

Potential Consequences of Violating Federal or California Ethics Laws

www.ca-ilg.org/consequences

May 2013

Keep in mind that the consequences listed below are only the potential legal consequences of violating ethics laws. Just being accused of violating the law can have unpleasant results, including embarrassment (to the extent that some officials have even moved out of their community), losing a good reputation and the community's respect, financial costs (hiring an attorney and the potential loss of one's job or professional license) and being recalled or losing the next election before the legal process has concluded.

Political Reform Act (includes disclosure and disqualification requirements, mass mailing prohibition, campaign regulation violations)

Violations of the Political Reform Act are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities can demonstrate.¹

Criminal Sanctions. A knowing or willful violation of the Political Reform Act's requirements is a misdemeanor.² A person convicted of a misdemeanor under these laws may not be a candidate for elective office for four years following the conviction.³ Such a conviction may also create an immediate loss of office under the theory that the official violated his or her official duties,⁴ or create a basis for a grand jury to initiate proceedings for removal on the theory that failure to disclose constitutes willful or corrupt misconduct in office.⁵ Jail time is also a possibility.⁶

In addition, the Fair Political Practices Commission (FPPC) may levy fines of up to \$10,000 per violation or more, depending on the circumstances.⁷

Civil Sanctions. Violations prosecuted as a civil matter can also be punishable by civil fines.⁸ Also, district attorneys, some city attorneys, the FPPC or a member of the public can bring an action to prevent the official from violating the law.⁹ If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorneys' fees.¹⁰

Administrative Fines. In addition to civil and criminal penalties, the FPPC may impose administrative penalties. The administrative penalty for violating the Political Reform Act is a fine of up to \$5,000 per violation.¹¹

Employment Consequences. Employees who do not comply with the Political Reform Act may be subject to discipline and possibly dismissal under an agency's personnel regulations.¹²

Effect on the Agency and Those Affected by Agency's Decision. When a disqualified official participates in a decision, it can void the decision.¹³ This can have serious consequences for those affected by the decision as well as the public agency.

<p>Prohibition Against Interests in Contracts</p>	<p>Criminal Penalties. Willful violations may be punished by fines of up to \$1,000, imprisonment and being disqualified from ever holding public office again.¹⁴</p> <p>Effect on Contract. The contract also is void, which means the local agency does not have to pay for goods or services received under the contract.¹⁵ The agency may also seek repayment of amounts already paid.¹⁶</p>
<p>Personal or Political Use of Public Resources</p>	<p>California Civil and Criminal Penalties. Public officials face both criminal and civil penalties for using public resources for personal benefit.¹⁷ Criminal penalties include a two- to four-year state prison term and permanent disqualification from public office.¹⁸ Civil penalties include a fine of up to \$1,000 for each day the violation occurs, plus three times the value of the resource used.¹⁹</p> <p>At some point, personal use of public resources becomes embezzlement, a form of theft.²⁰ Embezzlement may constitute “willful misconduct,” warranting removal from office, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement of public funds is guilty of a felony punishable by imprisonment; in addition, that person is thereafter ineligible to hold public office in California.²¹</p> <p>Federal Income Tax Violations. Federal prosecutors have been known to treat the receipt of illegitimate expense reimbursements or advances as income to the official. Because the official has not typically reported these payments as such on personal tax returns, the official then becomes subject to an action for income tax evasion.</p> <p>The Internal Revenue Code is notoriously complex and its penalty sections are no exception. The general penalty for willful income tax evasion is a fine of up to \$100,000 and up to five years in prison or both. Those convicted are also responsible for paying the costs of prosecution.²² Failure to report information to the tax authorities is punishable by fines of up to \$25,000 and/or a year in federal prison, plus the costs of prosecution.²³</p> <p>Federal Mail Fraud. If the U.S. Postal Service was used in any way, such use can also be the basis for a charge of mail fraud.²⁴ Mail fraud is punishable by up to five years in federal prison per violation and/or a fine of the greater of: 1) twice the gain to the violator; or 2) \$250,000 per violation.²⁵</p> <p>Federal Corruption and Embezzlement. If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement also apply.²⁶</p>

<p>Violation of Ralph M. Brown Act And Open Meeting Laws</p>	<p>Nullification of Decision. As a general matter, decisions that are not made according to open meeting laws are voidable.²⁷ After asking the agency to correct the violation, either the district attorney or any interested person may sue to have the action declared invalid.²⁸ Costs and attorneys’ fees may be awarded to those who successfully challenge Brown Act violations.²⁹</p> <p>Criminal Sanctions. Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor.³⁰ The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.³¹</p> <p>Other Measures. Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.³² Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape recorded.³³ Costs and attorneys’ fees may be awarded to those who successfully challenge Brown Act violations.³⁴</p>
<p>Public Records Act</p>	<p>Anyone can sue a public agency to enforce his or her right to access public records subject to disclosure.³⁵ If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys’ fees.³⁶</p>
<p>California and Federal Criminal Bribery Laws</p>	<p>California Law Penalties for Bribery. Receiving or agreeing to receive a bribe is a criminal act punishable by a combination of prison time, fines, losing one’s office and being forever disqualified from holding public office.³⁷ The specified prison sentence is two to four years in state prison.³⁸ If a bribe was actually received, the fine is a minimum of \$2,000 up to either \$10,000 or double the amount of the bribe, whichever is greater.³⁹ If a bribe was not actually received, there is still a fine of between \$2,000 and \$10,000.⁴⁰</p> <p>California Law Penalties for Extortion. Extortion by public officials is a misdemeanor.⁴¹ Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000 or both.⁴² Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for willful or corrupt misconduct in office.⁴³</p> <p>California Law Penalties for Accepting Compensation for Appointing Someone to Office. An official who receives payment or favors for an appointment faces the following punishments: forfeiture of office; disqualification from ever holding public office again; and a fine of up to \$10,000.⁴⁴</p> <p>Federal Penalties. If an agency receives more than \$10,000 in federal monies (which many agencies do), an official could be subject to federal prosecution if the amount at stake (for example, a bribe) exceeds \$5,000.⁴⁵ The penalty for bribery under federal law is a fine of up to three times the amount of the bribe or \$250,000 (whichever is more), up to 10 years imprisonment or both.⁴⁶</p> <p>Restitution. The official may be ordered to pay restitution to the agency in the amount of the profit or advantage received (or loss to the agency) as the result of the misuse of the official’s position.⁴⁷</p>

