



Commitment to Nonprofit Causes and Public Service
AB 1234 Self-Study Materials
**Part I — Ethics Principles, Transparency,
Financial Interest and No Perk Laws**
One Hour of Self Study Credit

AB 1234 requires elected and appointed officials to take *two hours* of ethics training if they receive compensation for their service or are reimbursed for their expenses.¹ The ethics training requirement may also apply to agency employees designated by the agency's legislative body.² There are many ways to satisfy this requirement, including in-person training and self-study activities. **This self-study exercise is for officials who have completed a basic AB 1234 training course and wish to focus their subsequent training on specific areas of concern.**

This self-study exercise is eligible for *one hour* of AB 1234 self-study credit (or the first half of the minimum requirement). To claim self study credit, log on to www.ca-ilg.org/AB1234selfstudy, print out and take the test, mail it to the address indicated with the \$25 processing fee. This fee covers grading the test, providing the correct answers (and explanations) and your proof of participation certificate for one hour of credit.

After completing Part I of the self-study exercise, complete Part II for a second hour of AB 1234 self-study credit (or the second half of the minimum two-hour requirement).

Scope of This Self-Study Exercise

These materials cover the ethical issues surrounding involvement in nonprofit organizations. These include:

- The distinction between law and ethics; and
- Laws relating to transparency, financial interests, and perks, including gifts and travel restrictions.

¹ Cal. Gov't Code § 53235(a), (b).

² Cal. Gov't Code § 53234(c).

They also cover ethics principles related to these laws and ethics in public service in general. Part II of these self study materials cover legal issues relating to contracts with nonprofits, as well as general conflict of interest issues under the Political Reform Act. Part II also discusses bias issues.

The Distinction Between the Law and Ethics

You can look at the law as a minimum standard of conduct for your behavior. The law determines things you *must* do. If you make a misstep vis-à-vis various ethics laws, you will likely face some kind of penalty. Some penalties are financial; others (for example violations of ethics laws that create crimes) can cost you your freedom in terms of jail time. Ethics laws are obviously something you want to take very seriously.

However, analyzing whether a given course of action complies with the law should not be the end of your analysis. The law creates a floor for conduct, not a ceiling. Just because a given course of action is legal, doesn't mean it is ethical or that the public will perceive it as such.

And of course, for elected officials, there can be consequences for real or perceived ethical missteps—the public retains the right to not return its elected officials to office during each election. In more draconian situations, the public can remove a public official from office through a procedure called a recall.

Ethical Decision-making as a Public Official

The key thing to keep in mind in terms of public service ethics is that the guiding principle for your decisions must be what best serves the overall public interest in your community. In some cases, the public's interest and the particular cause one of your nonprofit organizations champion may align. In other cases, they will not.

Let's take a simple example. Nonprofit organizations invariably are short on resources to do the good work they do. The issue may arise whether your public agency should provide funding (or continue to fund) your nonprofit.

This is what is known as a right-versus-right ethical dilemma. You are in the position of balancing your *loyalty* (one ethical value) to your nonprofit's cause with your *responsibility* (another ethical value) as an elected official to put the public's interest first in your decision-making. In public service ethics, your *responsibility* to serve the public's interests come first.

An important role of an elected official in the budgeting process is deciding what the most important uses are for taxpayer monies. Let's say one of the nonprofit organizations in which you are involved is the local chamber of commerce. The mission of a chamber of commerce is typically to promote and enhance the economic vitality of a community and support the interests of the business community. A good argument can be made that a

healthy business environment benefits everyone in a community (“a rising tide lifts all boats”). However, if funds are scarce, funding the chamber of commerce may come at the cost of funding important public services. A challenge you face as a decision-maker is how to weigh and evaluate these kinds of trade-offs. *In your public service, the public must be convinced that you are putting their interests ahead of all others.* This includes putting the public’s interests ahead of those of the nonprofits with which you are affiliated (as well as of course your own personal financial interests).

Be aware of the strong temptation to rationalize in these kinds of situations. When one rationalizes, one starts with a conclusion and then essentially reasons backwards from that conclusion.

In our example, one would start with the conclusion that supporting the chamber of commerce is in the public’s interest and therefore it makes sense to budget money for that purpose. A less-rationalizing approach is to start with an analysis of what the pressing needs are in a community and then allocate money to those. Strengthening the business environment may legitimately be one of those interests, but supporting the chamber may or may not be the best way for the agency to do that.

The Importance of Public Perception

A key thing to keep in mind as a public servant is the public’s perception. *It is important not only that public servants do the right thing, but that the public perceives the right thing has been done.* The public’s perceptions about how you and your agency make decision go to the heart of public trust and confidence in both you and your agency’s leadership.

Why should you care about public perception? There are both lofty and practical reasons. The lofty reason to care about public perception is that, as a public official, you are a steward of the public’s trust. The public’s trust and confidence in both you and your agency is vital to your ability to lead and accomplish things in your community.

The practical reason is that the public’s perceptions will play a determining role in their decision to have you represent their interests. If you fall short of the public’s expectations, you are not likely to retain your position as an elected official.

