Everyday Ethics for Local Officials

Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder

August, October, December 2008

QUESTION

I just completed my first campaign for public office and am happy to report that I won. One of the issues that came up in the campaign was my extensive involvement in nonprofits in our area. I am the executive director of one nonprofit and serve on the board of another. I volunteer for a third. I think my extensive community involvement is one reason I was elected, but what issues should I be alert to now that I'm an elected official? I don't want to make any missteps.

ANSWER

First, congratulations on your election and your commitment to your community. You must be aware of many issues now that you are an elected official. And there are several ways to slice the ethical issues facing an elected official involved in nonprofits.

You will have both ethical and legal considerations to weigh. This column addresses the ethical considerations as well as the legal considerations.

The Distinction Between the Law And Ethics

You can consider the law as a minimum standard of conduct for your behavior. The law determines what you *must* do. If you make a misstep regarding various ethics laws, you will likely face some kind of penalty. Some penalties are financial, and others can cost you your freedom in terms of jail time. Ethics laws are something you should take very seriously.

However, determining 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 serious consequences for real or perceived ethical missteps - the public has the right to not return its elected officials to office during each election. In other situations, the public can remove a public official from office through a recall.

Making Ethical Decisions as a Public Official

The key thing to keep in mind regarding 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 championed by one of the nonprofits you're involved with may align. In other cases, they will not.

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

Putting aside legal issues associated with participating in such a decision, the ethical issue is whether such funding is in the public's best interest as a whole. Just as nonprofits typically are short on money, so are public agencies. It's not unusual for a community's needs to outstrip its resources. Elected officials play an important role in the budgeting process by deciding the most important uses for taxpayer dollars.

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 a community's economic vitality and support the interests of the business community. A good argument can be made that a healthy business environment benefits everyone in a community.

For More Information About These Issues

To learn more about legal and ethical issues discussed in this column, see the following related "Everyday Ethics" columns, online at www.ca-ilg.org/everydayethics:

- Extortion and honest services fraud, December 2006;
- Bias and fair process requirements in adjudicative decision-making, October 2006;
- Giving public funds to nonprofits, April 2005;
- First Amendment issues, June 2008; and

Where to seek advice on these issues and the limitations of such advice, June 2007.

However, if funds are scarce, funding the chamber of commerce may mean not funding important public services. A challenge you face as a decision-maker is how to weigh and evaluate such trade-offs. The key ethical issue you face is whether your loyalty to your nonprofit's interests conflicts with your duty of loyalty to the public's interests.

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 your own personal financial interests, of course).

Be aware of the strong temptation to rationalize in these kinds of situations. Rationalizing involves starting with a conclusion and then essentially reasoning backwards from that conclusion.

In our example, you 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 begin with an analysis of the community's pressing needs 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.

Rod Wood, city manager of Beverly Hills, explains the issue this way:

I believe participating in nonprofit organizations and their good works is beneficial for us all. However, I decline opportunities to sit on the boards of directors of nonprofits, and I encourage council members and executive staff to do likewise. This way, there is no conflict with our first duty and oath of office to the city. If someone does sit on a board and that organization has business before the city, I believe the appropriate course of action is to disclose the relationship and abstain from actions involving the organization.

Wood goes on to observe that people are very passionate about the nonprofits with which they are associated, and it's easy for other nonprofits to feel slighted if an organization in which a city official is involved receives some benefit from the city.

The Importance of Public Perception

Most members of the public will not know a public official's motivations and reasoning. This is where the issue of public perception is important to public servants. *It is important not only that public servants do the right thing, but also that the public perceives the right thing has been done.*

Why should you care about public perception? There are two very practical reasons. The first 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 are vital to your ability to lead and accomplish things in your community.

The second 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 keep 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 considerations were in analyzing whether to fund the chamber of commerce. Moreover, for better or worse, the public tends to have a rather cynical attitude toward public officials' motivations. Frequently, the public concludes that public officials are motivated to act based on a desire to serve special interests instead of 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 backdoor influence on law or policy, whether it's purchased by campaign contributions or bartered for political support."[1] 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 "backdoor influence" on the agency's decision.

Another element of the public's analysis relates to perceptions of 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. It is always best to follow one lead, not two. And it's best for a public official and the public served to have the same focus --- the public's best interest.

What to Do?

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

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 consider 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. Stepping aside will underscore your commitment to the public's trust and confidence in both your decision-making process and that of your agency.

