

Understanding Public Service Ethics Laws: AB1234 Training

*League of California Cities Annual
Conference*



Thursday, October 8, 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
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by the end of
October

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

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

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**California Special
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Districts Stronger Together



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

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Leadership & Governance

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



Ethics Training for Public Officials

AB 1234

LEAGUE OF CALIFORNIA CITIES
October 8, 2020





Who, What, Where



- 7 City of Beaumont Officials
- \$43 million in misappropriated bond, contract, fee and loan funds over two decades
- Facing 16-26 years in prison; \$5 million bail



Who, What, Where



- Jeffrey Hubbard, former Beverly Hills USD Superintendent
- 2 counts felony misappropriation of public funds (approved a car allowance of \$500 and \$20,000 stipend for an employee w/o board approval)
- Cal. S.C. held that PC 424 applies broadly to every person with some control over public funds
- 60 days jail, 280 hours community service, \$23,500 restitution, \$,6000 fine

“I’m Not Like Those Officials”

- Make sure your name does not show up in the FPPC’s “Hall of Shame”...

FAIR POLITICAL PRACTICES COMMISSION

Summaries of Past Enforcement Cases A-Z

www.fppc.ca.gov

Agenda

1. Ethics Principles
2. Personal Advantages and Perks of Office
3. Personal Financial Gain
4. Fair, Open and Impartial Processes and Decision Making (Brown Act/CPRA)



Morals, Ethics & Legalities

- **Morals:**
 - a person's standards of behavior or beliefs concerning what is and is not acceptable for them to do.
- **Ethics:**
 - moral principles that govern a person's or group's behavior.
- **Legalities:**
 - the quality or state of being in accordance with the law.

What are Ethics?

- Laws and policies establish what the public employee must do.
 - Clearly stated requirements of behavior.
 - General principles of ethical behavior.
- Legal and disciplinary consequences.

What are Ethics?

- The public expects public employees to act ethically, whether or not doing so is required by law or policy.
- Public employees must always consider the perception as well as the reality

What are Ethics?

- Ask Yourself:
 - Is this legal?
 - Does it comply with City rules?
 - Is it consistent with my personal values?
 - How will it look in the newspaper?

Ethics Laws

California law promotes ethics:

1. by requiring public disclosure
2. by prohibiting certain actions
3. by punishing violations



Ethics Laws vs. Ethics



Law = minimum standards

What we *must* do

Floor - not the Ceiling

Ethics = *What an official should do*

General Ethical Principles

Universal Ethical Values:

- Professional/Trustworthy
- Community First
- Respect
- Fairness



The Choice Is Yours



You have a major meeting tomorrow but it's playoff season and there's a great game on TV. Should you:

- a) Skim the meeting agenda package during commercials
- b) Have your spouse read the materials and advise what to do
- c) Remain silent at the meeting and consent to the staff recommendation
- d) None of the above

Professional

What does this value look like in practice?

- _____
- _____
- _____
- _____

Professional

This value looks like:

- I come prepared to meetings, having read and studied any materials and information provided to me.
- I respect confidential information.
- I follow through and take responsibility for my actions.
- I keep my knowledge and skills current.



The Choice is Yours:



Your neighbor, who is a friend, has an application coming before the Council that staff recommends against approving because of negative impacts and Code conflicts. Should you:

- a) Impose extra conditions to look tough, but still approve
- b) Remain silent and approve
- c) Tell the applicant to move to another community
- d) None of the above

Community First

- What does this value look like in practice?
- _____
- _____
- _____
- _____

Community First

This value looks like:

- I make impartial decisions, free of narrow political interests and financial and other personal interests that might impair my independence of judgment or action.
- I comply with both the spirit and the letter of the law (Constitution, State law, City Code, City Policies).
- I do not use Agency resources or my position for personal gain.



The Choice Is Yours



You realize that you forgot to file a report required by a state agency. Should you:

- a) Blow it off because it's a State agency
- b) Tell the City Manager you assigned the project to a co-worker
- c) Call the agency and tell them the report got sent to the wrong address
- d) None of the above

Trustworthy

What does this value look like in practice?

- _____
- _____
- _____
- _____

Trustworthy

This value looks like:

- I act truthfully with the public, agency officials and staff.
- I use accurate information.
- I do what I say I will do.
- I use my title only when conducting official agency business, carefully considering whether I am exceeding or appearing to exceed my authority.

General Ethical Principles

Respect

What does this value look like?

- _____
- _____
- _____
- _____

Respect

This value looks like:

- I treat people with courtesy and equitably.
- I listen carefully.
- I am engaged – I ask questions.
- I involve staff.
- I work towards consensus.



The Choice Is Yours



It's okay to:

- a) Reject an application because the applicant is a jerk
- b) Only consider Agency staff's position on a decision
- c) Encourage questions from members of the public during meetings
- d) None of the above

