

# Understanding Public Service Ethics Laws: AB1234 Training

*California State Association of  
Counties  
Annual Meeting*



**Friday, November 13, 2020**



# 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 training

You must answer the virtual polling questions

# Other Housekeeping Items

You will receive your  
certificate via email  
by December 15<sup>th</sup>

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

Contact Melissa  
Kuehne at  
[mkuehne@ca-ilg.org](mailto: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

## Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable Communities



## Services

Education & Training

Technical Assistance

Capacity Building

Convening

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

# Understanding Public Service Ethics Laws and Principles (AB 1234)

California State Association  
of Counties Annual Meeting  
November 13, 2020



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# AB 1234 Training

- Who gets AB 1234 training?
- Applicability to legislative bodies vs. staff
- Topics
  1. Ethics and Scandals
  2. Personal Financial Gain (aka Conflicts of Interest)
  3. Perks of Office
  4. Fair Processes & Procedures
  5. Government Transparency





# **Part I: Ethics and Scandals**



# Ethics: What, and So What?

- What are ethics?
- Ethics vs. Laws: Minimum standards vs. Moral standards
- Public officials held to higher standards
- What sets off *your* ethics alarm?





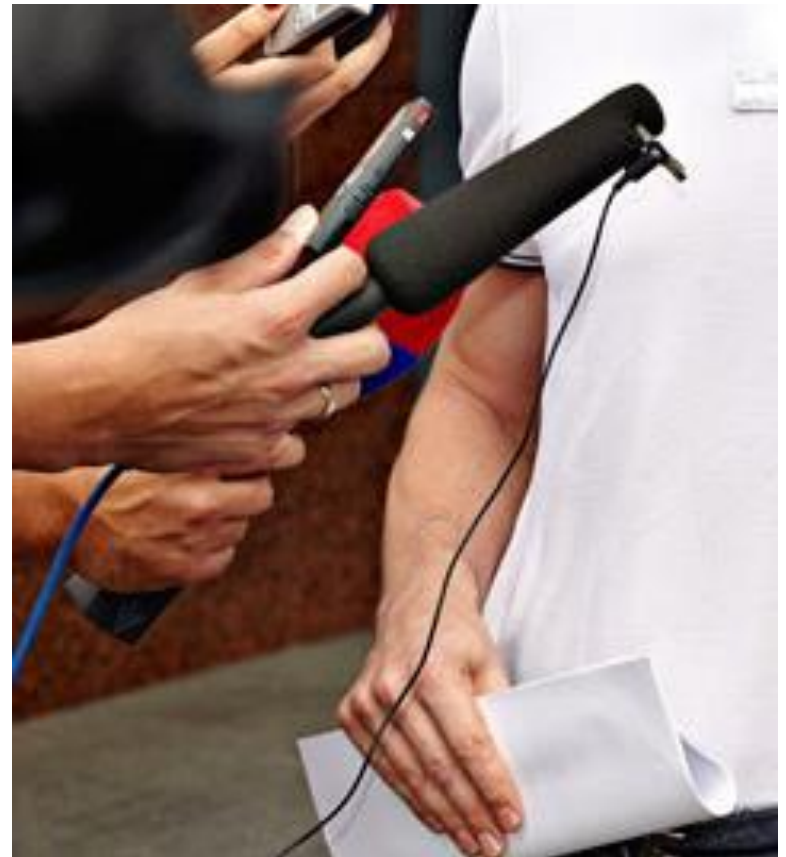
# Institute for Global Ethics' Universal Ethical Values

- Fairness
- Loyalty
- Compassion
- Trustworthiness
- Responsibility
- Respect



# Scandalous!

- Sexting, Surfing and *Scandal*
- Drugs, guns and gambling
- The sun never sets on Nepotism
- “It’s not theft if I deserve it”
- What are you hiding?
  - Alleged transparency violations
  - Creative ownership
- The 24-hour news cycle, web-based longevity: old stories never die





# Ethics Laws

- Minimum standard
- Not always common sense
  - Consider political process
- Appearances matter
- Sources of laws and regulations
  - Role of FPPC