The hard truth about public perception is that the public will necessarily have incomplete information. They will not know what your thought processes were in analyzing whether to fund the chamber of commerce. Moreover, for better or worse, the public tends to have a rather cynical attitude towards the motivations of public officials. Frequently the public is inclined to conclude that public officials are motivated to act based on a desire to serve special interests as opposed to the public’s interest.

It’s important to note that, in the minds of many, “special interests” are not just limited to private, for-profit organizations. As the *New York Times* noted: “We still think of

special interests as groups that have obtained a back-door influence on law or policy, whether it's purchased by campaign contributions or bartered for political support.”³ The question for a local elected official to ponder is whether the public might reasonably conclude that the official's relationship with a nonprofit might be a form of “back-door influence” on the agency's decision.

Another element of the public's analysis relates to perceptions on whether a public official can be loyal to the public's interests and the interests of a nonprofit organization with which the official is affiliated. The public is inclined to believe the adage that a person cannot serve two masters. That concept has come to mean in the public service context that it is best for a public official and the public the official serves to have a single master—the public's interest.

What to Do?

If you find yourself in a situation in which you believe that you cannot put your loyalty to a nonprofit organization's cause aside and make a decision based on what serves the public's interest, step aside from the decision-making process.

Let's say, however, you earnestly believe that you can make a decision solely based on the public's interests. In such a situation, you are still well-advised to think about stepping aside from the decision-making process if you believe the public might reasonably question whether your loyalty to a nonprofit organization is motivating your decision in a situation. Doing so will underscore your commitment to the public's trust and confidence in both your decision-making process and that of your agency. It will also avoid the inference that a nonprofit is receiving special treatment because of your relationship with the organization.

If the situation is public, such as a vote on a request for funding, explain your decision in terms of those values:

Everyone knows that I am a strong supporter of both business in general and the chamber of commerce in particular. In fact, I am a member of the chamber's board of directors.

As a public official, I have a solemn duty to put the public's interest first in all of my decision-making. I put a high value on the public's trust in my decision-making. Because of my relationship with the chamber, I am going to abstain on this decision, so there is no question in the public's mind as to whether my decision is based on my loyalty to the public's interests or my loyalty to the chamber's interests.

³ Nunberg, Geoffrey, “The Language Lobby: The Lost Vocabulary Of Disinterested Politics” *New York Times at NYTimes.com* (September 14, 2003) (accessed May 12, 2008).

Again, this is wholly apart from a legal analysis of whether, in certain situations, the law makes this decision for you and requires you to step aside from the decision-making process (one of the issues we will discuss more specifically in the next ethics column).

Too High of a Price?

Some officials might reasonably feel that such an approach elevates form over substance—that they were elected to office precisely because of their commitment to the causes espoused by their nonprofit organizations. They may feel that they would be letting their supporters down if the officials didn't participate in the decisions that matter most to their organizations.

In some communities, local officials are encouraged to resign their positions on nonprofit boards of directors when they take public office. This can reduce concerns that that an official's decision is affected by conflicting organizational loyalties. In other situations, the official reaches the conclusion that whatever cause the official is championing is so important that they go with that position and figure the voters will have the ultimate say on whether the official is doing the right thing.

A middle ground, as Mayor Janet Lockhart of Dublin notes, is for public officials to disclose their affiliations with nonprofit organization whenever voting on an issue affecting the nonprofit, so the public at least is aware of the relationship and can evaluate the official's actions accordingly. She goes on to note that “any financial interest at all” is a basis for removing themselves from discussions. Ultimately, of course, the ethical issues are judgment questions for each official to resolve—subject to the judgment of their constituents.

Ethics Laws: Fundraising Caveats

There are, however, situations in which the law makes the call on what's okay for a public official to do. There are a number of laws that govern a public official's actions vis-à-vis nonprofit organizations.

In fundraising or similar situations, public officials need to be extraordinarily careful that those they ask to contribute to charitable causes do not get the impression that their contributions to a nonprofit will favorably influence a public official's decision on a matter. Using one's official position to, in essence, force donations to nonprofits violates state and federal laws prohibiting extortion⁴ and protecting the public's rights to public officials' honest services.⁵

It doesn't necessarily matter that a public official doesn't financially benefit from a donation to a nonprofit. A few members of a committee bidding for the right to host the

⁴ See Cal. Penal Code § 518; 18 U.S.C. §1951.

⁵ *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005), *aff'd* 500 F.3d 257 (3d Cir. 2007), *cert. denied*, 128 S. Ct. 1329 (2008).

Olympic Winter Games found this out the hard way when they were successfully prosecuted for bribing and providing gifts to members of the International Olympic Committee. The court held that the site committee need not have obtained personal gain from their actions, but only needed to intend to deprive the public of the IOC members' honest services.⁶

To create a degree of transparency in this area, the law says that the public has a right to know who is giving big money to charitable causes at a public official's request. Under the law, "big money" is when contributions from a single person or entity reach \$5,000 over the course of a year. When that happens, the official needs to write a memo to be kept with the agency's custodian of records that explains:

- Which organization or person contributed
- What amount (of \$5,000 or more)
- What dates
- Which cause.

