



Everyday Ethics for Local Officials

**Badges for Officeholders and
Prominent Members of the Community:
A Bad Idea**

August 2007

QUESTION

I'm a newly appointed police chief, and I'm getting requests for law enforcement-type badges from our newly elected officials, which I find perplexing.

The elected officials say that the previous chief used to issue such badges and that they are necessary for identification. I have offered laminated, photo identification badges for the elected officials, but they are upset because they want something in metal that would be carried in a special wallet that looks more like a law enforcement-type badge.

My recollection is that both using and issuing such badges is illegal. Am I wrong about this or has the law changed?

ANSWER

You are right about the law. As you know, certain kinds of public officials (chiefly police and fire officials, called "peace officers" in many provisions of state law) are given a distinctive means of visually and quickly identifying themselves to the public. In an emergency, such identification needs to be virtually instantaneous.

For that reason, state law imposes criminal penalties on anyone who:

... willfully ... uses any badge ... which so resembles the authorized badge of a peace officer as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, for the purpose of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer.¹

A similar law creates a parallel prohibition of badges that look like firefighter identification.² Violation of the prohibition against facsimile badges is a misdemeanor,

punishable by imprisonment in a county jail not to exceed one year, a fine not to exceed \$2,000, or both.³

There's more. State law also says:

[Anyone] ... who willfully ... gives, or transfers to another, any badge ... which so resembles the authorized badge ... of a peace officer as would deceive an ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, is guilty of a misdemeanor ...⁴

This means that you, or anyone who issues such badges, may well be guilty of a misdemeanor.

Update: Attorney General Weighs In

The propriety of issuing honorary facsimile badges is the subject of an attorney general opinion.⁵ The opinion involves several questions, including whether issuing honorary facsimile badges could in and of itself be a violation of the law. The opinion concludes in part that issuing an honorary badge to a private citizen violates California law if the badge falsely purports to be authorized, or would deceive an ordinary reasonable person into believing that it is authorized for use by a peace officer.⁶

Promoting Compliance With the Law

A particularly enthusiastic proponent of facsimile badges could parse the statutory language and assert, "I would never have a 'purpose' of 'fraudulently inducing a belief' that I am a peace officer."

Although it is unclear how many jurisdictions issue facsimile badges, it is undoubtedly true that the vast majority of local officials would never engage in conduct that came anywhere near the criminal prohibitions regarding misuse of facsimile badges. Despite the good intentions of most officials, however, there have been some reported unfortunate experiences with facsimile badges.

For example, in 2003, a local elected official was prosecuted for false imprisonment and unlawful use of a badge. The allegation was that the elected official got into a dispute with a customer at his business and flashed a facsimile badge saying, "I am the police around here. You are under arrest."⁷ Eleven jurors thought the official violated the laws against impersonating a police officer and false imprisonment; one disagreed. This kept the official from being convicted, but it was a close call. Prosecutors persisted and, according to newspaper accounts, the official ultimately pleaded no contest to impersonating a police officer and disturbing the peace as part of a plea bargain.⁸

This suggests that something for officials to ponder in considering the advisability of facsimile badges is that even if they themselves would never misuse the badge, it is possible that their colleagues or future officials might. The issue becomes one of responsibility -- a core ethical value. As decision-makers, officials have a responsibility to consider not only their own situations and inclinations, but everyone else's as well. The actions of those who may have a lapse in judgment can ruin it for the rest of local officials, and decision-makers have a responsibility to realistically consider that likelihood.

What the Attorney General Has Said

The issue of flashing facsimile badges by "civilians" (non-peace officers who are otherwise affiliated with law enforcement activities) was addressed in a 1985 Attorney General's Opinion. Then-Attorney General John Van de Kamp opined that it would be unlawful for a public defender investigator to display a "badge which so resembles a peace officer's badge as would deceive an ordinary reasonable person into believing that it is being used by one who by law is given the authority of a peace officer."⁹

The attorney general noted:

Peace officer badges are usually designed in the shapes of shields or stars or combinations of both such forms. The general public associates these designs with police officers, sheriff's deputies and other law enforcement officers. County public defenders' investigators badges similarly fashioned would resemble such peace officers badges and would likely deceive an ordinary reasonable person into believing that the investigators have the authority of peace officers. In our view a county public defender's badge should not be in the form of a shield or a star.¹⁰

The question was also posed whether some kind of inscription that labeled the badge as a "Public Defender's Investigator" on the face of the badge would make the badge OK. The attorney general refused to provide such a safe harbor, noting that badges are often "flashed" and that people react to a badge out of fear or respect. He cautioned that the circumstances under which a badge is displayed will be factors in deciding whether the law has been violated.

Van de Kamp reiterated advice that any badges issued to non-peace officers be "as distinguishable from those of the authorized peace officers as is possible so as not to cause confusion."¹¹ The plastic laminated identification you propose meets this standard.

What if the Badge Falls Into the (Really) Wrong Hands?