Fairness

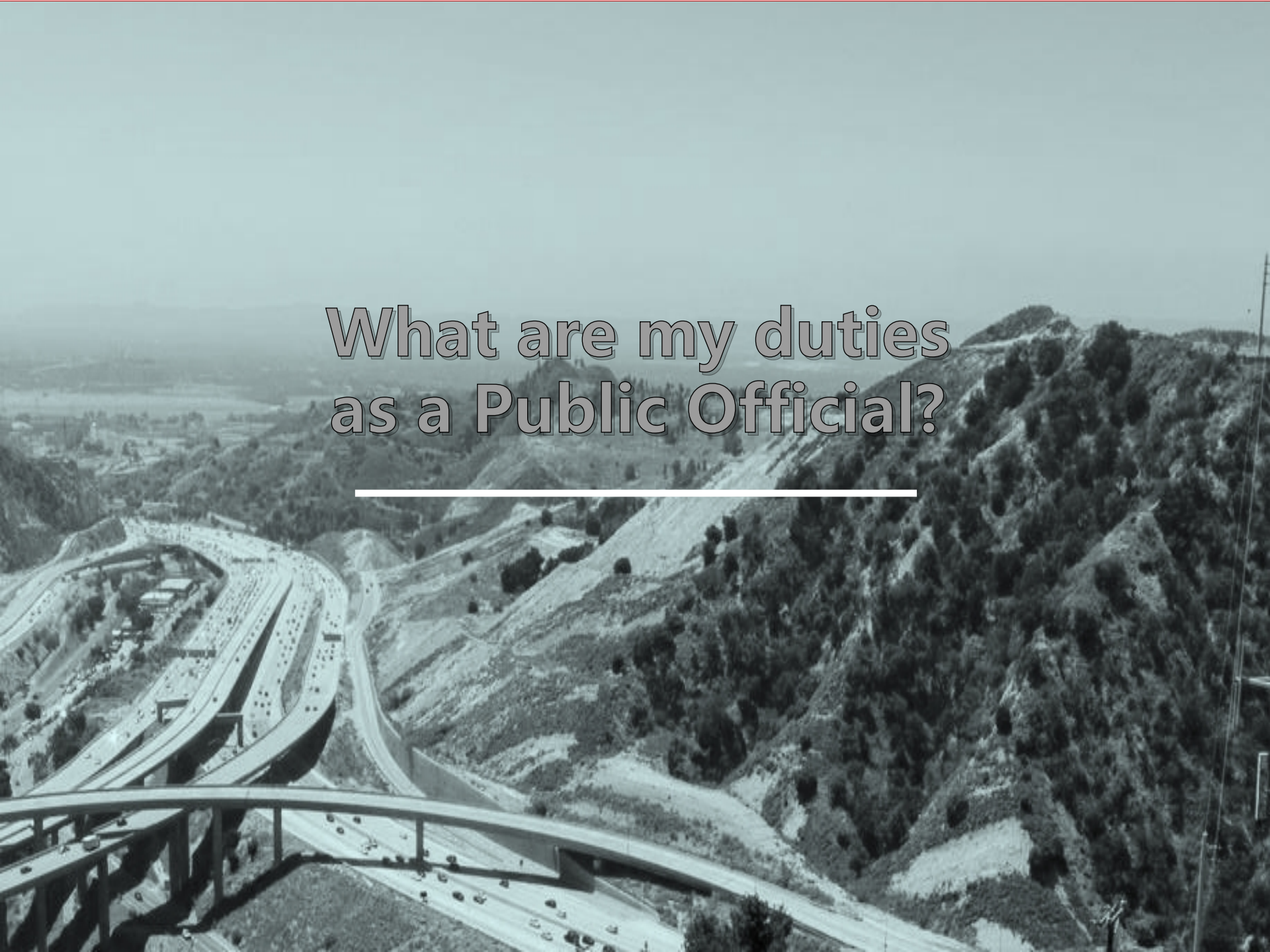
What does this value look like?

- _____
- _____
- _____
- _____

Fairness

This value looks like:

- I focus on merits not on personalities.
- I promote public involvement.
- I provide more process than required.
- I consider all sides.
- I apply policies consistently.

An aerial photograph of a complex highway interchange built into a hilly, wooded landscape. The interchange features multiple levels of overpasses and ramps, with several vehicles visible on the roads. The surrounding terrain is covered in dense vegetation, and the sky is clear and bright.

What are my duties
as a Public Official?

Supervisory Obligations

- All Public Officials are required to follow all City policies.
- Violations of policy will result in appropriate disciplinary action.

Public Official Obligations

- Lead by Example:
 - Public Officials are expected to lead by example in all things, including engaging in ethical behavior.
 - Subordinates should be able to model their behavior from you.

Supervisory Obligations

- Enforce the Rules:
 - Public Officials have an obligation to enforce all City policies.
 - If a Public Official has any reason to believe that an employee is acting unethically, he/she must report that concern.
 - Obligation to enforce exists for conduct within and outside the chain of command.
 - When in doubt, speak up and ask for help.

Part I: Personal Advantages & Perks

Legal Limitations on Official Benefits and Perks



benefits & perks

Gifts

- **What is a Gift?**

- Anything of value you receive for which you do not provide monetary or other consideration of equal or greater value.
- May include discounts and rebates if not also given to the general public.



Report - \$50 or more in
a year/source

Limit - \$500/year/source
through 2020

Disclosure of Gifts

- Must report gifts on your Form 700 if:
 - Total value of all gifts from that source during the calendar year is at least \$50.
 - Gift are reportable regardless of the location of the donor.

Tip: If the amount is unknown, you must make a good faith estimate of the item's fair market value.





The Choice Is Yours



Are meals gifts?

- a) Yes, if the food is delicious
- b) No, if the company is boring
- c) No, if you take turns paying
- d) Only if you go to a restaurant

Gifts

- **Are Meals Gifts?**

Yes. A meal is a gift unless:

- provided at an individual's home (existing relationship)
- Provided as part of a reciprocal exchange
- paid for by a governmental agency



Gifts

There is a rule for everything:

- Gifts through family members
- Attendance at Invitation-Only Events
- Wedding gifts
- Non-Profit fundraisers

Potential Economic Interests



- **Gifts.** Any person or entity which has been a source of gifts (including promised gifts) of **\$500 or more** in the prior **12 months**.

Gifts

Party a bit too lavish for public officials

Developer's celebration violated limits on gifts



Matthew T. Hall, *San Diego Union Tribune*

SAN DIEGO – Downtown San Diego developer Doug Wilson threw a party so posh this summer that it **violated state and local gift limits for the public officials who attended, barring five of them from working on his projects for a year**. It was hardly the splash he wanted. The per-person cost for Wilson's July 14 celebration – including food, drink, entertainment and other amenities – totaled a whopping \$805.

Gifts



FPPC Enforcement Decisions:

James L., as a Mayor of Palmdale, failed to timely disclose gifts of two meals totaling \$253.39 on his Statement of Economic Interests. All gifts were from E.J. De La Rosa & Co., Inc.

Penalty: \$200.

SACRAMENTO — Spurred by an investigation by the Ventura County District Attorney's Office into the activities of Oxnard city officials, the Fair Political Practices Commission found 205 government officials across the state failed to properly report gifts from the same companies involved in the Oxnard case.

Gifts

FPPC Enforcement Decisions:



Judith V, former **mayor of the City of San Bernardino**, acceptance of membership dues from Arrowhead Country Club, exceeded the 2004 gift limit of \$340 and the 2005 gift limit of \$360.

Fine: \$400

Gifts



FPPC Enforcement Decisions:

Marc R, Director of Recreation and Parks for the City of Santa Rosa, received gifts including free golf course access, range access, cart use, lessons and merchandise discounts that exceeded the reporting threshold of \$50, and **failed to report these gifts on his Annual Statements of Economic Interests.** Additionally, Mr. R **received gifts exceeding the applicable gift limit from one source.** He impermissibly made, participated in the making, or influenced a governmental decision by assisting in the negotiations of agreements with Bennett Valley Golf Course and recommending to the Santa Rosa City Council that it enter into and amend agreements with Bennett Valley Golf Course, **which was the source of a gift** that exceeded the annual gift limit.

