

Understanding Public Service Ethics Laws: AB1234 Training

*League of California Cities New
Mayors and Councilmembers
Academy*



Thursday, February 18, 2021



How to Ask a Question During the Webinar

- All webinar participants will be on MUTE during the entire call.
- Please TYPE any questions into the question box at any time during the webinar.
- The moderator will read your questions during the question period at the end of the webinar.



How to Get Credit

You must have your own log-in

You must be present for the full two hour training

You must answer the virtual polling questions

Other Housekeeping Items

You will receive your certificate via email by the end of March

If you an attorney looking for MCLE credit, please contact
ILG

Contact Melissa Kuehne at
mkuehne@ca-ilg.org
with questions or concerns

Non-Profit, Non-Partisan & Here to Help

ILG is the non-profit training and education affiliate of...



**California Special
Districts Association**
Districts Stronger Together



We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground.

ILG's Programs & Services



Our mission is to help local government leaders navigate complexity, increase capacity & build trust in their communities

Presenter



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Partner

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Disclaimer: This training was previously recorded in October 2020. BB&K presentations and webinars are not intended as legal advice. Additional facts, facts specific to your situation or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information herein. Audio or video recording of presentation and webinar content is prohibited without express prior consent.



Why Is This Training Important



- ⑩ Comply with the law
- ⑩ Learn best practices
- ⑩ Promote positive public perceptions
- ⑩ Avoid legal problems



Spirit of the Law



Obey the spirit, not just the letter of the law

THE TRIBUNE EDITORIAL BOARD

Technically speaking, Arroyo Grande Planning Commissioner John Mack may not have had a conflict of interest when he voted against Nick Tompkins' development proposed for Grand Avenue — even though Mack lives a short distance away.

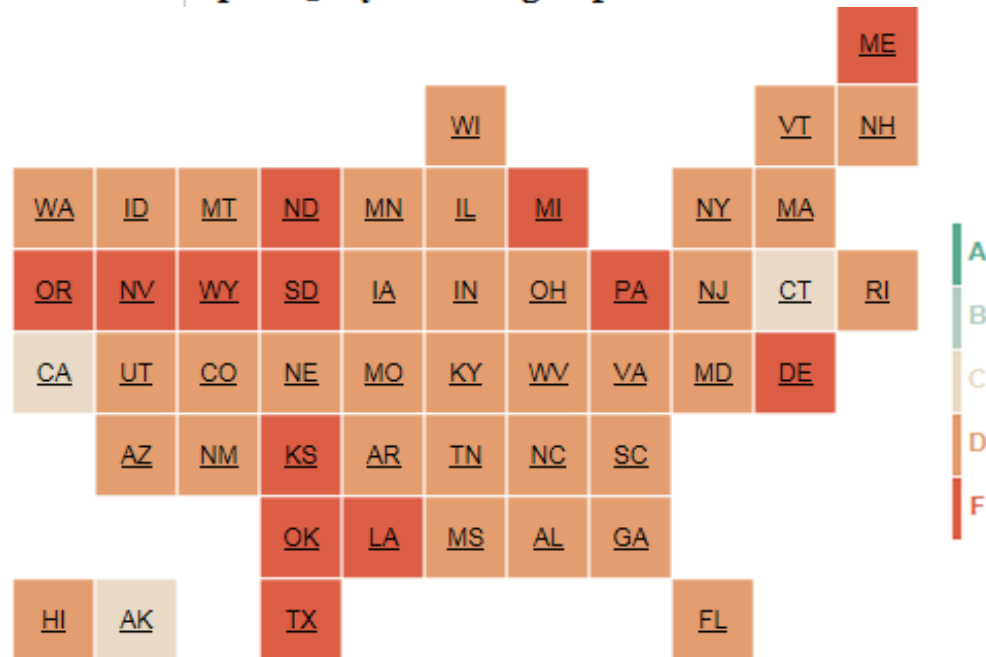
That doesn't make his actions OK.



Spirit of the Law

California gets C-minus in government integrity survey; 47 states score D-plus or lower

By Thomas Peele | tpeele@bayareanewsgroup.com



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Personal Financial Interests



Conflict Laws Focus on Personal Financial Interests

1. Political Reform Act
Decisions of
Government Entities,
Officers and
Employees

**2. Gov. Code §
1090**

Contracts “Made” by
Government Entities



What's the Difference between the PRA and GC 1090?

All Contracts made by a Government Entity Involve a Governmental Decision
BUT not all Governmental Decisions Involve a Contract

Thus, when a decision affects a contract, both the PRA and GC 1090 apply



Political Reform Act of 1974 (Gov. Code § 87100, et seq.)



Personal Financial Interests *Political Reform Act of 1974*

Officials should perform duties solely in the public's interest, not for their own financial interests.



How is this done?