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 both of 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.

Again, this is wholly separate 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.

Too High 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 believe that by not participating in the decisions that matter most to their organizations, they would be letting their supporters down.

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 an official's decision is affected by conflicting organizational loyalties. In other situations, the official reaches the conclusion that whatever cause he or she 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. The middle ground is for public officials to disclose their affiliations with a nonprofit organization when 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.

Ultimately, the ethical issues are judgment questions for each official to resolve. There are, however, situations in which the law makes the call on what's OK for a public official. A number of laws govern a public official's actions with respect to nonprofit organizations, and that topic will be the focus of the next two "Everyday Ethics" columns.

More "Everyday Ethics" Articles On the Law

The February 2004 "Everyday Ethics" column addressed fund-raising issues for local officials. The February 2006 column talked about mass mailing restrictions, which can come up when public funds support an organization and that organization in turn produces mailed publications that feature an official's name or photo.

All past "Everyday Ethics" columns are online at www.ca-ilg.org/everydayethics.

Fundraising Caveats

In fundraising or similar situations, public officials must take extraordinary care to separate their roles as fundraisers or representatives of a nonprofit and as public officials. They must strive to ensure that people from whom they've solicited a contribution for a charitable cause understand that such a contribution will not favorably influence their decision on a separate matter. Using one's official position to, in essence, force donations to nonprofits violates state and federal laws that prohibit extortion[2] and protect the public's right to officials' honest services.[3]

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 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 (IOC). 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.[4]

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, when contributions from a single person or entity reach $5,000 over the course of a year, the official needs to write a memo to be kept with the agency's custodian of records explaining this information:

- Which organization or person contributed
- What amount (of $5,000 or more) to
- Which cause, and
- When the money was given.

Some agencies have created a form to facilitate complete reporting. This disclosure needs to be made within 30 days of reaching the $5,000 threshold.[5]

The disclosure requirement applies 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 requirement applies.[6] In fact, any time someone donates to a cause in "cooperation, consultation, coordination or concert with" a public official, the disclosure requirement applies.[7]

What does the disclosure accomplish? It 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 a public official's 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 soon will). This 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 secure such contributions in exchange for a favorable decision.

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.[8] 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 and food or make other gestures that show appreciation to those who 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 the public official has provided services or something else to the organization, such as a speech or participation on a panel. If the public official provided services of equal or greater value to the 501(c)(3), then travel reimbursement is not reportable and not subject to a value limit.[9] If the public official has not provided services, then reimbursement of travel expenses 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.[10]

For nonprofit organizations that are not 501(c)(3) eligible, the issue is whether travel expenses, meals and other gestures from the nonprofit are a form of compensation to the nonprofit's leadership or volunteers. If so, then their value should be reported as income on an official's Statement of Economic Interests, particularly if the value totals $500 or more.[11] For these gestures to qualify as income (as opposed to gifts), an official needs to be able to demonstrate that he or she provided services equal to or greater than the value of the reimbursements, meals and other gestures.[12] (Note that reimbursement for travel or meals is not reportable as income for purposes of state and federal tax laws.)

If no services were provided for the gestures, then the gestures' value is reportable as a gift if they total $50 or more in a calendar year.[13] The same is true if the payments are for purely social or recreational activities paid for by the nonprofit.[14] The value of the gestures cannot total more than the annual gift limit ($420 for 2009-10).[15] The exception is a gesture that 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.[16]

Agency Financial Transactions With the Nonprofit

There may be times when the nonprofit has business with the agency. The nonprofit may want to lease agency property or perform services for the agency. It may be seeking a donation to support its operations or an event (see "For Whom the Whistle Blows," April 2005, *Western City*, on legal requirements related to making donations to nonprofits, online at www.westerncity.com). It's important to note that there are two different laws an attorney will need to analyze for a public official if one of these situations exists.

1. One is a prohibition against public officials having certain kinds of interests in contracts involving their agency. Attorneys call this a "1090" issue, which refers to the section of the Government Code where the prohibition appears. The prohibition applies to public officials having a financial interest in a contract, but it is important to keep in mind that the definition of "financial interest" is very broad, and so is the definition of "contract."

2. The other is the Political Reform Act's provisions that require public officials to step aside from decisions and the decision-making process if they have a financial interest in the decision. As with the prohibitions relating to contracts, the definition of "financial interest" is broad, and the analysis of how the prohibition applies is quite complex.