**Questions?**

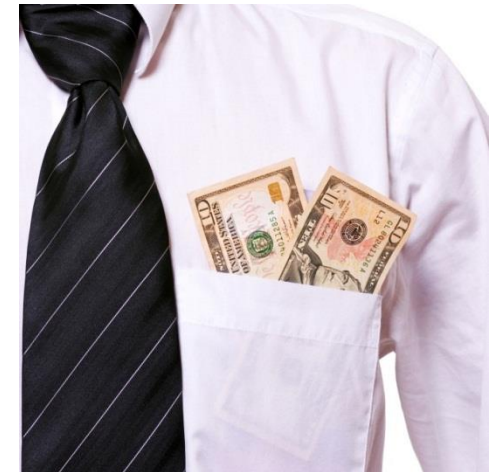


## **Part II: Personal Financial Gain (aka Conflicts of Interest)**



# Roadmap: Personal Financial Gain

- Laws to mitigate inevitable conflicts of interest
- Public officials should not benefit financially from their positions
- Laws govern conflicts of interest
  - Public contracts
  - Government decision-making
  - Campaign contributions
  - Bribery





# No Self-Dealing in Contracts (Section 1090)

You “shall not be ***financially interested*** in any ***contract made***” in your official capacity, or by any body or board of which you are a member.

Government Code §1090 *et seq.*





# No Self-Dealing in Contracts

- Is there a financial interest?
- Is the financial interest a remote interest (Board of Supervisors only) or statutory non-interest?
  - Examples: landlord/tenant, non-profit entity
  - “Public services generally provided” “on same terms” non-interest exception



# What if there is a Section 1090 conflict?

- If Supervisor, two choices: No contract or resign
- Staff can recuse instead of resign
- Penalties & consequences of violation
  - Contract = void ***and*** refund money
  - Felony: imprisonment and fines (\$5,000-\$10,000)
  - Attorneys' fees
  - Can never hold another public office

# 1090 Reform

*AB 1090 (2013) allows FPPC to:*

- *Provide opinions and advice*
- *Bring civil and administrative enforcement actions, after consultation with D.A.*





# Hypothetical

- Staff Member: “As you all know, the County has outgrown its current space for records storage and wants to lease a new storage facility for all its paper records located at 100 Woodland Ave in Grovesville, CA. Staff proposes the County rent the storage facility located at that address.”
- Supervisor: “Wait a minute, I think Supervisor Owens owns that facility. Can the Board of Supervisors authorize the County Administrator to execute the lease?”

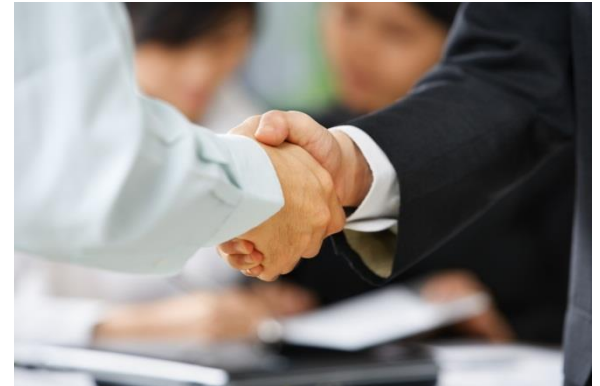


## **Poll: Can the Board of Supervisors authorize the County Administrator to execute the lease?**

- Yes
- No

# Avoiding Conflicts in Government Decisions

FPPC: “You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests, **and** a significant portion of your jurisdiction does not also feel the important impact on their economic interests.”



Political Reform Act

(Government Code § 87100 *et seq.*)



# Applying the Law

- 4-step analysis (rather than old-fashioned 8) with two pre-cursors
  - Public Official
  - Financial Interests
    - Business Entity: \$2,000 investment or holds position
    - Sources of income: \$500 in past 12 months
    - Real estate: \$2,000 value
    - Sources of gifts: \$500 in past 12 months
    - Personal financial effect: \$500 up or down in 12 months





# 4-Step Analysis:

1. Is the financial effect on the official's financial interest "reasonably foreseeable"?
  - *Explicitly involved*
  - *"Realistic possibility and more than hypothetical or theoretical"*
2. Is the financial effect material?
  - Apply the new regulations
  - Named party or property?: Probably yes
  - Not named?: Will the value or use change?
3. Is the effect on the official the same as on the "public generally"?
4. Is the official "making, participating in the making, or using his or her position to influence" the governmental decision from which the financial effects result?