Disclosure
(Form 700)

Disqualification



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COVER PAGE

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

1. Office, Agency, or Court

Agency Name _____
 Division, Board, Department, District, if applicable _____ Your Position _____
 ▶ If filing for multiple positions, list below or on an attachment.
 Agency: _____ Position: _____

2. Jurisdiction of Office (Check at least one box)

State Judge or Court Commissioner (Statewide Jurisdiction)
 Multi-County _____ County of _____
 City of _____ Other _____

3. Type of Statement (Check at least one box)

Annual: The period covered is January 1, 2012, through December 31, 2012. **Leaving Office:** Date Left ____/____/_____
 (Check one)
 -or- The period covered is ____/____/_____, through ____/____/_____.
 Assuming Office: Date assumed ____/____/_____. The period covered is ____/____/_____, through ____/____/_____.
 Candidate: Election year _____ and office sought, if different than Part 1: _____

4. Schedule Summary

Check applicable schedules or "None." ▶ Total number of pages including this cover page: _____
 Schedule A-1 - Investments – schedule attached Schedule C - Income, Loans, & Business Positions – schedule attached
 Schedule A-2 - Investments – schedule attached Schedule D - Income – Gifts – schedule attached
 Schedule B - Real Property – schedule attached Schedule E - Income – Gifts – Travel Payments – schedule attached
 -or-
 None - No reportable interests on any schedule

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
 (Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS (OPTIONAL)
 ()

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed _____ Signature _____
 (month, day, year) (File the originally signed statement with your filing official)

[Clear Page](#) [Print Form](#)

FPPC Form 700 (2012/2013)
 FPPC Advice Email: advice@fppc.ca.gov
 FPPC Toll-Free Helpline: 866/275-3772 www.fppc.ca.gov

Personal Financial Interests Disclosure

Who?

- **87200 Filer:**
 Elected Officials, Finance Directors, Planning Commissioners, City Attorney
- **Code Filer:**
 Assistant City / County Clerk, Planner, Department Heads, Consultant

How?

- **Use Form 700**

When?

- ✓ **Assuming Office**
- ✓ **Leaving Office**
- ✓ **Annually, by April 1st**

Signed Under Penalty of Perjury



Personal Financial Interests

Political Reform Act of 1974

General Rule

Public officials shall not:

- make,
 - participate in making, or
 - attempt to influence
- a governmental decision in which they have a financial interest.



Personal Financial Interests *Political Reform Act of 1974*

WHO IS A PUBLIC OFFICIAL?

A Public Official is every:

- Member
- Officer
- Employee
- and *certain* Consultants

of a State or Local Agency.

(Gov. Code. sec. 82048)



Personal Financial Interests

Political Reform Act of 1974

What is your role in the governmental decision?

- **Making**: authorizing, directing, voting on, or committing the agency to the decision.
- **Participating in Making**: providing info, opinions, or a recommendation for the purpose of affecting the decision.
- **Attempting to Influence**: (1) contacting any official in the agency for the purpose of affecting a decision, or (2) contacting another agency on behalf of your agency to affect a decision.



Personal Financial Interests

Political Reform Act of 1974

Types of Economic Interests:

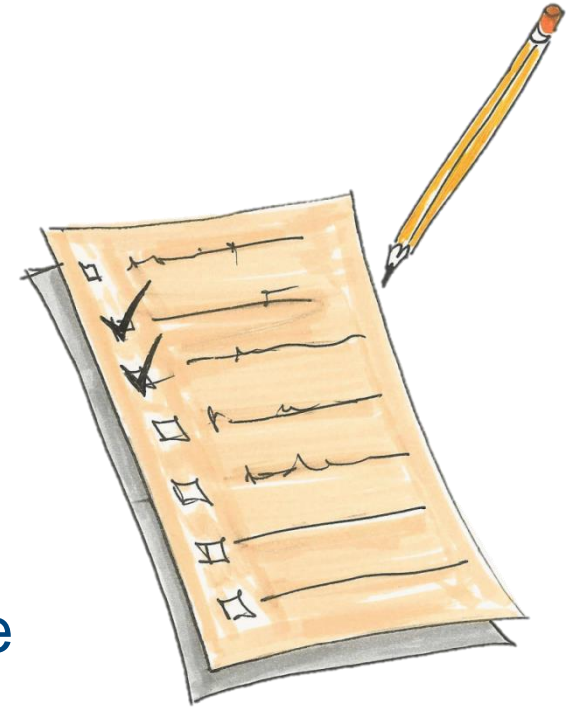
- ⑩ Business Investment
- ⑩ Source of Income
- ⑩ Business Position or Employment
- ⑩ Real Property
- ⑩ Gifts
- ⑩ Personal Finances



Personal Financial Interests *Political Reform Act of 1974*

The FPPC Does a Four-Step Analysis:

1. Is it ***reasonably foreseeable*** that decision will have a financial effect on your economic interest?
2. Will financial effect be ***material***?
3. Is the financial effect ***indistinguishable*** from its effect on the ***public generally***?
4. Is there another exception?



Personal Financial Interests

Political Reform Act of 1974

1. **Reasonably foreseeable** – “Realistic possibility”
2. **Material** – Above FPPC standards (e.g., within 500 feet of real property owned)
3. **Public generally exception** – Affects: (1) 25% of properties, businesses, or individuals, and (2) no unique effect on public official
4. **Other exceptions** – e.g., rule of necessity, speaking as a member of the public on an item of personal interest



Personal Financial Interests *Political Reform Act of 1974*

HYPOTHESIS:

The Mayor is going to vote to award a construction contract for a city library to a company who employs his sister's husband (brother-in-law) in a top executive position.

Can the Mayor vote on the decision to award the contract?



Personal Financial Interests

Political Reform Act of 1974

Answer: Yes.

An official has an economic interest in his or her own finances and those of his or her immediate family (spouse and dependent children). A mere sibling relationship is not enough to create a conflict.



Personal Financial Interests *Political Reform Act of 1974*

HYPOTHESIS:

The City is considering constructing a hiking trail on the city property on the opposite side of a creek which borders the backyard of the residence of a member of the board.

Can the councilmember who owns the property vote on the decision to develop the trail?



Personal Financial Interests *Political Reform Act of 1974*

Answer: No.