The complexity of the analysis required under both laws makes it advisable to consult with your agency counsel as early as possible about these issues.

Section 1090 and Contract Issues

Let's look more closely at the rules related to contracts and nonprofits. When a member of a decision-making body has a financial interest in a contract, the contract cannot occur[17] --- that's the rule. Nonprofits present special issues because they are not owned by anyone and no one reaps a profit in connection with their activities. As a result, public officials may think that this proscription does not apply.

The ban does apply though, because nonprofits are sources of income and provide other benefits to a variety of individuals, as discussed in the October column. Those benefits --- as well as the close relationship a public official may have with a nonprofit --- can cause the public to question whether a public official is putting the general public's interests first in a given situation.

What is a public official to do if he or she has the kinds of financial ties covered by the law with a nonprofit? Typically, the official must disclose the relationship and not participate in any decision-making related to the nonprofit.

The decision-making process is not limited to the final vote on a matter. The public official needs to step aside from all phases leading up to the contract's approval, including preliminary discussions, negotiations, compromises and planning.[18] If the official doesn't and attempts to influence his or her colleagues, the official and the agency lose the benefit of the exception that allows the contract to be entered into.[19] This requirement assures the public that no preferential treatment is occurring because of a nonprofit's connection with one or more public officials.

The official must step aside in situations that involve:

- **A Nonprofit Officer ---** When an elected official is an officer of the nonprofit (for example, president) and the agency wishes to support the nonprofit;[20] and

- **A Nonprofit Employee ---** When an elected official or his or her spouse or partner works for the nonprofit, and the agency wishes to support the nonprofit.[21]

Note, however, that the official does *not* have to step aside if: 1) he or she is a non-compensated officer of a tax-exempt organization; and 2) one of the nonprofit's purposes is to support the functions of his or her public agency.[22] Also, just being a non-salaried member of the nonprofit doesn't require a public official to step aside from the decision-making process, all other things being equal.[23] (For both of these exceptions to apply, the relationship needs to be disclosed in the agency's official records.) If, however, there is a question about whether the official's relationship biases his decision, he should speak with agency counsel about bias issues.

Note that if the financial arrangement pre-dates the official's service on the decision-making body, there is no problem as long as there is no change or renewal of the arrangement.[24] As an example, the attorney general said that a city could continue to lease property to a nonprofit organization even though a newly elected council member is a paid executive director for the nonprofit.[25]

What about being a member of a nonprofit's board of directors? Attorneys disagree on the best interpretation of the statutory language. The attorney general believes that being a board member is akin to being an officer, which means board members must step aside from the decision-making process when it comes to agency financial relationships with their nonprofits.[26] Some attorneys believe that the concept of being an "officer" of a nonprofit is limited to those positions specified as "officers" under state law related to nonprofits.[27]

The question in this situation is: On which side do you want to err? If the official participates in decision-making related to the contract, the contract may be void.[28] There are other penalties for purposeful failure to disclose one's status, including loss of office.[29] To be safe, nonprofit board members may want to disclose and step aside from the decision-making process until the appellate courts provide guidance on this point.

About Those Agency-Affiliated Nonprofits

In some situations, public agencies will create nonprofit organizations to support a worthwhile objective. Because of the close tie to the public agency's interests, public officials sometimes sit on the nonprofit's governing board. These situations can create complex legal and ethical issues because the agency's and nonprofit's interests are so closely intertwined.

For example, what if an agency decides to use its authority when approving a lease, permit or other entitlement to require a contribution to the agency's nonprofit? The idea can make complete sense, as apparently was the case in one Northern California city. The nonprofit supported the operation of a national park. Most of the buildings and land within the park are owned and maintained by the city. One of the responsibilities of board members is fundraising.

The city's holdings in the park apparently included land that a company sought to lease for aggregate mining. The lease required environmental review. The council member/board member had the idea that one of the mitigation measures for the mining operation could include a $250,000 contribution to the nonprofit to support the operations of the park. The company apparently agreed to do so, and the council member/board member asked staff to include the commitment in the conditions for project approval.

When asked if the council member/board member could participate in the decision-making relating to the lease, the attorney general said he could. This was largely because the nonprofit was so closely affiliated with the city and therefore the council member did not have a direct or indirect financial interest in the lease.[34] The special statutory provisions for nonprofits formed to support public agency objectives played a strong role in the attorney general's analysis.