Fine: \$6,500



Gifts



Options when you receive a gift over \$50:

- Decide if you want to report it on your Form 700.
- If so, report it within 30 days of receipt.
- If not, then within 30 days:
 - Reimburse the donee for the fair market value,
 - Return the gift unused, or
 - Donate the gift to charity (no deductions).
- If the gift exceeds \$470, you have a duty to reject it.
 - Or “buy down” the value



The Choice Is Yours



Can public officials accept “tips” for a job well done?

- a) Never
- b) Always
- c) Only if you do an extra good job
- d) Yes, if you have a performance based contract

Prohibition on Gratuities or Rewards



It is a misdemeanor to receive any kind of gratuity or reward for performing one's duties.

Honoraria

- Receipt of honoraria (e.g., any payment for a speech, article, attendance at a conference, event or similar gathering) is ***prohibited***
- **Exception:** Speech or article in connection with private business

Tip: You can **return** or **donate** the honoraria within 30 days of receipt.



Honoraria

Ex-member of governor's Cabinet pays \$5,400 in ethics fines

June 09, 2009| Michael Rothfeld *Los Angeles Times*

SACRAMENTO — A former member of Gov. Arnold Schwarzenegger's Cabinet who resigned in March has paid \$5,400 in fines to a state watchdog agency for violating a ban on accepting speaking fees, while saying administration officials knew what she was doing and never advised her to stop.

Rosario Marin, who led the State and Consumer Services Agency for three years, admitted to three violations of the state's ethics law under a settlement with the California Fair Political Practices Commission.

Marin resigned from her \$175,000-a-year post last March after the Los Angeles Times reported that she had accepted speaking fees, including \$15,000 from Pfizer and \$13,500 from Bristol-Myers Squibb while the drug companies were lobbying her agency.



The Choice Is Yours



Agency officials can set their salary:

- a) As high as they want (or can get away with)
- b) By ordinance
- c) Whenever they want
- d) None of the above

Compensation

- Generally fixed by statute.
- Increases, if permitted, usually require a public vote or an ordinance.
- Cannot be acted on at a special meeting.
- Automatic increases not permitted.





The Choice Is Yours



If you take your spouse on official business, you can charge the following to the City:

- a) Room
- b) Spouse's meals
- c) Mileage
- d) Both (a) and (c)
- e) None of the above

Expense Reimbursement



General Rule: *Actual* and *Necessary* Expenses

Agency Policy: The Agency has a written policy specifying reimbursable activities and rates

Reporting: Timely use of report forms (with receipts documenting the expenses); oral report at subsequent meeting (only for attendance at Brown Act “meetings”)

Penalty: loss of reimbursement privilege; restitution; civil penalties and 3x value of misused resources; jail; ban from public office

Remember...

Your expense report forms are
PUBLIC RECORDS





The Choice Is Yours



A local store owner offers to give you an iPad in appreciation of your excellent work. You must:

- a) Tell the City Manager
- b) Give it to your children
- c) Ask the value before accepting
- d) Give it to charity and take a tax deduction
- e) Politely refuse the offer



The Choice Is Yours



It's not okay to:

- a) Make a few personal copies on the Agency copy machine
- b) Call your spouse from an Agency phone
- c) Use an Agency truck to pick up a new mattress
- d) All of the above

Misuse of Public Resources



- **Rule:** No use of public funds or resources for personal, non-public purposes, including campaigns.
- “**Public Resources**” includes staff time, office equipment and supplies, but excludes incidental or minimal uses.



- **Penalties:** disqualification from office, jail, civil penalties up to \$1000/day plus 3x the value of the unlawful use.

Tip: Ensure that an expense or use is consistent with adopted City policy or practice.

Misuse of Public Resources

Top fire officials suspected of driving county vehicles while collecting \$1,000 monthly personal car allowance.

SAN BERNARDINO - San Bernardino County Fire Chief Pat Dennen was placed on unpaid administrative leave Wednesday after county supervisors evaluated a human resources report alleging he and Deputy Fire Chief Dan Wurl **improperly drove county vehicles for personal use**. Dennen and Wurl reportedly used a county trailer to move personal belongings from Running Springs to Yucaipa. The two may have also violated county policy by driving county vehicles while collecting a roughly \$1,000 monthly personal car allowance.



Solicitations of Political Support

- Soliciting campaign funds from City officers or employees is unlawful (except when included as part of a communication to a significant segment of the community).
- Conditioning employment and compensation decisions on political support is also prohibited.



Restrictions on Loans

- Officials cannot receive loans:
 - from anyone within the official's City or with whom the City contracts; or
 - greater than \$500 (except in writing and with clear terms)

PERSONAL
LOANS



Exceptions: loans received by the official's campaign committee; normal bank and credit indebtedness; and loans from family members

Restrictions on Loans

FPPC Enforcement Decisions:

Antoinette R, was the **Inspection Services Manager for the City of Oakland Community and Economic Development Agency (CEDA)**, Building Services Division (BSD). Ms. R violated conflict of interest laws when she approved and signed a series of contracts with a contractor, her former brother-in-law, from whom she had received a loan in the amount of \$50,000.

Fine: \$6,500



Restrictions on Loans



This is the Walnut Grove home of Jason Peltier, a former deputy general manager of the Westland Water District. Peltier received a \$1.4 million loan at 0.84% interest from the district to buy the home in 2007 and has until 2021 to repay the final \$1 million-plus

Potential Economic Interests

FPPC Enforcement Decisions:

Richard F, Dorris City Councilmember, violated conflict of interest laws by **voting to obtain a \$491,520 state grant to extend a water and sewer line to an area of the city where he owned real property and operated an inn and restaurant.**

Fine: \$4,000



Part II: Personal Financial Gain



Bribery & Extortion

- Requesting, receiving, or agreeing to receive anything of value, including an “advantage,” in exchange for official action, or using an official position to gain something of value, is a crime.



- **Penalties:** criminal fines, forfeiture of office and disqualification from office.



Bribery & Extortion

Cudahy mayor resigns after bribery arrest

Cudahy Mayor David M. Silva steps down. A councilman and the former head of code enforcement are also accused of taking money from a marijuana clinic owner.