An official who has an financial interest of \$2,000 or more in real property may not vote on a matter affecting real property located within 500 feet of the property line of the official's property.



Personal Financial Interests *Political Reform Act of 1974*

Hypo:

A Water District votes to set water rates for wholesale distributors. A member of the board is a wholesale water distributor; one of only four who deal with the District.

Can the member/water distributor vote on the new wholesale rates?



Personal Financial Interests *Political Reform Act of 1974*

Yes. Even though the member is only 1 of 4 wholesale distributors affected by the new rates, the “public generally” here are those 4 wholesale distributors. Because the decision affects each of the four distributors the same, the decision comes within the “public generally” exception.



Personal Financial Interests

Political Reform Act of 1974

What do we do when a conflict exists?

- ⑩ **DO NOT PARTICIPATE IN THE DECISION**
- ⑩ **DO NOT DISCUSS, GIVE OPINION OR INFLUENCE**
- ⑩ **DISCLOSE**
- ⑩ **DISQUALIFY**



Interest in Public Contracts (Gov. Code § 1090)



Financial Interest in Public Contracts

Government Code § 1090

If:

- A Public Official
- Who Has a Financial Interest
- Makes A Contract

Then:

- Contract is VOID
- Penalties Apply



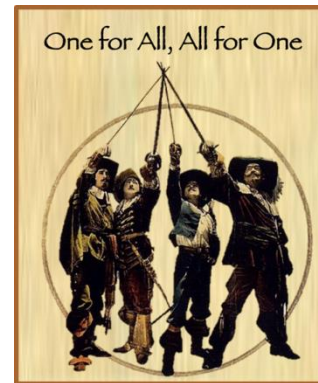
Self-Dealing



Financial Interest in Public Contracts

Two Scenarios

- Member of multi-member board approving contract
- Individual official or advisory board member of Agency approving contract



Consultants & Independent Contractors

- GC 1090 applies to officials, officers and employees.
- An outside consultant can be considered an “employee” under the law when that consultant acts in an advisory role and has duties to engage in or advise on public contracting that he/she is expected to carry out on the government’s behalf.



Financial Interest in Public Contracts *Board Member Scenario*

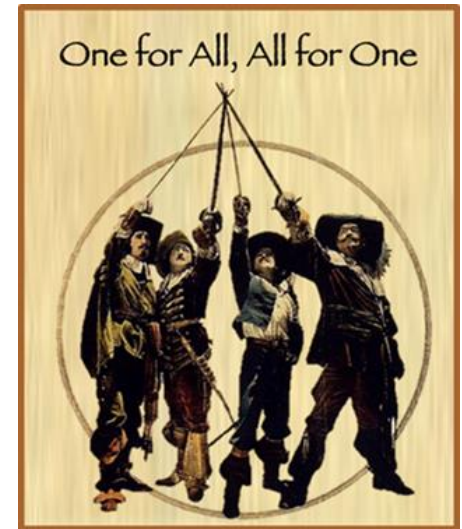
- **Facts:** Council member Jones owns the construction company that has been awarded the contract to remodel City Hall. She recuses herself from participating or voting to approve the contract.



Financial Interest in Public Contracts

Board Member Scenario

- **Holding:** The contract is void.
- **Analysis:**
 - Jones is financially interested in the contract.
 - A council member's interest in the contract prohibits the city from entering into the proposed contract, even though the member does not participate in and abstains from the actual decision.



Financial Interest in Public Contracts

Employee Scenario

Facts: A firefighter wants to contract to sell a unique fire protection device that he invented to the city's fire department. The decision would be made by the city manager without any input from the employee.

Question: May the contract be made?



Financial Interest in Public Contracts

Employee Scenario

Answer: Yes, if he

- discloses his interest and
- disqualifies himself from participating in, or influencing the decision making process.



Financial Interest in Public Contracts

Contract Defined



- Use general contract principles
- Examples:
 - Construction contracts
 - Purchases
 - Development agreements
 - Civil service appointments
 - Grants and donations



Financial Interest in Public Contracts

“Making” the Contract

“Making” includes:



- Negotiations,
- Discussions,
- Reasoning,
- Planning, and
- The “give and take which goes beforehand in the making of the decision to commit oneself”



Financial Interest in Public Contracts

Types of Financial Interests

- **Financial Interest**
 - Direct (contracting party)
 - Indirect (related to contracting party)
- **Effect**
 - Positive or negative
- **Certainty not required**



Financial Interest in Public Contracts

Remote Interest Exceptions - § 1091(b)

- **Requirements:**
 - Public disclosure noted on records
 - No attempt to influence
 - Board acts in good faith
- **16 Exceptions, including:**
 - Employees, in certain cases
 - Suppliers, in certain cases

(for at least 5 years before election/appointment to office)



WARNING!

THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY



Financial Interest in Public Contracts

“Non-Interest” Exceptions - § 1091.5

- **Requirements**
 - Some do not require disclosure or disqualification
- **14 Exceptions**, including:
 - Corporate ownership
 - Less than 3% of shares, and
 - Income of less than 5% of total
 - Expense reimbursements
 - Recipient of public services



WARNING!

THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY



Financial Interest in Public Contracts

Limited Rule of Necessity

Permits a public body, that has a duty to act upon a matter before it, to do so despite a conflict of interest when the public agency is the only entity capable to act on the matter (where one or more of the board members has a personal financial interest).

Example: Public official owns the only mortuary within 500 miles and the public agency needs to contract with a Mortuary.