In his account of the Los Angeles area "Hillside Strangler" trial, Justice Roger W. Boren recounts that the perpetrators were "using some sort of police ruse involving badges and handcuffs. Evidence that both [defendants] had police badges was plentiful." He also implied a facsimile badge may have played a role in the crime, noting that an aide to a

county supervisor had provided one of the perpetrators with a large official county seal that could be used for special automobile parking and other privileges.¹²

In other accounts of the murders, forensic scholars described how the murderers lured the victims (many of whom were prostitutes) into their cars by posing as police officers and displaying fake badges.¹³ The victims were reportedly raped, strangled and dumped in the hills above Los Angeles during the late 1970s. Some victims were also tortured. The prospect of a facsimile badge playing a role in such atrocities is a sobering thought.

Nor can one count on the Hillside Strangler situation being an isolated incident. There are at least two recently reported instances of official-looking badges being lost or stolen. In 2007, an elected official thought he lost his badge.¹⁴ Fortunately police recovered that badge.¹⁵ A number of elected officials in that city have since turned in their badges, with the mayor noting, "I feel that for now the carrying of the badge brings more liability [to the city] than it is worth."¹⁶

In another instance, a badge given to an individual by a state official was stolen when he was mugged.¹⁷ According to the *Los Angeles Times*, after a year and a half the badge has not been recovered.¹⁸

In short, the possibility of loss or theft of official-looking badges is real. And even if an official has never lost important items or been the victim of theft, the evidence suggests that others may not have similar luck.

The Short Answer: It's a Bad Idea

Abraham Lincoln reportedly once asked the rhetorical question, "How many legs does a dog have if you call the tail a leg?" His answer: "Four; calling a tail a leg doesn't make it a leg."

Issuing facsimile badges to non-law enforcement public officials is similar to calling a dog's tail a leg. Having such a badge doesn't make someone a law enforcement official. Elected officials and others who may possess honorary or facsimile badges are not peace officers, nor is their role in government and the community anything like that of a trained peace officer.

Issuing badges that suggest otherwise makes the agency a party to a potential, if not actual, deception. It may also be a criminal offense.

Debunking a Myth: Does Having a Badge Help in Encounters With Law Enforcement Officials?

Recent reports indicate that quite the opposite is true. Instead of causing a law enforcement official to "go easy" on you, flashing a facsimile badge can add to the number of offenses the officer writes up. According to those familiar with law enforcement, most officers take a dim view of those who inaccurately claim law enforcement status.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

ILG is grateful to the input of Martin J. Mayer, attorney, Jones & Mayer law firm, on this article.

Endnotes:

¹ Cal. Penal Code § 538d(b)(2).

² Cal. Penal Code § 538e(b)(2).

³ Cal. Penal Code §§ 538d(b)(2) and 538e(b)(2).

⁴ Cal. Penal Code § 538d(c).

⁵ 90 Cal. Op. Att’y .Gen. 57 (2007).

⁶ See Cal. Penal Code § 538d.

⁷ "Jury Deadlocks on Convicting Councilman" *Los Angeles Times*, Sept. 24, 2003; Karen Rubin, "Baldwin Park Councilman Rejects Plea Bargain" *Pasadena Star News*, July 23, 2003.

⁸ Christiana Sciadone, "Council Member Free in Plea Deal," *Los Angeles Times*, March 18, 2004.

⁹ 68 Cal. Op. Att’y .Gen. 11 (1985).

¹⁰ *Id.* at 14.

¹¹ *Id.* at 14 (citing 27 Cal. Op. Att’y .Gen. 213, 214 (1956)).

¹² Justice Roger W. Boren, "The Hillside Strangler Trial" *Loyola of Los Angeles Law Review*, Volume 33, pp 707 (January 2000) available at <http://llr.lls.edu/volumes/v33-issue2/boren.pdf> .

¹³ See generally Ted Schwarz, *The Hillside Strangler* (Vivisphere Publishing; Jan. 12, 2001) and summary of crimes at <http://www.karisable.com/skazbianchi.htm>.

¹⁴ "City Councilman Loses Wallet, Dignity in Prostitute Hotel" Political Muscle Blog by Robert Salladay (part of the *Los Angeles Times*' website) (March 19, 2007) available at http://latimesblogs.latimes.com/politicalmuscle/2007/03/city_councilman.html; Jeffrey Anderson and David Zahniser "Mario Beltran's Wild Night" *LA Weekly*, (March 21, 2007) available at <http://www.laweekly.com/news/news/mario-beltrans-wild-night/15955/?page=2>; Charles Proctor "Councilman Beltran convicted" *Los Angeles Times* (March 24, 2007) (subhead reads "The Bell Gardens official was found guilty of filing a false police report claiming that he had been robbed.") available at <http://www.latimes.com/news/local/la-me-beltran24mar24,1,2363941.story?coll=la-headlines-california> .

¹⁵ Charles Proctor "Councilman Beltran convicted" *Los Angeles Times* (March 24, 2007).

¹⁶ Selene Rivera, "Council Censures Beltran" EGP News Service (n.d.) available at <http://www.egpnews.com/index.cfm?id=333427&fuseaction=browse&pageid=5641>.

¹⁷ Dan Morain and Evelyn Larrubia "Nuñez wants use of badges probed" *Los Angeles Times* (March 13, 2006) available at <http://www.latimes.com/news/local/la-me-badges13dec13,1,6985871.story?coll=la-headlines-california>.

¹⁸ *Id.*