<p>Misconduct in Office</p>	<p>Willful or corrupt official misconduct can create a basis for a grand jury to initiate proceedings for removing an official from office.⁴⁸</p>
<p>Election Law Violations</p>	<p>Election Contest. An election result may be challenged in an election contest, the primary purpose of which is to ascertain the will of the people and to make certain that mistake or fraud has not frustrated the public’s exercise of its will.⁴⁹ Any elector of any county, city or of any political subdivision of either may contest any election held in the jurisdiction.⁵⁰</p> <p>Quo Warranto. The entitlement of a public officer to hold office may be contested in quo warranto proceedings.⁵¹ In rare instances, the attorney general may pursue such actions; more often the attorney general’s role is one of granting or denying permission to private individuals to bring such actions on behalf of the public.⁵² Private individuals cannot bring such actions without first obtaining the attorney general’s permission. For more information, visit http://oag.ca.gov/opinions/quo-warranto.</p>
<p>Whistle-Blower Protections</p>	<p>Any employer who violates this law is guilty of a misdemeanor punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed \$1,000 or both and, in the case of a corporation, by a fine not to exceed \$5,000.⁵³ A private lawsuit for damages is also possible.⁵⁴</p>

G:\INSTITUTE\Ethics\Publications\Understanding Basics Update 2013\Working Documents\Penalties\Consequences Chart.docx

About ILG

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/trust. If you would like to access this resource directly go to www.ca-ilg.org/consequences.

This material is a summary of complex law written for clarity for a non-attorney audience. It is not legal advice and local officials are well advised to ask local agency counsel how these principles may apply in specific situations.

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- 1 *See generally* Cal. Gov't Code § 91000-14.
- 2 *See* Cal. Gov't Code § 91000(a).
- 3 *See* Cal. Gov't Code § 91002.
- 4 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 5 Cal. Gov't Code §§ 3060-74 (providing for proceedings to be brought by the grand jury for removal from office).
- 6 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 7 Cal. Gov't Code § 91000(b).
- 8 Cal. Gov't Code §§ 91004, 91005, 91007.
- 9 Cal. Gov't Code §§ 83116(a), 91001(b), 91001.5, 91003.
- 10 Cal. Gov't Code §§ 91003, 91012.
- 11 Cal. Gov't Code § 83116(b).
- 12 *See* Cal. Gov't Code § 91003.5.
- 13 *See* Cal. Gov't Code § 91003(b).
- 14 *See* Cal. Gov't Code § 1097.
- 15 *See* Cal. Gov't Code § 1092.
- 16 *Thomson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985).
- 17 *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- 18 Cal. Penal Code § 424.
- 19 Cal. Gov't Code § 8314(c)(1).
- 20 Cal. Penal Code § 504.
- 21 *Id.*
- 22 *See* 26 U.S.C. § 7201.
- 23 *See* 26 U.S.C. § 7203.
- 24 *See generally* 18 U.S.C. § 1341 and following.
- 25 *See generally* 18 U.S.C. § 3571(b) and (d).
- 26 *See, for example*, 18 U.S.C. §§ 641 (crime of embezzlement against the United States), 648 (misuse of public funds).
- 27 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- 28 *Id.*
- 29 Cal. Gov't Code § 54960.5.

- 30 Cal. Gov't Code § 54959.
- 31 *See* Cal. Penal Code § 19.
- 32 Cal. Gov't Code § 54960.
- 33 *Id.*
- 34 Cal. Gov't Code § 54960.5.
- 35 Cal. Gov't Code § 6258.
- 36 Cal. Gov't Code § 6259(d).
- 37 *See generally* Cal. Penal Code § 68(a).
- 38 *Id.*
- 39 *Id.*
- 40 *Id.*
- 41 Cal. Penal Code § 521.
- 42 Cal. Penal Code § 19.
- 43 *See* Cal. Gov't Code §§ 3060-3074.
- 44 Cal. Penal Code § 74.
- 45 18 U.S.C. § 666.
- 46 *See* 18 U.S.C. §§ 666 (specifying maximum 10 year prison term and fine “under this title”), 3571 (general fine for violating federal criminal laws).
- 47 *U.S. v. Gaytan*, 342 F.3d 1010 (9th Cir. 2003).
- 48 Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- 49 *See generally* Cal. Elec. Code § 16000 and following. *Hardeman v. Thomas*, 208 Cal. App. 3d 153, 256 Cal. Rptr. 158 (1989).
- 50 *See* Cal. Elec. Code § 16100.
- 51 *See* Cal. Civ. Proc. Code § 803 and following. *See also Nicolopoulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1225, 111 Cal. Rptr. 2d 420, 428 (2d Dist. 2001).
- 52 *See, for example*, 79 Cal. Op. Att’y Gen. 21 (1996).
- 53 *See* Cal. Lab. Code § 1103.
- 54 *See* Cal. Lab. Code § 1105.