Remote Interests allows Board member to disclose and disqualify



Personal Financial Interests

Interest in Public Contracts



Ramifications

- **Criminal**
 - Willful Violation = Felony
 - Lifetime bar to public office
- **Civil**
 - Contract = Void and unenforceable
 - Disgorgement of all money
 - Civil Penalties
 - **Administrative Fines**



Revolving Door



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Personal Financial Interests

“Revolving Door”



AFTER LEAVING OFFICE:

Elected Official & Agency Head/CEO

- One Year Ban
- Prohibited from appearing before, or communicating with, agency on behalf any other person for compensation



“Feathering Your Nest”



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Personal Financial Interests

“Feathering Your Nest”

Influencing Prospective Employment:

No Public Official Shall:

- Participate in decision making process when it relates to any prospective employer.
- UNLESS: An exception applies.



Bribery



Personal Financial Interests

Bribery

Bribery: The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.



Difference between a Gift or Political Contribution and a Bribe

The commonly accepted borderline is that a gift or contribution (money or anything of value) is a bribe if there is proof of a quid pro quo.

A promise to perform an official act or not.



Bribery

McDonnell v. United States

Received

- \$50,000 loan, and \$15,000 gift to pay wedding expenses
- \$50,000 loan for rental properties
- \$20,000 shopping trip Use of vacation home and Ferrari
- A \$10,000 Rolex
- \$20,000 loan
- Rounds of golf
- A free trip
- \$10,000 wedding gifts
- Use of a private plane during the campaign

Gave

- Introduction to government officials
- Lunch event with University researchers
- Healthcare industry reception
- Mentioned Anatabloc in meetings on state employee health plans
- But:
 - No action was ever taken
 - No evidence that officials were influenced



Bribery

McDonnell v. United States

- SCOTUS's Opinion – No Bribery
 1. There must be a formal exercise of governmental power that is specific and focused. Setting up meetings, talking to officials, or organizing an event – without more – does not meet this definition.
 2. Conscientious public officials arrange meetings for constituents, contact other officials on their behalf, and include them in events all the time.



Bribery

McDonnell v. United States

“There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute. A more limited interpretation of the term “official act” leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.”

-Chief Justice John Roberts



Personal Advantages and Perks



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Personal Advantages and Perks

- Gifts
- Honoraria
- Travel/Lodging Expenses
- Loans
- Reimbursements
- Mass Mailings
- Misuse of Public Funds
- Nepotism
- Charity Fundraising
- Disclosures

“ When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office ... ”

- Terry v. Bender (1956)



Personal Advantages and Perks

Gift Laws



Meals



Entertainment



Travel

A gift is anything of value that provides a personal benefit for which adequate consideration was not provided.



Personal Advantages and Perks

Gift Laws

Disclose
\$50+

Disqualify
\$500/12mos.

Refuse
\$500+

Bottom Line: Watch your calendar

- **Estimate**
- **Track**
- **If Gift Exceeds Limit: Return, Pay or Donate**



Personal Advantages and Perks

Common Exceptions

- Gifts to public agency
- Gifts returned unused or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Reciprocal exchanges
- Tickets/passes to certain fundraisers



Agency Disclosures

Gift to Agencies: Forms 801 & 802

Gift to Agency Report A Public Document

1. Agency Name Date Stamp: **California Form 801**
For Official Use Only

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number | E-mail

Agency Contact (name and title) | Date of Original Filing

Amendment (explain in comment section)

Agency Report of: Ceremonial Role Events and Ticket/Pass Distributions A Public Document

1. Agency Name Date Stamp: **California Form 802**
For Official Use Only

Division, Department, or Region (if Applicable)

Designated Agency Contact (Name, Title)

Area Code/Phone Number | E-mail

Agency Contact (Name, Title) | Date of Original Filing (Month, Day, Year)

Amendment (Must provide explanation in Part 2.)

2. Donor Name and Address

Individual | Last Name

Address

If "Other" is marked, describe the entity. If applicable, identify the name.

Name

3. Payment Information

Date and Amount of Payment

Travel Payment Information

District of Travel

Provide a specific description of the payment.

2. Function or Event Information

Does the agency have a ticket policy? Yes No Face Value of Each Ticket/Pass \$ _____

Event Description | Provide Title/Explanation | Date(s) | / /

Ticket(s)/Pass(es) provided by agency? Yes No If no: _____ Name of Source

Was ticket distribution made at the behest of agency official? No Yes If yes: _____ Official's Name (Last, First)

3. Recipients

Use Section A to identify the agency's department or unit. Use Section B to identify an individual. Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/Pass(es)	Describe the public purpose made pursuant to the agency's policy

B. Name of Individual (Last, First)	Number of Ticket(s)/Pass(es)	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> <small>(If checking "Ceremonial Role" or "Other" describe below)</small>
		Income <input type="checkbox"/>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> <small>(If checking "Ceremonial Role" or "Other" describe below)</small>
		Income <input type="checkbox"/>

C. Name of Outside Organization (include address and description)	Number of Ticket(s)/Pass(es)	Describe the public purpose made pursuant to the agency's policy

4. Verification

I have determined that it is in the public interest to disclose this information.

Signature of Agency Head or Designee | Print Name | Title | (Month, Day, Year)

Comment: (Use this space or attach a separate sheet)

FPFC Form 802 (4/12)
FPFC Toll-Free Helpline: 866/ASAK-FPFC (866/275-7772)

Gift to Agencies: Form 801

- **Know the rules: NEW** - Exceptions on gifts of travel now apply to elected officials and officials specified in Gov. Code § 87200.