By Ruben Vives / *Los Angeles Times*

The mayor of Cudahy resigned Tuesday after he, a councilman and a former official were charged in late June with federal bribery in an unfolding corruption scandal, officials said. Silva, Councilman Osvaldo Conde and Angel Perales, the former head of code enforcement, are accused of ***taking \$17,000 in bribes from a marijuana dispensary owner*** who was working as an FBI informant. ***The officials allegedly took the bribes in exchange for their help in opening a store*** in the small blue-collar city, according to federal authorities.

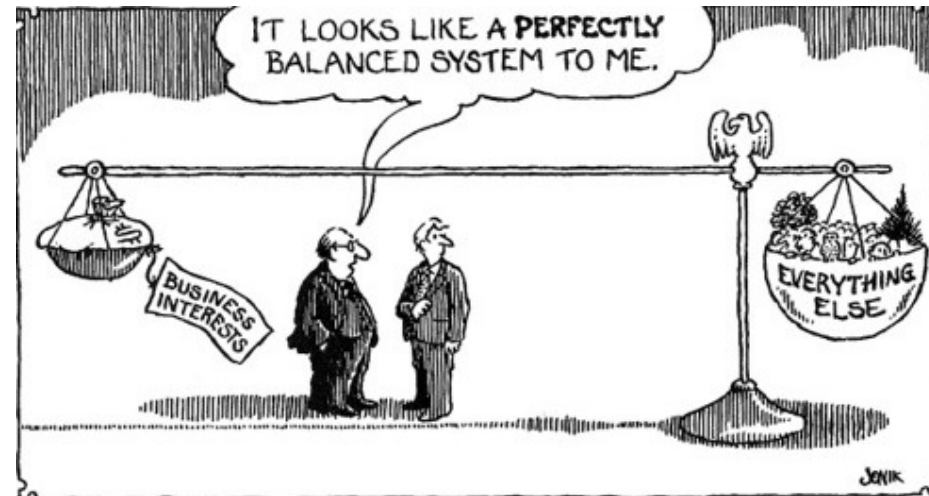
Conflicts of Interest Rules

- **Political Reform Act**
 - Government Code §87100 and following, and the Regulations of the Fair Political Practices Commission (FPPC)
- **Contractual Conflicts**
 - Government Code §1090



Purpose of Conflict Rules

- Public officials owe paramount loyalty to the public
- Personal or private financial interests should not be allowed to enter into the decision making process



Disclosure of Financial Interests

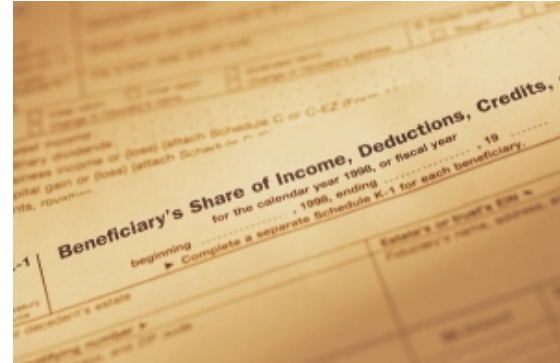
- Statements of Economic Interests “Form 700”
- Purpose:
 - alert officials of personal interests that might be affected
 - inform the public about potential conflicts

A sample of a completed Statement of Economic Interests (Form 700) for a public official. The form is titled "Statement of Economic Interests" and "Form 700". It includes sections for "A. Personal Information", "B. Financial Interests", "C. Gifts and Honoraria", "D. Conflicts of Interest", and "E. Signature". The form is filled out with handwritten information, including the name "John Doe" and various financial details.

The Who, What, When and Where of Disclosure

- **Who?** All “designated” officials.
- **What?** Interests in real property, investments, business positions, sources of income and gifts.
- **When?** Upon assuming office, annually (by 4/1), and upon leaving office.
- **Where?** File with local agency, which will send it, if required, to the FPPC.

Note: The documents are public records and late filers may face fines or penalties.



Form 700 Reporting

FPPC Enforcement Decisions:

Jackson W, as a **Member of the Sunshine Ordinance Task Force** for the City and County of San Francisco, failed to timely file the 2012 Annual Statement of Economic Interests covering the period January 1, 2012, through December 31, 2012, due April 1, 2013.

Fine: \$200



May I Participate?

Conflict-of-Interest Rules Political Reform Act



General Rule of Disqualification

- A public official may not:
 - make/participate/influence
 - a governmental decision
 - that will have a foreseeable and material financial effect on
 - the official's economic interests





The Choice Is Yours



The best time to discuss a potential conflict with the Agency's Attorney is:

- a) At a meeting because it is convenient and will save money
- b) After the action/decision so you know all the facts
- c) As early as possible
- d) Never, because it's not a privileged communication

Recognizing and Seeking Advice

- The conflict rules and regulations are complex.
- ***Recognizing*** potential conflicts is essential.
- ***Talk early on*** with City counsel and consider seeking advice from the FPPC when economic interests may be affected (positively or negatively) by a decision.



Potential Economic Interests

Personal Finances.

Any economic interest in personal finances (e.g., expenses, income, assets [other than real property or business entity interests], or liabilities) of an official or the official's immediate family which will have a “***measurable***” ***financial benefit or loss from the decision.***



Personal Finances

FPPC Advice Letter:

A Zero Emission Vehicle (ZEV) grant could become a potential basis for disqualifying an CARB employee or official from making, participating in making, or influencing governmental decisions of CARB relating to the ZEV grant program. Given that ZEV grants may total up to \$9,000, it is reasonable to assume that a ZEV grant recipient would receive at least \$250 per year, over the three-year life of the grant. Therefore, if an CARB employee or official is planning to apply for a ZEV grant, he or she could have a potential disqualifying conflict of interest in governmental decisions directly or indirectly involving the ZEV grant program.

Potential Economic Interests

- **Sources of Income**

Any source of income of **\$500 or more** during the prior 12 months for you or your spouse or domestic partner.



Potential Economic Interests

FPPC Enforcement Decisions:

David S, a member of the board of directors of the **Indian Valley Hospital District**, violated the conflict-of-interest provisions when he **voted in favor of a contract which benefitted a client of his oxygen supply business.**

Fine: \$2,000



Potential Economic Interests

- **Business management, employment or investment**
 - Any business entity in which an official is a director, officer, partner, trustee, manager or employee.
 - Any business entity in which an official has a direct or indirect investment of **\$2,000 or more**.