# What if there is a PRA conflict?

- Staff:
  - Report it
  - Don't participate
- Supervisors:
  - Report in open session
  - Leave the room
  - Don't participate
  - Don't discuss
  - Don't vote
- Penalties, consequences
  - FPPC enforcement
    - *Heightened focus*
  - Fines (*trending up*: \$30,000-\$50,000)
  - Attorneys' Fees
  - Misdemeanor, may lose office
  - May invalidate decision

***1-866-ASK-FPPC***

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# Hypothetical

- Staff Member: “As you all know, the County has outgrown its current space for records storage and wants to lease a new storage facility for all its paper records located at 100 Woodland Ave in Grovesville, CA. Staff proposes the County rent the storage facility located at that address.”
- Supervisor: “Wait a minute, I think the County Treasurer-Tax Collector owns that building. Can the Board of Supervisors authorize the County Administrator to execute the lease?”



## **Poll: Can the Board of Supervisors authorize the County Administrator to execute the lease?**

- Yes
- No



# Hypothetical

Supervisor: “As you all know, the County is partnering with the cities in our jurisdiction to have a joint Holiday Festival in Civic Center Park, and we want to hire Pyro Parties Inc. to put on a fireworks show. The County and City have no rules prohibiting fireworks shows and they are permissible under state and federal law. My primary residence is right across the street from where the show will be held!”

County Administrator: “County Counsel, can the Supervisor participate in discussions related to this contract?”



## **Poll: Can the Supervisor participate in discussions related to this contract?**

- Yes
- No



# Campaign contributions as conflicts, aka “Pay-to-Play” rules, Levine Act

- No officer shall:
  - Accept/solicit/direct \$250 from party while a proceeding is pending or for 3 months after final decision
  - Participate in/influence a decision if financially interested party has contributed \$250 within past 12 months; officers must report such conflicts
- Covers contributions to all campaigns officer supports
- Covers:
  - Business, professional, trade, land use licenses/permits
  - Entitlements for use
  - Nonexempt contracts
  - Franchises
- Exceptions:
  - *Decisions of boards/councils with directly elected members, e.g., cities, some special districts*
  - Competitively bid contracts
  - Contracts for labor/personnel employment



# Future Employment

- No participation in decisions involving future employers
  - How far into the process are you?
  - Who else knows you are thinking of leaving?
  - Who else can cover this part of your job?
- Revolving door prohibition
  - Covers elected officials and executive directors
  - Cannot represent clients/employers before agency for one year



# Bribery

- **Anything of value** in exchange for a vote, opinion or action
- *Quid pro quo*
- Even if bribe not actually received
- Penalties & consequences
  - Imprisonment of 1-4 years
  - Fines up to \$10,000 or double amount of bribe
  - Attorneys' fees
  - Forfeit office, disqualified from future office, employment or appointment in California





# Honest Services Laws

- Federal Laws
- Mail and wire fraud
- Now limited to bribery and kickbacks in interstate communication
- Penalties: up to 20 years in jail and \$250,000 fine



# Take-Aways

- Always be on the lookout for a conflict
- Ask for help!
- The problem – and the solution – may or may not be obvious
- Be prepared for questions





**Questions?**





# **Part III: Perks of Office**



# Roadmap: Perks of Office

- Public officials should not benefit personally from their positions
- Laws govern
  - Gifts
  - Honoraria
  - Free/discounted transportation
  - Use of public resources



**Stricter of state law and agency policy governs**



# Gift Limits

- “Public Official”: Conflict of Interest Code
- “Gift”: Anything that confers a “personal benefit” for which you do not provide something of equal value
- Limit: \$500 per source per calendar year for 2019-2020
- COI Disqualifying Interest: Over \$500 in 12 months from single source
- Report: Any gift worth \$50 or more
  - *Designated positions: only report if connected to job duties*
- Separate rules for gifts to and from the agency, tickets
- May differ from agency policies, especially for vendors



# Is it a gift, does an exception apply, and what is it worth?

1. Is there a personal benefit?
2. What is it? Look it up, but...

It's a gift if it's:

- Food/drink
- Services
- Travel/lodging
- Money/loan
- Items/things

But it may be exempt if:

- Reciprocal exchange
- "Host" is present
- Prize/earnings
- Personalized plaque/award (if under \$250)
- Received at big event
- Informational materials
- Inheritance
- Act of neighborliness or compassion
- Campaign contribution





# Is it a gift, does an exception apply, and what is it worth?

## 3. Who is it from?

- Does an exception apply?
    - *Family members*
    - *“Long-term, close personal friend” (“BFF exception”)*
    - *Non-agency business relationship (day job, old job)*
    - *“Dating” relationship*
  - Are they in your disclosure category?
  - Are they a vendor? Does a special rule apply?
- ## 4. Is the source a lobbyist or do they have a matter pending before your agency (12 months forward, 12 months back)?