Tickets: Form 802

- Applies to tickets for entertainment, recreational or similar purpose.
- List of Public Purposes.
- New Definition of Ceremonial Use
- Written Ticket Policy Required



Personal Advantages and Perks

- Third party payments to agency used for travel and conference costs, in lieu of agency funds, are only allowed if:
 1. The costs are for “official agency business”
 2. The agency head decides who will attend
 3. The agency reports the payment (Form 801)
 4. Plans are coordinated with the agency
 5. Reimbursements go directly to the agency
 6. No personal benefit (only for business)
 7. Travel time is not extended



Personal Advantages and Perks

Tickets and Passes

- FPPC adopted Regulation 18944.1 regulating tickets or passes distributed by a public agency which applies to tickets/passes to recreational/entertainment/amusement events



Personal Advantages and Perks

Tickets and Passes

- Regulation 18944.1 provides that tickets/passes distributed to, or at the behest of, an official of the agency are not considered a gift if:
 - The public official claims them as income for federal income tax purposes
 - Tickets are distributed to employees/officials (other than elected) to promote morale/employee retention
 - Tickets are distributed pursuant to the agency's adopted ticket policy



Personal Advantages and Perks

Tickets and Passes

- Agency ticket policy must be adopted by legislative body and include:
 - List of public purposes for which tickets may be distributed
 - Requirement that all tickets distributed shall be to accomplish one of the public purposes
 - Prohibition against transferring tickets received except to an immediate family member
 - Ticket distribution must be recorded on form provided by the FPPC and forwarded to the FPPC for posting on its website



Personal Advantages and Perks

Rules of the Road



- Acceptance of passes or discounts from transportation companies is prohibited.
- Informational exception to gift rules does not include travel – exceptions apply.
- Travel may be subject to gift limits. Evaluate on a case-by-case basis – source, purpose.
- Travel paid by using agency funds is totally exempt from limits and disclosure if for agency business.



Behested Payments: Form 803

FOR ELECTED OFFICIALS ONLY

- Contributions of **\$5,000 or more**
- made by a single source
- in cooperation with elected official
- **Must be reported to official's agency within 30 days.**

Behested Payment Report		A Public Document		Behested Payment Report	
1. Elected Officer or CPUC Member (Last name, First name)		Date Stamp	California Form 803 For Official Use Only		
Agency Name					
Agency Street Address					
Designated Contact Person (Name and title, if different)		<input type="checkbox"/> Amendment (See Part 5)			
Area Code/Phone Number	E-mail (Optional)	Date of Original Filing: _____ (month, day, year)			
2. Payor Information (For additional payors, include an attachment with the names and addresses.)					
Name _____					
Address _____ City _____ State _____ Zip Code _____					
3. Payee Information (For additional payees, include an attachment with the names and addresses.)					
Name _____					
Address _____ City _____ State _____ Zip Code _____					
4. Payment Information (Complete all information.)					
Date of Payment: _____ <small>(month, day, year)</small>		Amount of Payment: (In-Kind FMV) \$ _____ <small>(Round to whole dollars.)</small>			
Payment Type: <input type="checkbox"/> Monetary Donation or <input type="checkbox"/> In-Kind Goods or Services (Provide description below)					
Brief Description of In-Kind Payment: _____					
Purpose: (Check one and provide description below.) <input type="checkbox"/> Legislative <input type="checkbox"/> Governmental <input type="checkbox"/> Charitable					
Describe the legislative, governmental, charitable purpose, or event: _____					
5. Amendment Description or Comments					

6. Verification					
I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.					
Executed on _____ DATE		By _____ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER			
FPPC Form 803 (December/09) FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)					
Clear Form		Print Form			



Personal Advantages and Perks

Gifts Are All About The Details

HYPOTHESIS:

The Metropolitan Water District of Southern California (the "MWD") hosts water inspection tours of their facilities and water areas that impact the Colorado River Aqueduct. MWD pays for the general manager of a local water agency to attend a tour.

Can the GM go and if so what needs to be reported?



Personal Advantages and Perks

Gifts Are All About The Details

Answer:

- Yes, General Manager can go if payment is for general use and General Manager is an official with access to such use.
- Fill out Form 801.
- No gift limit



Personal Advantages and Perks *Gifts Limit Ramifications*



- FPPC civil action
- Penalty: 3 times the amount of the gift
- \$5,000 fine
- 6 months jail
- Bribery/Extortion – Felony – Prison



Personal Advantages and Perks

Honoraria Is Illegal



- What is Honoraria?
- To whom does it apply?
- Application
- Exceptions



Personal Advantages and Perks

Loans / Reimbursements / Nepotism



- Personal Loans
- Reimbursement Policy
- Mass Mailings (special rules)
- Nepotism (Agency Policy)



Personal Advantages and Perks

Misuse of Public Funds



Ballot Measures



Endorsements & Legislative Activities

WESTONKA SCHOOL DISTRICT

Westonka School Ballot Question 1

Westonka Schools request to increase its general education revenue by \$480 Per Resident Pupil Unit, funding each year for a period of ten years with provisions for annual inflationary increases. Vote Yes or No. By Voting Yes, you authorize a property tax increase.

WE URGE YOU TO VOTE NO.

Of 13 West Metro School Districts, Westonka has the poorest record of Classroom Instruction spending. Westonka spends a paltry 38.9% on Regular Education Classroom Instruction. In these same 13 School Districts, Westonka has the highest 13 of District Admin costs, higher than Wyozone, Ohio, Delano, Alameda, Wake-Linn-Meyer, Eden Prairie, Chaska, etc.