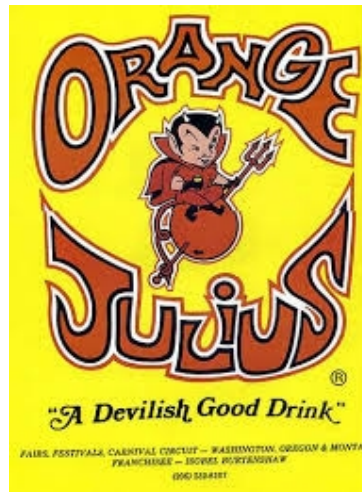


Potential Economic Interests

FPPC Enforcement Decisions:

Leonard E was the **Assistant City Manager** and Controller of the City of West Covina. Mr. E violated the conflict of interest disclosure and disqualification provisions by **failing to disclose his interests in an Orange Julius franchise located in a shopping mall and by participating in decisions relating to a major expansion and restoration of the mall.**

Fine: \$18,000



Potential Economic Interests

FPPC Enforcement Decisions:

Robert B, while a member of the **Tuolumne Utilities District Board of Directors**, he made governmental decisions in which he knew, or had reason to know, he had a financial interest, by **voting to approve numerous claim summaries that included payments made to Behee Enterprises, a corporation in which he held the position of Director.**

Fine: \$12,000

[illegible]



The Choice Is Yours



Interests in real property are:

- a) A potential ground for a conflict of interest
- b) Not a conflict if it is your home because of the homestead exemption
- c) Not a problem as long as your property is more than 300 feet away
- d) Always a conflict if the property is within the Agency's jurisdiction

Potential Economic Interests

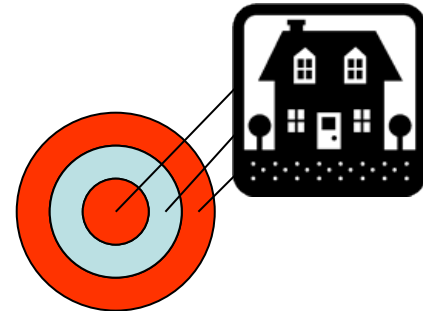
- **Real Property**

Any real property interest worth **\$2,000** or more

- Includes leasehold interests in some instances

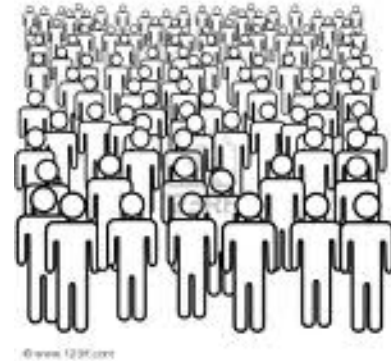


- **Tip:** Be alert for any projects or decisions that may affect the land use or value of the property or other nearby properties (500 feet).



Exceptions to Potential Economic Interest Conflicts

- Two exceptions to potential financial conflicts:
 - The “**public generally**”
 - The “**legally required participation**”



Public Generally Exception

- Decisions that affect a **broad range of persons or interests** may be exempted: 25% of (i) all businesses, (ii) all real property, or (iii) all individuals.

Example: Water rate decisions; Sign Code amendments



Legally Required Participation Exception

- May apply if a conflict disqualifies so many officials that there is no longer a quorum to make a decision.



Note: Does not apply: (1) quorum could later be met; (2) to break a tie vote.

Gifts of Public Funds



- Local agencies are prohibited from making a “gift” of public money or anything of value.
- Expenditures for ***public purposes*** are not considered gifts even if a private party incidentally benefits.

Misuse of Public Resources

Current and former Irwindale officials to be tried for embezzlement

Four current and former leaders of Irwindale are accused of misusing city money for tickets to baseball games and Broadway shows while on official trips to New York.

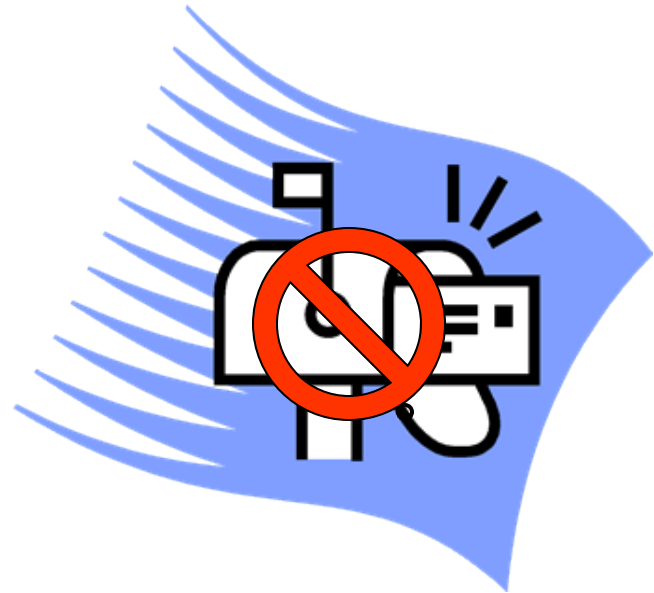
By Abby Sewell, / Los Angeles Times



Four current and former Irwindale officials will go to trial this spring on embezzlement charges laid out in a grand jury indictment. The charges stem from a series of trips city officials made to New York between 2001 and 2005, allegedly to get a higher bond rating. During the trips, prosecutors said **officials improperly used city money to treat themselves to baseball games and Broadway shows that had nothing to do with city business.**

Mass Mailing Prohibition

- **Rule:** No newsletter or other mass mailing may be sent at public expense.
- **Purpose:** Conserve resources, no advantages for incumbents
- **Application:**
 - 200+ items/month
 - official “featured”
- **Penalties:** Criminal liability; restitution.



Mass Mailing Prohibition

The Public Eye: Rocklin fined \$2,000 for newsletter containing prohibited photos

Richard Chang / *The Sacramento Bee*

Rocklin was fined \$2,000 by the California Fair Political Practices Commission last week for blanketing households with a newsletter that contained photos of City Council members, a violation of the Political Reform Act.

The State considers such activities a prohibited form of campaigning with taxpayer funds that gives incumbents an unfair advantage.

City officials said the inaugural newsletter, Inside Rocklin, was a well-intentioned effort to keep citizens informed and that they were unaware of the state rules.

MAYOR'S MESSAGE...

