyzing Public Service Dilemmas", "Trustworthiness", "Transparency Strategies", and "Working with Residents and the Media". The article title is "Local Agency Website Transparency Opportunities", accompanied by an icon of a person at a computer. The text reads: "Websites are one opportunity local agencies have to share information proactively with the media and the public. Is your agency interested in increasing its transparency efforts through its website? If so, what information should a local agency consider including on its website?" A small text box at the bottom states: "This article (see box at right) offers a handy checklist of items to consider. The items on the list were collected from various...". On the right side, there is a "DOCUMENTS & RESOURCES" section with a link for "Website Transparency Opportunities".

Questions About Transparency



Fair Process Laws

- **Principle: Under certain circumstances, public officials are stewards of fair processes**
 - Decision-making
 - Contracting
 - Employment



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Fair Process Laws, continued



- **Disqualification requirements if decision involves family members**
- **Nepotism—Local policies (video)**

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Fair Process Laws, continued



- **Competitive bidding requirements**
 - Everyone has a right to compete for agency's business
 - Competition produces the best price
 - Prevents graft
- **Kickbacks prosecutable under federal fraud and extortion laws** (video ahead)

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Fair Process Laws

- **Due process requirements and rules against bias**

- Expressions of views prior to hearing
- Personal, but non-financial interests
- Receipt of information outside of public hearings



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Fair Process Laws, *continued*

- **Incompatible office/ employment prohibitions**

- Issues: Conflicting loyalties & overlapping jurisdictions
- Elected officials forfeit first position

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Campaign Contribution Issues



- **State law campaign contribution restrictions** (appointed)—
 - See page 15 of www.ca-ilg.org/FairProcess
- **Demands for contributions** in exchange for favorable action = federal fraud and extortion
- **Soliciting campaign contributions** from fellow officials and employees prohibited

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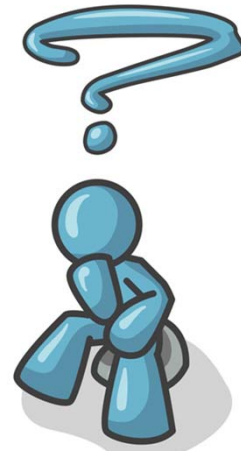
The screenshot shows a web browser displaying the Institute for Local Government (ILG) website. The page title is "Understanding Fair Process Laws and Merit-Based Decision-Making". The main content area features a blue header with the ILG logo and the text "INSTITUTE FOR LOCAL GOVERNMENT Promoting Good Government at the Local Level". Below the header, there is a navigation menu with options like "Researching an Issue?", "New to Local Public Service?", "Publications", and "About ILG". The main content area is titled "Understanding Fair Process Laws and Merit-Based Decision-Making" and includes a sub-header "PUBLIC SERVICE ETHICS". The text describes the resource as a plain-language explanation of laws relating to public officials and fair processes, and lists key issues such as: "The Public's Right to Fair and Unbiased Decision-Makers", "The Prohibition Against Vote-Trading", "Restrictions on Personal Loans to Public Officials", "Restrictions on Participation in Decisions that May Benefit an Official's Family", "Disqualification from Decision-Making Based on Receipt of Campaign Contributions", and "Restrictions on Campaign Support from Agency Staff". On the right side, there is a "DOCUMENTS & RESOURCES" section with links to "Understanding the Basics of Public Service Ethics: Fair Process Laws and Merit-Based Decision-Making", "Hard Copy Order Form", and "Digital Order Form". At the bottom of the page, there is a green banner with the text "www.ca-ilg.org" and the ILG logo.

- www.ca-ilg.org/FairProcess (page 15)

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Questions About Fair Process/ Merit Based Decisionmaking Rules



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Personal Financial Gain Issues

Principles:

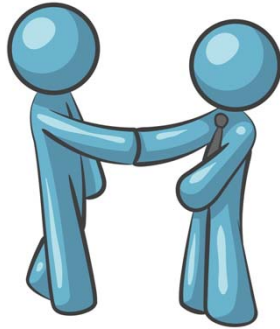
- **Public's interest should be sole motivation**
- **Public servants should not benefit financially from their positions**



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Bribery



Public officials may not:

- Solicit, receive or agree to receive
- A benefit
- In exchange for their official actions

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The screenshot shows a news website with the following elements:

- Header:** "NEWS Channel ON YOUR SIDE newsnet5.com" logo, navigation links (Submit Photos, Local Coupons, RSS, Blogs, Email Alerts, Contests, Mobile, ABC Video, Clevel), and a search bar.
- Page Info:** "Tuesday, August 7, 2012" and a site selector.
- Navigation:** A menu bar with links: HOME, NEWS, WEATHER, TRAFFIC, ENTERTAINMENT, LIFESTYLE, SPORTS, MONEY, MARKETPLACE, VIDEO, ABOUT.
- Main Article:**
 - Headline:** "Former Cuyahoga County Commissioner Jimmy Dimora gets 28 years in prison on corruption conviction"
 - Location:** "Cleveland, OH"
 - Weather:** "78° Clear Power of 5 Weather" with a forecast: "Forecast: More sunshine, warmer"
 - Text:** "Jury found Dimora guilty of corruption last March"
 - Media:** A video player showing a courtroom scene with a play button. Below it are social sharing options (Recommend, Tweet, +1) and author information: "By: Ron Regan, newsnet5.com" and "By: Ellen McGregor, newsnet5.com".
 - Text:** "AKRON, Ohio - Former Cuyahoga County Commissioner Jimmy Dimora will spend 28 years in federal prison for his convictions on conspiracy, racketeering, bribery and more."
 - Text:** "Dimora was once the most powerful political figure in Cuyahoga County."
- More Coverage:** A section titled "More Dimora Coverage" with several article thumbnails and titles, including "Dimora's cell 'crown jewel' of prison", "Judge slams Dimora's corrupt act", "Dimora's flippant & tearful statement", "Dimora courtroom emotional & dramatic", and "Dimora's corruption sentence imminent".

Bribery and Related Crimes

- A few bad apples
- Beware of: "this for that"
- Think about what you would say



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No Self-Dealing Rules

- Disqualification/conflicts of interest rules
- Special rule for contracts



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Disqualification/Step Aside Requirements Based on Financial Interests

- Rule: You may not participate in a decision if financial interests are affected by a decision
- Effect can be positive or negative
- Analysis is complex
- Applies to “designated employees”

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Beyond Minimum Requirements



- **Disqualification => Legally required**
 - Does not imply wrongdoing
 - *Unless* don't step aside
- **Abstention => voluntary**

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What Kinds of Interests?

Public Official's Conflict of Interest Checklist

KEY CONCEPTS

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

BASIC RULE

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

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel 1) early and often, 2) when an action by the public agency, 3) may affect (positively or negatively), 4) any of the following:

- ✓ **Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for the official or official's spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which the official serves as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that the official or official's immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are looked within 500 feet of the subject of the decision.
- ✓ **Gifts.** A gift of a gift of \$40 (2013-14 proposed amount) or more to the official in the prior 12 months, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to the official.
- ✓ **Personal Finances.** The official or official's immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.
- ✓ **Contract.** A contract that the agency is considering entering into, in which the official or a member of the official's family may have an interest (direct or indirect).
- ✓ **Business Investment.** An interest in a business that the official or the official's immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:
 - Has a direct or indirect investment worth \$2000 or more, or
 - Is a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of the official's that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of the official (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

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

EVEN IF IT'S LEGAL, IS IT ETHICAL?

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


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Getting Advice on Conflict Issues

- **Your agency attorney**
 - No immunity though
- **The FPPC**
 - In writing
 - Allow plenty of time



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What It Means to Have to Step Aside





1. **Can't discuss or influence**
(staff or colleagues)
2. **Meetings:**
 1. **Identify nature of conflict**
 2. **(Elected Officials) Leave room**
(unless matter on consent)

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Penalties

- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees
- Fodder for critics



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Warning! Special Rules for Contracts

- **Interests in contracts are *forbidden***
- **Disqualification likely not a solution**
- **Penalties:** Refund money received, fines, imprisonment, and loss of office (felony)



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Future Employment Issues



Revolving door prohibition



- Electeds and top managers
- Cannot represent people for pay for a year after leaving their agency
- **No participation in decisions involving future employers**

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Questions About Personal Financial Interest Rules




Perks

Principles:

- Democratic equality and serving the public's interests
- No special privileges for public officials

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Three Areas



1. **Compensation**
2. **Use-of-public-resources issues**
 1. Personal Use/Expense Reimbursement
 2. Political Use
3. **Gifts**

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Compensation

- **No honoraria rule for speaking or writing**
- **Elected officials salaries**
- **Post Bell restrictions on executive salaries**



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New Transparency Requirements