# Is it a gift, does an exception apply, and what is it worth?

## 5. Who is the gift to?

- You, your spouse, your child

## 6. If the gift was received at an event, exemptions and valuation depend on nature of event

- Public event where make a speech
- Wedding, other private event
- In someone's home



# Conferences

- Free or reduced registration for informational conferences is OK
- Meals, lodging and transportation costs
  - Subject to gift limits unless paid by 501(c)(3) or public agency
  - Can be disqualifying
- What if you are performing a service? (Is the “gift” actually “income”?)

**Supervisors: Give a brief report at next meeting for reimbursed travel!**

# Gift Tips

- *Look to County's policies first*
- *Keep a gift log*
- *Consider the FPPC's gift tracking app*
- *Use the FPPC Fact Sheet*



# Honoraria

- Supervisors, candidates for office, and designated officials
- No compensation allowed for writing, attending or speaking
- Expense reimbursement OK if in CA
- Exceptions
  - Bona fide business or profession
  - Artistic performance
  - Money paid to County
  - Direct charitable donations





# Hypothetical

Supervisor: “I would like to report that I attended the CSAC Conference last week and received reimbursement from the County for my attendance. What a great experience! I learned a ton and made connections with all sorts of firms that could help us. Normally, I’d end my report there, but I have a question.

One particular consultant took me and my spouse golfing at an amazing country club. Then he took us out to dinner the next night and on a Riverboat cruise. I think the total value of these gifts was about \$800. I can pay him back if I have to, but I think its fine because I bought him two drinks at the conference reception plus a couple cups of coffee during the week. I’m good, right?”



## **Poll: Was buying a few drinks or a coffee sufficient?**

- Yes
- No



# What to do with these Perks?

- 30 days to decline/donate/pay down/return
- Report it
- Disclosure/disqualification
  - Disqualification from participating in gov't decisions if over \$500 in past 12 months
  - Announce the interest, leave the room
- Penalties & consequences
  - Fine: \$5,000 per violation
  - Own attorneys' fees \$3,000-\$30,000
  - Others' attorneys' fees





# Ban on Free or Discounted Transportation

- *OK if employment benefit or in furtherance of official duties*
- Applies to officers but not employees
- Applies to public or private transportation companies only
- Progressive era law
- Penalty is forfeiture of office



# Use of Public Resources

- Personal (or political) use or gifts of public resources
  - Funds
  - Surplus property
  - Staff time
  - Copiers, phones





# Mass Mailing Prohibition

- No newsletters or mass mailing at public expense
  - Costs of design, production & printing \$50+
  - Features name, picture, office, other such reference to elected official
  - 200+ substantially similar items in 1 month
- Exceptions
  - Legally required notices, announcements
  - Intra-agency communications



# Campaign and Political Activities

- No public funds for partisan campaigning
- No use of phones, supplies, fax machines, computers
- Informational materials: factual, balanced, do not advocate
- No solicitation of officers or employees
- Penalties: civil, criminal
- ***Can't*** use resources to advocate or campaign for local ballot measure
- ***Can*** use resources to provide informational/educational materials that are neutral and balanced in timing, tenor and tone
- FPFC's AdWatch



*OK on own time and dime!*

# Compensation and Reimbursement Policies

- Compensation of Supervisors
- Executive and staff compensation
- Reimbursement: actual and necessary expenses
  - Follow adopted policies
  - Use agency expense form and submit receipts
  - Public records
- Penalties: criminal, civil, permanent disqualification







# Hypothetical

Supervisor (from the dais): As you all know, I'm up for reelection this year. I'd like to thank staff for making the old computers in the bunker available to me. We'll put them to good use. Also, staff has made copies of the flyer for one of my upcoming fundraising lunches. I encourage everyone to pick up a flyer from staff and attend. County Counsel, it was okay that I announced this here, right?