Welcome to the inaugural issue of Inside Rocklin. We hope this guide helps you enjoy the best that Rocklin has to offer. Whether you are a long-time resident or new to the area, I invite you to take a look and see what's happening in Rocklin. Rocklin is a thriving city of 60,000 residents consisting of a vibrant and historical downtown, friendly neighborhoods, unique shopping and strong businesses that offer diverse employment. Rocklin residents and visitors alike enjoy numerous hometown community events, scenic parks and rustic open spaces. Public safety is our top priority. We are fortunate to have a highly-ranked fire department, and an accredited police department in part responsible for keeping our crime rate among the lowest in the region. Rocklin is also a center for educational excellence, proudly home to the #1 ranked unified school district in the region—Rocklin Unified. Sierra College and William Jessup University round out higher-education choices. Something extra special that makes Rocklin a great

place to live, visit or work stems from our caring community. People get involved—and stay involved—by volunteering numerous hours and support in a variety of important ways. And most noticable, Rocklin people are nice. It's what sets Rocklin apart and maintains a small-town feel in a mid-size city.

Hang on to this guide, refer to it often to find out what's going on and how you can stay connected to your wonderful community.

You can also find the latest information and updates on the City's website at **rocklin.ca.us**, or 'like' us on Facebook (City of Rocklin, California Government). Explore and enjoy all that Rocklin has to offer!



Scott Yuill
Mayor, City of Rocklin



George Magnuson
Vice Mayor



Diana Ruslin
Councilmember



Dave Butler
Councilmember



Greg Janda
Councilmember



Contractual Conflicts of Interest

Government Code § 1090

Prohibition on
“Self Dealing”



Contractual Conflicts of Interest

Government Code §1090

- Section 1090 prohibits **officials** and **employees** from having **financial interests in contracts made by them in their official capacities** or any board of which they are members.



Contractual Conflicts of Interest

- If a public official or employee has a financial interest in a contract, **the contract is prohibited** *regardless* of whether the official participates in or abstains from the actual decision.



Contractual Conflicts of Interest

- Term “Contract” is liberally construed
- Financial gain not required



Limited Exceptions:

- Contract existed before assuming office -- if no modifications made during tenure
- Interest is terminated prior to participation

Violations of § 1090

- If contract is made in violation of §1090, the ***contract*** will be deemed ***void***.
- All ***monies paid*** under the contract ***must be returned*** to the local City.
- Willful violations may be punished by fine, imprisonment and disqualification from public office.





The Choice Is Yours



May an official in one Agency department accept money from a third party to influence contract negotiations with a different department in the same Agency?

- a) Yes, if the official discloses the payment
- b) Yes, because the official is not participating in the execution of the contract
- c) No, because the official only received a small payment
- d) No, and the contract may be voided



The Choice Is Yours



A member of the public comes to the Agency and asks how to obtain a permit. It is okay to:

- a) Ignore the person because this information is already available on the Agency's website
- b) Tell the person to check the Agency's Code, then walk away
- c) Ask the appropriate Agency staff member to assist the individual
- d) Refuse to answer the question because you dislike the individual's business

Contractual Conflicts of Interest

- There are also exceptions for:
 - “**Remote interests**” (§1091)
(landlord or tenant
of contracting party)
 - “**Non-interests**” (§1091.5)
(non-compensated officer
of a non-profit)



 ***Still must abstain from voting***

Contractual Conflicts of Interest

COUNTY OF SAN BERNARDINO et al., Plaintiffs and Appellants,

v.

Kenneth James WALSH et al., Defendants and Appellants.

Background: County brought action against county administrator, former county administrator, waste management company's vice president, billboard lessees, and other entities to recover for damages suffered as result of two separate bribery schemes involving defendants.

The statute prohibiting public officials from obtaining a financial interest in any contract made by them in their official capacity is triggered when a public official receives any profit from a public contract and includes the acceptance of a bribe in return for influencing the public entity to enter into a particular contract

Conflicts Created By Future Employment



Delays on the revolving door...

- May not participate in decisions involving a **prospective** employer (includes interviews and negotiations).
- Officials and senior management may not represent parties before their former agency for **one year** after leaving office.

Conflicts Created By Future Employment

FPPC Enforcement Decisions:

Dwain S served as a **Director on the Western Hills Water District** Board of Directors During his tenure he voted on a matter directly relating to World International, Inc., with whom he had an arrangement concerning prospective employment at the time of the vote.

Fine: \$4,000



Common Law Conflict: Personal Interests or Bias

- Personal interests or biases (positive or negative) about the facts or the parties may cast doubt on your ability to make a fair decision.
- Try to exercise power with at least the appearance of **disinterested** skill, zeal, and diligence.



Common Law Conflict//Due Process & Fair Hearing Rules: Personal Interests or Bias

- Personal interests or biases (positive or negative) about the facts or the parties may cast doubt on your ability to make a fair decision.
- Need to exercise power with at least the appearance of ***disinterested*** skill, zeal, and diligence.



Public Interest vs. Personal Interest

City of Fairfield v. Superior Court (1975) 14 Cal.3d 768:

“A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. . . . Campaign statements...do not disqualify the candidate from voting on matters which come before him after his election.”

Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470:

Plaintiff was seeking to develop five lots in Los Angeles. While the matter was pending before the Planning Commission, one of the Commissioners authored an article attacking the Plaintiff's project. The Planning Commission voted to deny the project and, in the lawsuit filed by the Plaintiff against the City of Los Angeles, the Court found that the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of the Commissioner who authored the article.

Personal Interests or Bias

Procedural due process requires an unbiased decision maker:

- Personal (non-financial) interest in outcome.
- Bias of loyalty/friendship to individual involved.
- Informational bias due to receipt of information outside of public hearing.
- Applies to “adjudictory” decisions, such as use permits and design review, where acting as judges in applying set law (ordinances etc.) to specific facts.
- Does not apply to legislative decisions.

What Happens If Disqualified?

- If disqualified:
 - Identify the applicable interest (with specificity).
 - Step down from the dais and leave the room (unless on consent calendar).
 - Refrain from any discussion or participation.



Exception: You can participate as a member of public from the audience on matters affecting personal economic interests.

Resources

- FPPC: 1-866-ASK-FPPC and on the web at www.fppc.ca.gov
- Attorney General: www.ca.ag.gov
- League of California Cities: www.cacities.org
- Institute for Local Government: www.ca-ilg.org



EVERYDAY ETHICAL SITUATIONS

Everyday Ethics

- Recreation employees have access to City tables and chairs that are used for City events.
- These tables and chairs can be used by the public when part of an event being held on City property.