No one should be pleased with these statistics. Immediate steps must be taken to improve the imbalance of priorities. Therefore, we urge you to vote NO to LEVY ballot question #1.

Why are they asking for more? The MN State Legislature recently raised the cap allowing school districts to ask voters for higher amounts of levy dollars. [VoteNO13.org]

What will the 2006 Proposed LEVY cost me?	
Home Value:	Westonka School Ballot Question 1 Minimum Tax Impact over the 10 year LEVY
\$ 150,000	\$ 915.
\$ 300,000	\$ 1,829.
\$ 500,000	\$ 3,048.
\$ 750,000	\$ 4,573.

Informational Materials



Transparency Laws

*(Gov. Code § 54950, et seq.;
Gov. Code § 6250, et seq.; and
California Constitution)*



Spirit of the Law



“Tuesday’s Redding City Council meeting provided a rare opportunity to look behind the curtain as the council debated, sometimes hotly, aspects of the state’s open-meeting law and who broke it.

It also showed that Redding’s city government needs a new culture of transparency — its priorities at the moment are backward.”

– *Record Searchlight Editorial 11-18-2015*



Transparency Laws

The Ralph M. Brown Act & The California Public Records Act

Applies to:

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office,
- Certain private organizations



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Transparency Laws

The Brown Act - Meetings



- What is a meeting?
- When is a meeting not a meeting?



Transparency Laws

The Brown Act – Serial Meetings

SERIAL MEETINGS

Use of:

- ⑩ direct communication;
- ⑩ intermediaries; or
- ⑩ technology

to develop a collective concurrence outside of a meeting is expressly prohibited.

E-MAILS

When e-mailing:

- ⑩ Don't "reply to all"
- ⑩ Do not take a position or make a commitment
- ⑩ E-mail board / council info only
- ⑩ Take caution to ensure compliance with law



Transparency Laws

The Brown Act – Social Media

- AB 992 (2020) – It is not a serial meeting to provide information to, or solicit information from, the public about agency business using social media
 - Must be “open and accessible” to general public (no blocking)
 - Cannot “discuss among themselves”
 - No responding directly to other members’ posts
 - No use of emojis, etc., on other members’ posts



Transparency Laws

The Brown Act – Rules Governing Meetings

- Regular meeting
- Special meetings
- Emergency meetings
- Adjourned meetings
- Public's right to comment
- Report individual votes or abstentions



Transparency Laws

The Brown Act – Closed Sessions

Must be:

- Expressly authorized
- Briefly described in agenda
- Verbally announced

If action is taken, may need to report it to the public and report individual votes or Abstentions

- Disclosure of closed session matter is illegal



Transparency Laws

The Brown Act

HYPOTHESIS:

All five members of a water district board are attending the ACWA legislative conference in D.C.. Three of the members would like to visit the District's congressional representatives.

If all three go, and they discuss a federal policy, has there been a Brown Act violation?



Transparency Laws

The Brown Act

Answer: No.

Meeting Location Exception: Three members can meet with a congressman at the same time under Gov. Code § 54954(b)(5)

Best Practices:

- ⑩ Post a special meeting notice at the District office and online.
- ⑩ Meeting to be held in a location accessible to the public.



Transparency Laws

The Brown Act - Ramifications

- For violations, Court may:
 - ⑩ Enjoin action,
 - ⑩ Invalidate action, or
 - ⑩ Mandate correction.
- Court costs & attorney fees are recoverable
- Individuals who intentionally violate may be guilty of a misdemeanor



“Secrecy is for losers”

-U.S. Senator Patrick Moynihan



Transparency Laws

California Public Records Act (CPRA)

Every person has a right to inspect public records of any state or local agency.

What is a public record?

Any writing containing information related to the conduct of the public's business retained by any public agency



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Emails, Social Media and Other Communications on Private Devices and Accounts

“Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act.”

City of San Jose v. Superior Court (2017)

2 Cal.5th 608



Why the Court Ruled As It Did

“Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state,” according to the Public Records Act and the state constitution.



The court made it clear it would not permit public officials to conduct the public’s business on private devices and place those communications beyond the reach of the Public Records Act and thereby encourage public officials to conduct the public’s business in private.



What Factors Help Determine Whether a Communication on a Private Device is a “Public Record”

The opinion suggested looking to the following factors:

- content
- context
- purpose
- audience
- whether the employee was acting within the scope of employment in preparing or receiving the communication



Transparency Laws

California Public Records Act

Handling Requests

- Public records must be available during office hours.
- Agencies must make copies of disclosable records “promptly available”...“upon request.”
- Agency shall:
 - ⑩ Within 10 days: determine disclosable records
 - ⑩ Within 14 days: request time extension for “unusual circumstances”

Hours
Monday 8AM—5PM
Tuesday 8AM—5PM
Wednesday 8AM—5PM
Thursday 8AM—5PM
Friday 8AM—3PM



Transparency Laws

California Public Records Act

SB 272 - The California Public Records Act: Local Agencies: Inventory.

Each local agency, except an educational agency, is now required to create a catalog of enterprise systems, make the catalog publicly available upon request, and post the catalog on the agency's Website.

The catalog is to list the following information:

1. Current system vendor.
2. Current system product.
3. A brief statement of the system's purpose.
4. A general description of categories or types of data.
5. The department that serves as the system's primary custodian.
6. How frequently system data is collected.
7. How frequently system data is updated.