How might an official handle such a situation to minimize questions about the dual role an elected official/board member might be playing? One is to consult with the management and legal staff about the contribution idea. Agency attorneys can analyze whether the law permits an agency to ask for this kind of gesture in this situation. For example, if this were a situation not involving city land, the city's requirements would need to satisfy the laws relating to permissible exactions.[35] Management staff can work with planning staff and get their input on the concept.

Getting buy-in on the merits of the approach (in an open meeting, of course) is another option. That helps make the idea to support the nonprofit's activities the agency's idea, as opposed to the individual elected official's idea.

Political Reform Act and Financial Interest Issues

The previous installment of this column analyzed the issue of travel reimbursement and other things an official might receive from a nonprofit. Such gifts or income can be the basis for having to disqualify oneself from participating in public agency decisions involving the nonprofit. A threshold issue is whether the official has received reportable income of $500 or more or reportable gifts of $390 ($420 in 2009-10) or more within the 12 months preceding the decision. If so, the next series of questions to be analyzed by either the Fair Political Practices Commission (FPPC) or agency counsel is whether it is reasonably foreseeable that a public official's decision would have a material financial effect on the nonprofit.[30]

Another situation of potential concern is an official doing business with a nonprofit --- for example, when the nonprofit is a customer or client of a business in which a public official is involved. In such a case, a public official is well advised to speak with either the FPPC or agency counsel about whether the disqualification requirements of the Political Reform Act apply.

For example, the FPPC recently advised one public official not to participate in a decision on funding a nonprofit organization when his consulting firm provided services to the nonprofit. The FPPC did the analysis required under the Political Reform Act. Key issues were whether the official had received income of $500 or more from the nonprofit during the 12-month period before the decision and whether the financial effect of the decision met the materiality standards under the act.[31] The FPPC also strongly advised the official to get advice from the attorney general on how the prohibitions against having an interest in contracts apply.[32]

Bias Issues

In situations where an official is applying an agency's policies to a specific situation (for example, in a permit or entitlement situation), one must be aware of the potential for bias. Bias is a common-law or judge-made law, concept. The issue to be concerned with is whether one's participation in a decision will subject the decision to invalidation.

For example, a planning commissioner ghost-wrote an article in a community newsletter that was critical of a project that ultimately came before the planning commission. When the project was turned down, the project proponent challenged the outspoken commissioner's participation in the decision. The theory was that the commissioner had prejudged the merits of the application before the public hearing and couldn't fairly deter mine whether the project satisfied the city's requirements.[33] The appellate court agreed and set aside the decision.

When a decision-maker is applying existing policies to a specific situation, the decision-maker is acting more like a judge. In legal jargon, the official is acting in a quasi-judicial capacity. When one acts in this capacity, certain fair process requirements apply that don't apply when a decision-maker is enacting those policies in the first place (and acting in a legislative capacity).

When an official is affiliated with a nonprofit organization that has strongly held views on a matter, the official should consult with agency counsel about whether the official will be acting in a quasi-judicial capacity. If so, the official should ask him or herself if he or she can truly be fair in applying the policies to the specific situation. If not, stepping aside satisfies one's legal and ethical obligations.

Even if an official feels he or she can be fair, another step in analyzing bias is consideration of whether the applicant and others will *perceive* the official as fair. Has the official made statements that suggest that the official has pre-judged the matter? Is there evidence that could be presented to a court to suggest bias? If so, it may be wise to step aside from the decision-making process.

For more information on bias and fair process requirements in adjudicative decision-making, see the "Everyday Ethics" column from October 2006 (online at www.westerncity.com).

Conclusion

When considering all the good and worthy things nonprofits contribute to a community, it can be very tempting to just think about those worthy ends and not think about the means used to achieve those ends. Some officials may even believe that the ends justify the means.

It's important to know that ethics laws make it very clear that the means by which a public official pursues worthwhile ends do matter. Using improper means can result in fines, jail time and other penalties, including the loss of one's standing in the community.

And of course, the laws just create the minimum standards for determining proper means. Merely satisfying the minimum requirements of the law may not satisfy either one's own or one's constituents' standards for what is appropriate. Dr. Martin Luther King Jr. encouraged everyone striving to make the world a better place to use means that are as pure as the end one seeks --- in other words, worthy ends never justify questionable means.

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.