Everyday Ethics

- The supervisor approaches the employee and asks what he is doing.
- The employee responds that he is borrowing the table and chairs for his child's birthday party.
- Ethical behavior?

Everyday Ethics

- What if the employee had taken them without anyone stopping him, and then forgot to return them?

Everyday Ethics

- Public Works employees are directed to assist in the clean up and disposal of outdated mechanical equipment.
- Part of the equipment has copper wiring.
- An employee removes the wiring both on the clock and off the clock.
- He sells it and keeps the profit.
- Is that ethical behavior?

Everyday Ethics

- During an inspection, the inspector sees a dresser that he likes and comments on it to the property owner.
- The property owner insists that the inspector take the dresser because it is going to be donated.
- Is it acceptable for the inspector to take the dresser?

Everyday Ethics

- During an investigation, the property owner produces evidence that he also gave the inspector a \$1000 check and testifies that you requested it as a “loan” and implied that giving him the money would keep his project running smoothly.
- The inspector claims it was for a “side job” inspecting the property owner’s neighbor’s house after a fire.
- Ethical behavior?

Everyday Ethics

- A Maintenance Worker is responsible for emptying the trash cans in City parks.
- A resident reports that the employee was seen sorting through the trash and removing recyclables.
- Ethical behavior?

Everyday Ethics

- During an arson investigation, the property owner mentions to the inspector that he is going to get rid of “everything in this room.”
- The inspector then asks if he can have a few pieces of furniture. The property owner agrees.
- Ethical behavior?

Everyday Ethics

- The HR Department is evaluating numerous proposals for new training software.
- Two HR employees are attending a conference, where 3 of the companies bidding are sponsors. One of the company representatives provides the HR employees chips at a casino night valued at \$375.
- Ethical behavior?

Everyday Ethics

- An employee in the General Manager's Office has access to legal bills submitted by outside employment counsel. One day, he happens to see in the narrative entry that his cousin in the IT Department is going to be investigated for suspected harassment.
- He warns his cousin.
- Ethical behavior?

Everyday Ethics

- The Fleet Manager oversaw repairs to 3 City buses by an outside contractor at a City parking lot. The Fleet Manager then had the same contractor perform an oil change on his personal vehicle?
- Ethical behavior?

Everyday Ethics

- What if the Fleet Manager submitted evidence that he was directly billed for the work performed on his personal vehicle?
- What if he got a discount on the work?

Everyday Ethics

- A library employee is seen using a City computer during working hours to sell personal items on eBay, search profiles on eHarmony, browse Facebook and Twitter, and watch videos on YouTube. Coworkers estimate that he spends close to 4 hours each day engaged in this conduct, which is visible to Library patrons.
- Ethical behavior?

Everyday Ethics

- Would it make a difference if the employee was using a City computer that was not visible to patrons?
- Would it make a difference if there was no personal gain?

Everyday Ethics

- A firefighter does not want to be on the force hire list.
- He accesses the staffing system to add hours and a vacation day to keep from getting force hired.
- Ethical behavior?

Everyday Ethics

- Employee has a City vehicle, which he is permitted to take home due to the fact that he responds to emergency call backs.
- GPS and employee observation establish that he leaves work early on most days, and is using the City vehicle for personal errands.
- Ethical behavior?

Everyday Ethics

- An employee realizes that he made a mistake during an inspection.
- He retrieves the inspection report and modifies it to reflect what he should have done. He backdates it and replaces the original.
- Ethical behavior?

Everyday Ethics

- A City lifeguard also runs a private business providing swim lessons in a neighboring City.
- His promotional materials and website include photographs of him in his capacity as a lifeguard, and pictures of City facilities.
- Ethical behavior?

Everyday Ethics

- During an investigation, a municipality learns that the lifeguard also regularly maintains his website on a City computer and he uses the City copier to make promotional fliers.
- Ethical behavior?

Everyday Ethics

- An employee calls in sick to work.
- Another employee is purchasing City supplies at Costco and sees the “sick” employee working at Costco.
- Ethical behavior?

Everyday Ethics

- A code enforcement officer is accused of receiving free massages from businesses that he was responsible for inspecting.
- During the investigation, the employee alleges that he was undercover and attempting to “bait” employees into solicitation.
- Ethical behavior?

Goals

That's a lot of law to digest in one session...



1. **Spot the Issues**
2. **Ask for Help**
3. **Failure has Consequences**
4. **Ethics in Practice**

BE SAFE

Goals

1. ***Familiarize*** you with ***laws*** that govern your service and when to ***ask questions***
2. Encourage you to ***think beyond legal restrictions***
3. ***Satisfy*** your AB 1234 requirement



Goals

Avoid these Headlines:



Former Assemblyman Tom Calderon pleads guilty in federal money laundering case

By Patrick McGreevy and Joel Rubin/ *Los Angeles Times*

June 6, 2016

Former Democratic Assemblyman Tom Calderon on Monday pleaded guilty to one felony count of money laundering as part of an agreement in which federal prosecutors offered to seek a prison sentence of no more than 12 months. The former state senator is accused of accepting bribes from an undercover FBI agent posing as a film industry executive in exchange for advocating for an extension of tax credits for film productions.

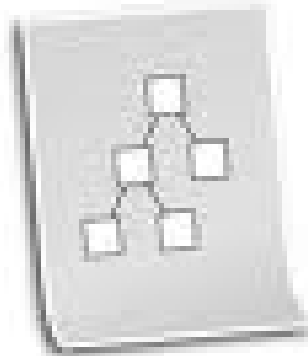
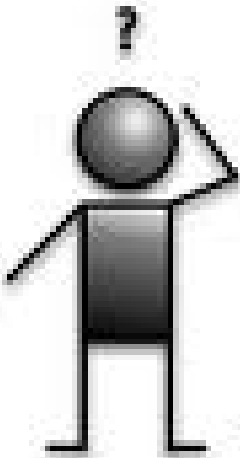
Attorney Advice



The sooner you speak to legal counsel the better, but remember...

- The Agency Attorney represents the Agency not you personally.
- Reliance on advice from legal counsel is not a defense if your actions result in a violation.
- Only a formal advice letter from the Fair Political Practices Commission protects you from violations of FPPC regulations.

Part III: Transparency Laws



The Brown Act



- All *meetings* of the *legislative body* of a *local agency must be open and public*
- *All persons must be permitted to attend any meeting*

Brown Act – Informal Meetings



- Caution: “A majority of the members of a legislative body **shall not...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action** on any item of business that is within the subject matter jurisdiction of the legislative body.