Some agencies have created a form to facilitate complete reporting. This disclosure needs to be made within 30 days of the \$5,000 threshold being reached.⁷

The disclosure requirement applies of course if the public official is the one who requests or suggests that the donor make the donation. It also applies if the request for a donation is made by letter and the public official's name appears on the solicitation (including as part of the letterhead). If the official's name appears on a grant application, even as part of a listing of the board of directors, the disclosure requirements apply.⁸ In fact, any time someone donates to a cause in "cooperation, consultation, coordination, or concert with" a public official, the disclosure requirement applies.⁹

What does the disclosure accomplish? The disclosure is one piece of information that can enable the public or media to assess if there is any correlation between a donation and a public official's decision. The goal is to avoid the perception or reality that someone receives special treatment by virtue of having donated to public officials' favorite causes.

As an ethical matter, it's best to avoid asking for donations from those who have matters pending with one's agency (or will soon). That way, the would-be donor does not feel like the decision to donate will affect how the official acts on the donor's pending matter. This relates to the ethical value of fairness. It also avoids any claims by a donor that a public official is trying to extort such contributions in exchange for a favorable decision.

⁶ *U.S. v. Welch*, 327 F.3d 1081 (10th Cir. 2003); *U.S. v. Silvano*, 812 F.2d 754, 760 (1st Cir. 1987). *Cf. U.S. v. Bloom*, 149 F.3d 649 (7th Cir. 1998) (finding personal gain necessary).

⁷ Cal. Gov't Code §82015(b)(2)(B)(iii).

⁸ Cal. Code Regs. §18225.7(a) ("Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.")

⁹ Sundberg Opinion, FPPC Advice A-05-087 (May 27, 2005).

Seeking donations from agency employees presents similar ethical issues. Employees may feel they can't say no without a risk that it could affect their employment. This is why the law prohibits public officials from seeking *campaign* contributions from employees.¹⁰ The same principle of fairness suggests that public officials voluntarily refrain from asking employees to contribute to the officials' favorite causes.

Reporting Meals, Travel, Gifts and Expense Reimbursement

Most board members and volunteers for nonprofit organizations are unpaid. However the nonprofit may pay for travel expenses, food or make other gestures that show appreciation to those that serve the nonprofit. A question under the ethics laws is whether these gestures should be treated as gifts, income or neither.

If the nonprofit is a 501(c)(3) organization, the issue is whether you have provided services or something else to the organization, such as a speech or participating on a panel.¹¹ If you have provided services of equal or greater value to the 501(c)(3), then travel reimbursement are not reportable and not subject to a value limit.¹² If you have not provided services, then reimbursement of travel expense from the 501(c)(3) is reportable but not subject to the value limit, as long as the travel is reasonably related to a governmental purpose or issue of public policy.¹³

Otherwise, the issue is whether travel expenses, meals and other gestures from the nonprofit is a form of compensation to the nonprofit's leadership or volunteers. If so, then their value can be reported as income on an official's Statement of Economic Interests if the value totals \$500 or more.¹⁴ An official needs to be able to demonstrate that the official provided services equal to or greater than the value of the reimbursements, meals and other gestures.¹⁵ (Note that reimbursement for travel or meals is not reportable as income for purposes of state and federal tax laws.)

If there were no services provided for the gestures, then their value is reportable as a gift if they total \$50 or more in a calendar year.¹⁶ The same is true if the payments are for purely social or recreational events.¹⁷ The value of the gestures cannot total more than

¹⁰ Cal. Gov't Code § 3205.

¹¹ 2 Cal. Code Regs. 18950.3

¹² Cal. Gov't Code §§ 82030(b)(2). See FPPC, Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Officials (January 2007) at 7 (<http://www.fppc.ca.gov/factsheets/giftlocal.pdf>). See also Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993); Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

¹³ Cal. Gov't Code § 89506(a)(2). See FPPC Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Officials (January 2007) at 8 (<http://www.fppc.ca.gov/factsheets/giftlocal.pdf>). See also Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993); Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

¹⁴ Benninghoven Advice Letter, FPPC No. I-98-177 (November 12, 1998); Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993).

¹⁵ Cal. Gov't Code § 82028(a).

¹⁶ Cal. Gov't Code § 87207(a)(1).

¹⁷ Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

the annual gift limit (for 2008, \$390).¹⁸ The exception is if the gesture is a personalized item (like a plaque) whose value doesn't exceed \$250. Such personalized items do not need to be reported as either a gift or income.¹⁹

Conclusion

For more information on these rules, go to www.ca-ilg.org/ethicslaws. For more information on ethics principles, please visit www.ca-ilg.org/ethicsprinciples.

¹⁸ 2 Cal. Code Regs. § 18940.2; Cal. Gov't Code § 89503.

¹⁹ 2 Cal. Code Regs. § 18942 (a)(6).