EXEMPT: IT security systems, video monitoring systems, systems used for 911 dispatch and emergency services, etc.



Transparency Laws

California Public Records Act

When is a public record exempt from disclosure?

- Preliminary drafts, notes or memos not kept in ordinary course of business
- Real estate appraisals
- Personnel, medical, similar files
- Records about pending litigation
- Records pertaining to an investigation
- Deliberative process
- Catch-all exemption



Transparency Laws

California Public Records Act

HYPOTHESIS:

City reviews an internal draft of the latest City. The budget is poorly written and contains several major errors. The City is concerned that the budget needs major revision and is also concerned about the performance of the employee who prepared the budget.

Does this draft document need to be disclosed?



Transparency Laws

California Public Records Act

ANSWER:

No. The Public Records Act exempts “preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the course of ordinary business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.”

To qualify for the draft exemption:

- 1) The record must be a preliminary draft, note or memorandum
- 2) The draft is not retained by the local agency in the ordinary course of business
- 3) The public interest in withholding the record must clearly outweigh the public interest in disclosure



Transparency Laws

California Public Records Act

- *Must the City provide a copy of the e-mail?*
- Evaluate and consider possible exceptions:
 - For example:
 - Personnel Records
 - Attorney-Client Communications
 - Preliminary Draft Exception
- E-mails & Text Messages: User beware - using personal equipment or accounts may not protect from disclosure



Transparency Laws

California Public Records Act

Best Practices

- Always respond to requests
- Adopt regulations
- Adopt a policy
- Develop standardized fees

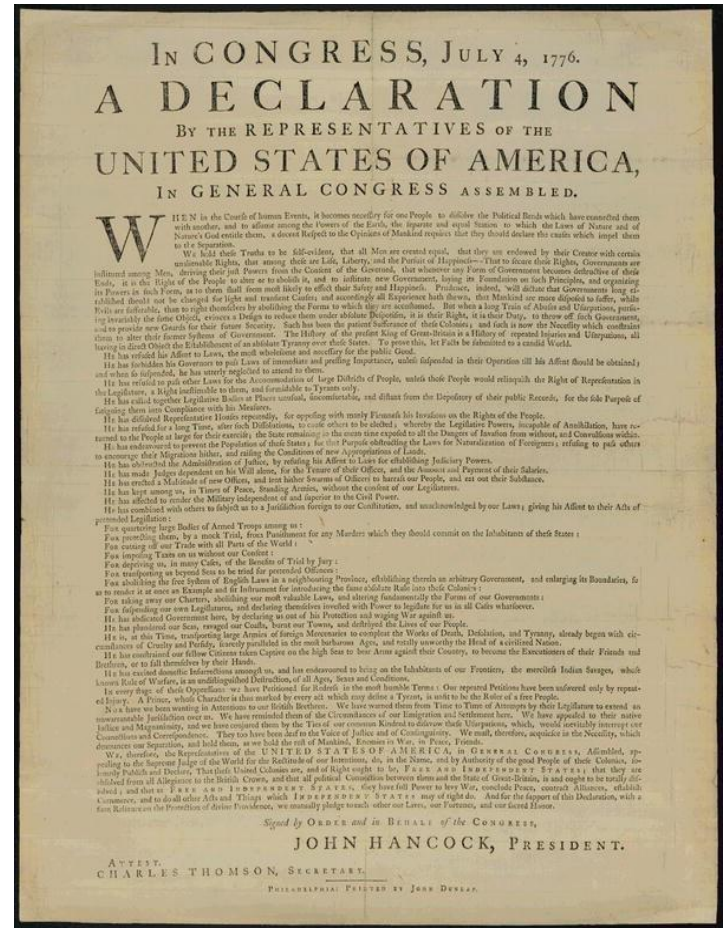


Fair Process



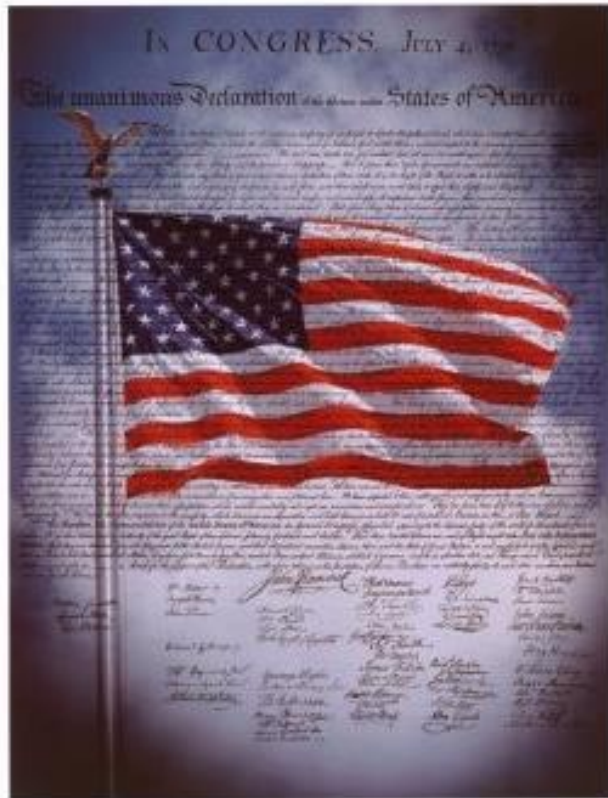
Fair Process

- Due Process
- Bias
- Competitive Bidding
- Incompatible Offices
- Incompatible Activities



Fair Process

Due Process



The Oath of Allegiance

I hereby declare on oath that I am a citizen and intend to remain such and that I will support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic, that I will bear true faith and allegiance to the same, that I will bear arms in behalf of the United States when required by the law, that I will perform noncombatant service in the Armed Forces of the United States when required by the law, that I will perform such other duties as may be required of me as a citizen of the United States, and that I will support the same to the best of my ability.