§ 54952(b) (1)

Improper Serial Meeting

- **Daisy Chain**: If Member A contacts Member B, and Member B contacts Member C, and so on, until a quorum has been involved, this type of “serial meeting” may result in a violation of the Brown Act.



Improper Serial Meeting

- **Hub and spoke**: An intermediary -- such as an Agency staff member or even an applicant -- contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body.



San Jose City Council's Brown Act violations 'unintentional'

- SAN JOSE -- Mayor Sam Liccardo and other City Council members have violated California's open meeting laws at least three times this year by discussing policy issues outside of public meetings, jeopardizing public trust and generating concerns about backroom deals at City Hall.
- If six of San Jose's 11 City Council members, including the mayor, chat about a policy in their offices or over a cup of coffee -- even if no decision is made -- they're violating the law, whether the discussions happen at once or in a series of conversations. For the council's multiple committees, which consist of five members, it's illegal for three or more members to engage in discussions.
 - February memo from Liccardo in support of state Senate Bill 3, which raises the state's minimum wage to \$11 in 2016 and \$13 in 2017, garnered three signatures from the Rules Committee and another violation.
 - Liccardo in May released a memo to "explore" expanding rent control, with support from council members Margie Matthews, Magdalena Carrasco and Chappie Jones. Liccardo, Jones and Carrasco -- a voting majority -- sit on the Rules Committee together.



The Choice Is Yours

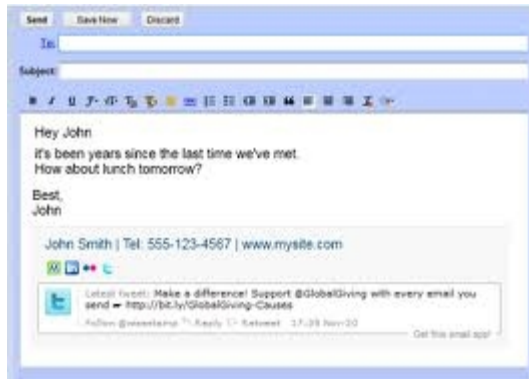


You are unsure how to vote at an upcoming meeting and request information from the City Manager. Should you:

- a) Copy the email to the entire City Council
- b) Hit “Reply All” when the City Manager responds to you and the entire City Council
- c) Only email the City Manager
- d) None of the above

E-mail/Technology Meetings

- Use of e-mail or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body's jurisdiction violates the Brown Act.



Recommendations for E-mail/Technology

- **Avoid sending e-mails to the whole body.**
 - If necessary, provide information only.
 - Do not solicit a response.
- **Be careful replying to e-mails.**
 - Do not communicate your position or make a commitment on a pending matter.
 - Do not direct a reply to a majority of the body.
- **Think carefully before sending any e-mail.**
 - Remember, your e-mail can be forwarded by others to a majority of the body.



Non-Meetings

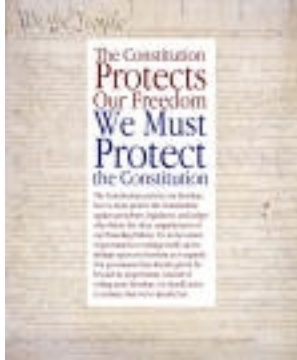
- An employee or official of a local agency may engage in **“separate conversations or communications”** outside of a meeting in order to **“answer questions or provide information”** so long as that person **“does not communicate to members of the legislative body the comments or positions of any other member or members.”**

§ 54952.2(b)(2).



Access to Public Records

- Access to public records is a constitutional right.



Public Records



- Public Record” means:
 - Any writing,
 - Containing information relating to the conduct of the public’s business,
 - Prepared, owned, used or retained by any state or local agency,
 - Regardless of physical form or characteristic.
(§ 6252(e))

Public Records

Rule: All of the agency's public records must be disclosed to the public, upon request, unless there is a specific reason not to do so.

- As described by one court: “Islands of privacy floating in a sea of disclosure.”

City Settles Lawsuit Over Alleged Public Records Act Violation

- Resident Gail Reznik won access to records about mold conditions at a neighbor's home as well as \$10,568 for attorney fees as part of a settlement with the city of Calabasas reached in mid July. In February, she began asking for copies of results from a mold inspection conducted at the property by the city and a petition to abate the mold problem the city filed with the Los Angeles Superior Court.



- In a Feb. 14 email, City Clerk Gwen Pierce told Reznik that she could not have access to the documents because they are "records of complaints to and investigations by law enforcement agencies" and "records subject to evidence code privileges, including the attorney-client privilege and the attorney work product doctrine." Reznik filed a , along with the First Amendment Coalition, alleging that the city of Calabasas violated the California Public Records Act.



The Choice Is Yours



The following is a public record subject to disclosure:

- a) A message sent from your work email
- b) A message sent from your personal email
- c) A message sent from your personal email, but only when sent from an Agency device
- d) All of the above

Public Records

Whether information related to the public's business retained on private phones, computers and other personal devices of public employees and officials is a public record is pending before the California Supreme Court.



Public Records

- Local officials have some discretion in terms of what records may be retained.
- Important to follow records retention schedules & policies.



Final Questions to Ask



- What would inspire public confidence?
- What decision best serve the interests of the community as a whole?

Public Perception

The LA School iPad Scandal: What You Need To Know

By ANNIE GILBERTSON, *NPR*
August 27, 2014



A massive expansion of classroom technology has come to a grinding halt in Los Angeles.

The LA Unified School District had planned to buy some 700,000 iPads for its students and teachers. The Apple tablets would include learning software built by publishing giant Pearson. But Superintendent John Deasy announced earlier this week he is canceling the contract and restarting the bidding process.

The decision comes on the heels of an investigation by NPR member station KPCC, ***which obtained emails between Deasy and tech executives that bring into question whether the initial bidding process was fair.***



Public Perception

What would you want to read about on the front page?



- Even if you are confident about the “right thing to do” – Don’t forget about public perception.
- The public needs to believe that “the right thing has been done.”



Final Thoughts

Don't End Your Career This Way:



Resources

- FPPC: 1-866-ASK-FPPC and on the web at www.fppc.ca.gov
- Attorney General: www.ca.ag.gov
- League of California Cities: www.cacities.org
- Institute for Local Government: www.ca-ilg.org

You made it!!!