- **Compensation disclosure at “sequential” meetings**
 - Locally-authorized extra compensation (not authorized in state statute)
- **Restrictions on executive salaries**
 - No automatic renewals with increases in compensation beyond cost-of-living index
 - Salaries must be discussed at regular (not special meetings)

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The screenshot shows a news article from the Los Angeles Times. The main headline is "2 former Lynwood officials guilty of illegally boosting salaries". The sub-headline reads: "Former Lynwood Councilmen Louis Byrd and Fernando Pedroza are convicted of misappropriating public funds. The case could expand the definition of public corruption." The article is dated August 01, 2012, and is by Abby Sewell. The text of the article states: "Two former Lynwood council members accused of illegally boosting their salaries were convicted Tuesday in a closely watched case that legal experts said could expand the definition of public corruption. The guilty verdicts marked a significant victory for the Los Angeles County district attorney's office in its efforts to crack down on city officials who pay themselves excessive salaries. The Lynwood trial was seen as an important test case for prosecutors as they prepare to try former Bell council members accused of similar charges in a much higher-profile corruption scandal." A red circle highlights a specific sentence: "During the month-long trial, prosecutors used a novel legal argument that Lynwood officials broke the law by accepting tens of thousands of dollars in stipends for sitting on city commissions that appeared to do little, if any, work — an arrangement Deputy Dist. Atty. Sean Hassett called 'clearly a scam.'" Below this, another sentence is partially visible: "The added pay boosted the part-time council members' income from less than \$10,000 a year to as much as \$112,000 in one year for Louis Byrd and \$72,000 for Fernando Pedroza, prosecutors said."

Use-of-Public-Resources Issues

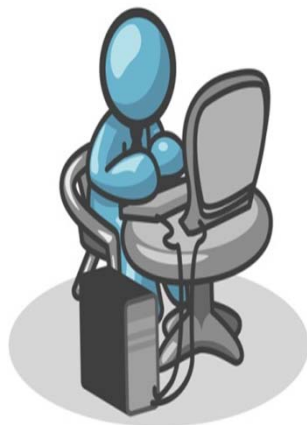
- **Personal** use of public resources (including staff time and agency equipment) prohibited
- **Political** use of public resources also prohibited



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“Public Resources”



Money or anything paid for with public money:

- Staff time
- Office space
- Equipment
- Supplies

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Expense Reimbursement Issues: It's the Public's Money

- Understand expense reimbursement policies
- Note: Partner/spouse expenses not reimbursable
- Following the law may not be enough



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OUR REGION REGION IN BRIEF B2
REMEMBRANCES B4
BUSINESS B6
WEATHER B8

Playwright dies
Sacramento Kathryn L. Webster, an award-winning author, was 91. Page B4

Friday, January 28, 2011 | The Sacramento Bee | sacbee.com/ourregion B1

RIO LINDA-ELVERTA WATER DISTRICT

Credit card abuse alleged

WORKER CHARGED PERSONAL TRIPS AND MORE, SAYS AUDIT

By BRAD BRASAS
bradas@web.com

An accountant at the troubled Rio Linda-Elverta water district used an agency credit card for personal expenses - trips to South Africa and Hawaii among them, according to an auditor's report.

The district's former general manager, Joseph Sherrill, said he terminated Elizabeth Myers because of the charges and because she violated district policy by receiving cash payments for unused sick time and vacation.

District director Frank Caron said the board next month will hear an appeal by Myers, who worked for the district for 17 years.

The Sacramento County District Attorney's Office, which seized records from the water district last year, is investigating the allegations against Myers, among other things, water district officials say.

Myers' actions raise questions about the district's finances because she was responsible for keeping track of its accounts, said former board member Stephanie Stala. Stala said she asked the district's auditor to review spending by Myers because of discrepancies and questionable expenses in her reports to the board.

Independent auditors have repeatedly questioned the district's financial stability and found holes in its record keeping. They've found the district can't adequately track money coming in or going out, leading one auditor to conclude it "has no formal accounting policies and procedures."