The following people contributed ideas and legal analysis for this column: Tom Butt, city council member, City of Richmond; Rob Ewing, city attorney, Danville; Roy A. Hanley, city attorney, Solvang and King City, Hanley and Fleishman; David Hirsch, city attorney, Simi Valley: Selma J. Mann, assistant city attorney, Anaheim; Michelle Sheidenberger, deputy city attorney, Roseville; Larissa Seto, assistant city attorney, Pleasanton; and Daniel G. Sodergren, assistant city attorney, Tracy.

Endnotes:

[1] Nunberg, Geoffrey, "The Language Lobby: The Lost Vocabulary of Disinterested Politics" *New York Times at NYTimes.com* (Sept. 14, 2003) (accessed May 12, 2008).

[2] *See* Cal. Penal Code § 518; 18 U.S.C. § 1951.

[3] *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).

[4] *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).

[5] Cal. Gov't Code § 82015(b)(2)(B)(iii).

[6] 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.")

[7] Sundberg Opinion **,** FPPC Advice A-05-087 (May 27, 2005).

[8] Cal. Gov't Code § 3205.

[9] 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) .

[10] Cal. Gov't Code § 89506(a)(2). See FPPC imitations 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) .

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

[12] Cal. Gov't Code § 82028(a).

[13] Cal. Gov't Code § 87207(a)(1).

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

[15] 2 Cal. Code Regs. § 18940.2; Cal. Gov't Code § 89503.

[16] 2 Cal. Code Regs. § 18942 (a)(6).

[17] Cal. Gov't Code § 1090.

[18] *See Stigall v. City of Taft*, 58 Cal. 2d 565, 569-71, 25 Cal. App. 441, 443-44 (1962).

[19] *See* Cal. Gov't Code § 1091(c) ("This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.")

[20] Cal. Gov't Code § 1091(b)(1); *see also* 89 Cal. Op. Att'y Gen. 258 (2006).

[21] Cal. Gov't Code § 1091(b)(1); *see also* 89 Cal. Op. Att'y Gen. 258 (2006); 85 Cal. Op. Att'y Gen. 76 (2002).

[22] Cal. Gov't Code § 1091.5(a)(8) (a noninterest includes "That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records"; an officer is "noncompensated" even if he or she receives expense reimbursements).

[23] Cal. Gov't Code § 1091.5(a)(7) (defining nonprofit membership as a non-interest). *See also* Attorney General Conflicts of Interest (2004) at 90 (". . .this office believes that the reference to "members" [in section 1091(b)(1)] refers to persons who constitute the membership of an organization rather than to person who serve as members of the Board of Directors of such organizations.")

[24] *See City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191, 162 Cal. Rptr. 663 (4th Dist. 1980).

[25] 85 Cal. Op. Att'y Gen. 176 (2002).

[26] Cal. Gov't Code § 1091(b)(1). *See also* Attorney General Conflicts of Interest (2004) at 90 (". . .this office believes that the reference to "members" [in section 1091(b)(1)] refers to persons who constitute the membership of an organization rather than to person who serve as members of the Board of Directors of such organizations.")

[27] Cal. Gov't Code §§ 1091(d)(specifying that willful failure to comply with the remote interest requirements is punishable under section 1097), 1097 (specifying that violations are "punishable by a fine

of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified fro holding any office in this state").

[28] *See* Cal. Gov't Code § 1091(c) ("This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.")

[29] Cal. Gov't Code §§ 1091(d) ("The willful failure of an officer to disclose the fact of his or her interest is a contract pursuant to this section is punishable as provided in Section 1097"), 1097 ("Every officer . . who willfully violates any of such laws, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.").

[30] *See* Cal. Gov't Code §87100 and following; 2 Cal. Code Regs. § 87200 and following. See also Pavlovich Advice Letter, FPPC No. A-94-391 (January 05, 1995).

[31] *See* Mattas Opinion, FPPC Advice A-08-035 (April 08, 2008).

[32] *See* Mattas Opinion, at n. 2.

[33] *Nasha L.L.C. v. City of Los Angeles* , 125 Cal. App. 4th 470, 483-842, 22 Cal. Rptr. 3d 772, 780-81 (2d Dist. 2004).

[34] *See* 88 Cal. Op. Att'y Gen. 32 (2005).

[35] The Institute offers resources on these issues at http://www.ca-ilg.org/index.jsp?displaytype=&section =land&zone=ilsg&sub_sec=land_property&tert=land_property_fees.