- What does Due Process mean?
 - ⑩ Notice
 - ⑩ Opportunity to be heard
 - ⑩ Fair and impartial decision-maker
- Due Process Clause

“No state shall deprive any person of life, liberty or property without due process at law”

- U.S. Constitution Amend XIV, sec 1



Common Law Conflicts of Interest



Common Law Conflict of Interest Often Relates to Fair Process



Common Law Conflict of Interest

Pre-dates the financial conflicts of interest in the Political Reform Act and Government Code section 1090

AND

Those laws now supplant common law conflicts of interest based on financial interests

SO

What's left is a mere vestige of the common law doctrine



Common Law Conflict of Interest

What Is It?

"A public officer is impliedly bound to exercise the powers conferred on him primarily for the benefit of the public. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal."



Common Law Conflict of Interest

"The common law doctrine against conflicts of interest . . . prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties."



Common Law Conflict of Interest

Avoiding the Conflict

The conflict "may usually be avoided by complete abstention from any official action with respect to or attempt to influence the transaction" (64 Ops.Cal.Atty.Gen. 795, 797 (1981)).



Common Law Conflict of Interest

HYPO:

The adult child of a board member has sued the district in connection with a vehicle collision between the child and an on-duty district employee. The board is to vote on approving a substantial settlement with the adult child.

May the member vote under the PRA, GC 1090, common law conflict?



Common Law Conflict of Interest

- PRA---yes, because the member does not have a financial interest in his adult child's personal finances.
- GC 1090---yes, same reason, no financial interest.
- Common law conflict---no, should not because of private, personal interest and bias

Remedy: Recuse or abstain



Fair Process *Due Process*

HYPOTHESIS:

Council member Smith rents an apartment month to month next to a property whose owner is seeking a variance to build a home that will interfere with the member's view of the ocean. The member opposed the variance application before the Planning Commission which approved it. The member appealed and now the matter is before the Council.

Any due process concerns?



Fair Process *Due Process*

Can Council member Smith participate in the decision by the Council?



Fair Process *Due Process*

Yes, there are due process concerns.

- ⑩ Bias.
- ⑩ Lack of impartiality.
- ⑩ Personal, private stake in the outcome

Should he participate?

No. The member would not be a neutral and fair decision maker, denying the applicant procedural due process.



Fair Process

Competitive Bidding

- Purposes
- General Rule
 - ⑩ Only when required by statute or ordinance
 - ⑩ Lowest, responsive, responsible bidder
 - ⑩ Thresholds for Public Works
- Exceptions



Fair Process

Incompatible Offices Doctrine



Elements:

- Official holding two public offices simultaneously
- Conflicting or overlapping functions (audit, overrule remove or exercise supervisory powers)

Ramifications:

- Immediate forfeiture of first office



Fair Process

Incompatible Activities

Gov. Code §1026

- Applies to officers and employees, but NOT ELECTED OFFICIALS
- Agency must adopt a statement of incompatible activities, statutory prohibition is not self-executing
- Agency may prohibit activities involving:
 - ⑩ Private gain or advantage
 - ⑩ Receiving consideration for performing duties
 - ⑩ Acts outside scope of employment
 - ⑩ Impairment of efficiency
- Attorney exception---GC 1128: government entity lawyer may serve on another board or commission



Fair Process

Campaign Finances

CAN AN ELECTED OFFICIAL BE DISQUALIFIED FROM VOTING/DECISION-MAKING FOR RECEIVING CAMPAIGN CONTRIBUTIONS?

- General Rule – NO.

Campaign Disclosure Forms Sufficient = NO Disqualification (e.g., campaign contribution)

- “BIG” Exception

(Gov. Code § 84308)

- ⑩ Proceedings involving entitlements, licenses/permits (land use permits, franchise, zoning variance, consulting contracts)



Fair Process

Best Practices for Decision-Makers

- If you can't be fair, don't participate
- Avoid statements before the close of a hearing
- Make decisions based on administrative record
- Avoid the appearance of bias
- Pay attention
- Above all, you will be judged by your fairness and integrity



Conclusion

Finding Your Way – Ethics Laws

Summary of 4 Major Areas

Personal Financial Interest

1. Political Reform Act
2. Contracts
3. Revolving Door
4. Feathering Your Nest
5. Bribery/Mail Fraud

Personal Advantages & Perks

1. Gifts
2. Honoraria
3. Travel/Lodging Expenses
4. Loans
5. Reimbursements
6. Mass Mailings
7. Misuse of Public Funds
8. Nepotism
9. Charity Fundraising Disclosure

Transparency Laws

1. Brown Act
2. Public Records Act

Fair Process

1. Due Process
2. Bias
3. Competitive Bidding
4. Incompatible Offices
5. Incompatible Activities
6. Campaign Finances
7. Best Practices



Ethics Laws

California's ethics laws set the minimum standards for public service



In civilized life, law floats in a sea of ethics
(US Supreme Court Justice Earl Warren 1964)



*“We are what we repeatedly do.
Excellence, then is not an act, but a habit.”*

–Aristotle



Thank You for Attending!

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