## **Poll: Is this permissible?**

- Yes
- No





**Questions?**







# **Part IV: Fair Processes & Procedures**



# Roadmap: Fair Processes & Procedures

- Government processes should be fair and consistently applied to avoid bias and favoritism
- Laws cover:
  - Constitutional due process
  - Statutes, rules and policies for fair processes
    - Competitive bidding
    - Fares/rates/charges
  - Incompatible offices and activities



# Constitutional Due Process & Fair Processes

- Cannot deprive public of
  - Life
  - Liberty
  - Property
- Without due process
  - Notice
  - Opportunity to be heard
  - Fair and impartial hearing
- Establish standards and follow procedures





# Competitive Bidding

- Public money for the public good
  - No discrimination or favoritism
- Federal, State and local laws and policies
- Essential elements
  - No conflicts of interest
  - Confidentiality
  - No ex parte communications
- Special concerns
  - Technology contracts



# Incompatible Offices & Activities

- Having more than one “master” – even if all are “the public” – creates conflicting duties
- Incompatible public offices
  - Penalty: forfeiture of first public office
- Incompatible activities (private and public): typically defined by agency policy





**Questions?**





# **Part V: Government Transparency**



# Roadmap: Government Transparency

- Government works for the public and should be open to the public
- Laws cover:
  - Open meetings
  - Public records
  - Agency, Individual Reports (FPPC Compliance)








# Open Meetings: Brown Act

- Meetings of local legislative bodies
  - Notice specifying time and place of meeting
  - Published agenda
  - Opportunity for public comment
- Special Meetings – 24 hours
- Regular Meetings – 72 hours
- Penalties: Invalidate action and/or misdemeanor



# Executive Orders Temporarily Modify the Brown Act

- Executive Order N-25-20 (March 12, 2020) (Superseded)
- Executive Order N-29-20 (March 17, 2020)
  - Suspends in-person meeting requirements and certain teleconference and location requirements.
  - Allows teleconferencing (video and/or phone) as exclusive means of meeting, so long as certain notice and accessibility requirements are satisfied.
  - Applies “during the period in which state or local public health officials have imposed or recommended social distancing measures.”



# Executive Order Regarding Permissible Briefings

- Executive Order N-35-20 (March 21, 2020)
  - Supervisors may receive updates from/ask questions of government officials regarding the COVID-19 emergency.
  - Supervisors cannot discuss amongst themselves, or take action on, information outside of a properly noticed public meeting.
  - Reiterates rules for permissible Board briefings.



# Special Requirements for Virtual Meetings

- Agenda must include:
  - Web access and/or call-in information for public
  - Clear description of method for public comment
  - Procedure for receiving requests for and implementing reasonable modifications for persons with disabilities
- Ability for legislative body and staff to hear and be heard
- Ability for public to hear and be heard
  - Avoid interruption, inappropriate conduct
  - Ability to be anonymous
  - For some, comments submitted in writing only
- All votes by roll call

# Closed Session Exceptions

- Real property – “price and terms of payment” only
- Pending litigation
- Personnel
  - *Post-Bell reform: can only approve compensation at regular meeting and in open session*
  - *New law (SB 1436): before taking final action on executive compensation, legislative body must orally report a summary of a recommendation for a final action during the open meeting (Gov’t Code section 54953)*
- Threat to public security
- Labor negotiations
- ***Duty of confidentiality!***






# Hypothetical

Supervisor: Now that we're in closed session to discuss the lease for the County's new records storage facility, I wonder if instead of leasing the building we should look into buying a new building? What do you all think of this alternative?

County Administrator: County Counsel, is it okay to discuss buying a building during closed session?



## **Poll: Is it okay to discuss buying a building during closed session?**

- Yes
- No



# Brown Act Pitfalls

- Quorums outside of noticed meetings
  - Conference exception
  - Improper use of “ad hoc” committees
- “Serial” conversations
  - Daisy chain
  - Hub and spoke
  - Talking outside of meetings
  - *E-mail*
  - *New social media rules*







## Internet-based Social Media (AB 992)

- Separate conversations or communications on an internet-based social media platform:
  - Answer questions
  - Provide information to the public
  - Solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body
- Majority cannot discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body
- Members cannot respond directly to each other regarding matters within the subject matter jurisdiction of the legislative body



# Public Records

- Right to inspect and copy public records
- Includes all non-exempt writings or other recording concerning the public's business owned or retained by a state or local agency
  - E-mail is covered; metadata may be
  - *Personal devices & accounts: New Law*
  - Some exemptions
  - Drafts, personnel files, pending litigation, trade secrets, deliberative process, otherwise privileged, “catch-all” exemption





**Questions?**





# Key Lessons

- Pay attention to your ethical compass
- Consider political climate – appearances matter!
- Laws change, but values don't
- Board and managerial leadership matters
- Remember the strictest rule governs (check grants, agreements, & other restrictions)
- Seek help if you need it





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