Financial problems have gripped the DISTRICT | Page B3

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Political Use of Public Resources

- **By individuals or agency itself (support of ballot measures)**
 - Objective analyses and information OK
 - Especially if part of regular communications channels
- **Note: Mass mailings still banned**



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Consequences of Violations

- **Civil penalties:** \$1,000/day fine + 3X value of resource used
- **Criminal penalties:** 2-4 year prison term + disqualification from office
- Can also have **income tax** implications



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Gifts Don't Always Have Bows

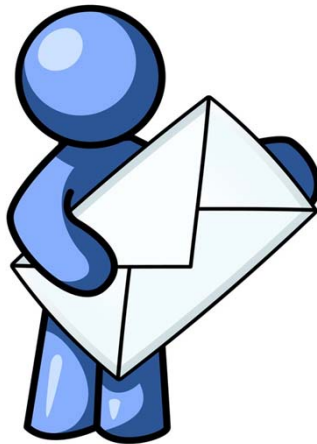


- Meals, food and drink
- Entertainment (concerts & sporting events)
- Certain kinds of travel

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Warning: Mass Mailings



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Gift Rules

- **Report \$50 and up** (over a year)
- **Limit \$440 per calendar year**
- **May also require stepping aside** (over \$440 in prior 12 months)



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Gift Rules, continued

- **Exceptions for:**
 - Some kinds of travel
 - Informational materials
 - Pre-existing social relationships
 - elected officials (*new*)
 - “Reciprocal exchanges”—
elected officials (*new*)
- **More Info:** [www. ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter)



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State Law Penalties



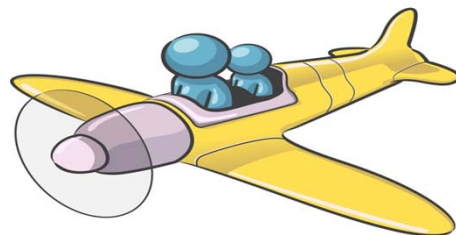
- Up to \$5,000 per violation
- Own attorneys fees (\$3,000-\$30,000)

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Special Rule

- No free transportation from transportation carriers
- Penalty: Loss of office



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Questions about Perk Issues

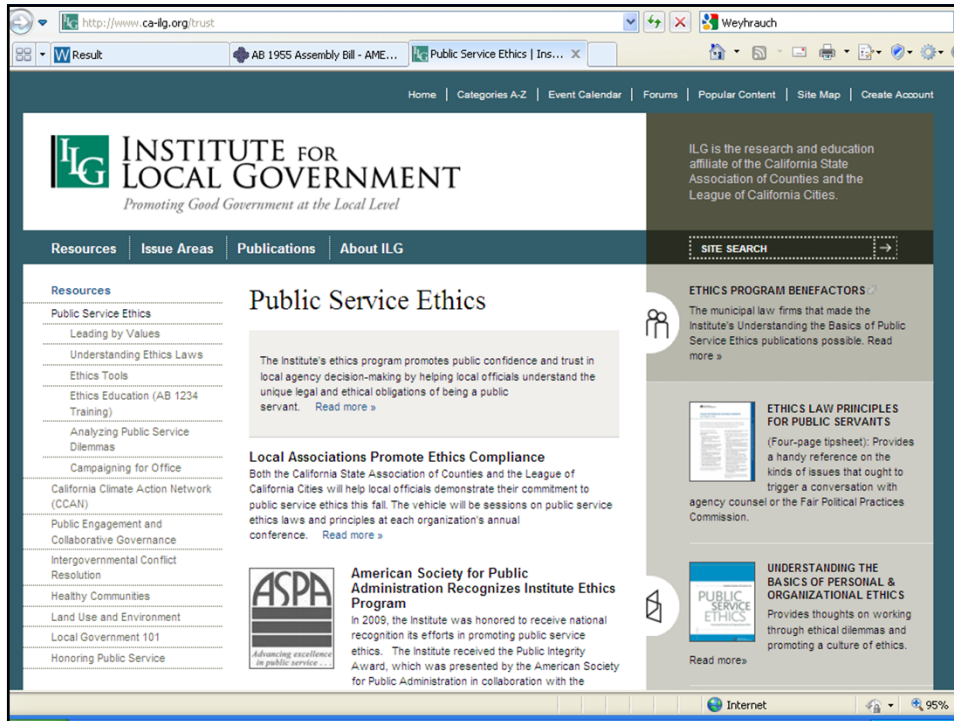
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Resources


- Cross References
 - Attorney General
 - FPPC
 - www.ca-ilg.org
- Also www.ca-ilg.org/everydayethics



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Key Lessons



- **It's your choice how high you want to set your sights above the minimum requirements of the law**
- **The law sets minimum—sometimes quite high-- standards for ethical behavior**
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early

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AB 1234 Compliance



- Sign in
- Proof of participation certificate
Note: \$20 lost certificate fee
- Provide to custodian of records as public record
- Consider going beyond the minimum in terms of education

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