



Ethics in the City Management Profession

League of California Cities Los Angeles
Division Countywide City Managers Meeting |
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Conflicts of Interest Laws

- Personal Interest in Contracts
 - Gov't Code § 1090 *et seq.*
- The Political Reform Act
 - Gov't Code § 81001 *et seq.*
- Common Law

General Duties

- Duty to Avoid Conflicts, or Even the Appearance or Possibility of a Conflict
- Public Officials and Employees Must Perform Their Duties:
 - Impartially;
 - Free from Bias Caused by Own Financial Interests; or
 - Free from Bias Caused by Financial Interests of Supporters

Gov't Code §1090 - Contracts

General Rule

- A Public Officer or Employee May Not Make Contracts in Which He or She Is Financially Interested

What is a “Financial Interest?”

- Not Defined by Statute
- General Inquiry:
 - Would Employee or Official Realize a Private Gain?
 - Would the Interest Cause the Employee’s or Official’s Loyalties to Be Divided?
- Can Be Direct or Indirect Financial Interest

Gov't Code §1090 Exceptions

1. The Financial Interest Is a Statutory “Non-Interest”
2. The Financial Interest Is a Statutory “Remote Interest”
3. “Rule of Necessity”

Effect of Gov't Code §1090 Conflict

- The Legislative Body Is Barred from Making the Contract
- Abstaining Is Insufficient to Cure a Conflict
- Does Not Matter if Contract Is Fair or More Advantageous
- No “Good Faith” Defense
- If the Contract Is Already Made, It Is Void and Unenforceable

Political Reform Act

Gov't Code § 87100

General Rule

- No Public Official May Make, Participate in Making or Use His/Her Official Position to Influence a Governmental Decision in Which He/She Knows or Has Reason to Know He/She Has a Financial Interest

Political Reform Act Test

1. Are You a Public Official Making, Participating in Making, or Attempting to Use Your Position to Influence a Decision?
 - Do You Exercise Discretion or Judgment with Regard to the Decision?
2. Do You Have an Economic Interest in the Decision?
3. If Yes, Is Your Interest Directly or Indirectly Involved in the Decision?
4. If Direct, Is Your Interest Material?

Political Reform Act Test (Cont'd)

5. If Material, Is It Reasonably Foreseeable that the Decision Will Have a Material Effect on Your Economic Interest?
6. If Foreseeable, Is the Effect Distinguishable from Effect on Public Generally?
7. If Not, Is Your Official Participation Nonetheless Required?

What Do You Do When a Conflict Exists?

- Member of Board, Council, or Commission Must:
 1. Publicly Identify, in Detail, the Financial Interest
 - Unless Closed Session Issue, Which Only Requires General Disclosure of a Conflict During a Public Meeting
 2. Leave the Room/Refrain from Participating
 3. Disqualified Officer May Speak During Time General Public Speaks on the Issue if the Conflicting Interest Is a Personal Economic Interest
 4. Disqualified Officer Not Counted in Quorum
 5. Employees/Officials-No Clear Requirements, But Should Advise Manager/City Attorney Immediately

Common Law

“A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.”

Noble v. City of Palo Alto (1928) 89 Cal.App. 47, 51

Resources

- The Fair Political Practices Commission
www.fppc.ca.gov
1-866-ASK-FPPC (1-866-275-3772)
- The Attorney General
www.ag.ca.gov

It Could Happen Anywhere

Pasadena's \$5.9 Million Embezzlement Story

Presentation by Michael J. Beck

Former City Manager, City of Pasadena





Embezzlement Overview

City Manager's Office

- May 20, 2014 – City Council Committee questions staff regarding Utility Underground Fund expenses
 - > City collects approximately \$5 million per year in Fund
 - > Fund balance of approximately \$45 million
- May 21st – HR Director informs City Manager of questionable transactions in Public Works regarding the Utility Underground Fund involving employee
 - > Multiple payments made to churches
- Principal suspect is on leave pending termination for unrelated issue.
 - > Suspect was a preacher and well liked and trusted in the organization



Questions

City Manager's Office

- Can it be true and how bad is it?
- How much money was involved?
- Who else within the City helped, directly or inadvertently?
- Who can be trusted?
- How do we get answers?
- Do we tell the Mayor and City Council?
- Do we tell the public?
- Could I be fired over this?



The Response

City Manager's Office

- Seek assistance from Police Chief and City Attorney
- Limit Internal HR Review to protect evidence for possible prosecution and recovery
- May 30th meet with LA Deputy District Attorney
 - > Directed not to share information with anyone, including City Council
- Select “Big 4” accounting firm to conduct forensic audit
 - > Interviewed June 9th; retained June 13th; on-site June 16th
- Develop Public holding statement



The Response

City Manager's Office

- **KPMG Investigation**

- > Backup all related paper and electronic files
 - 20 member CSI-like team
 - Data review going back 10 years
- > Forensic analysis
- > Focus on four vendors 296 invoices; 189 payments = \$6,432,810.98 (August 2003 – March 2014)
 - Collins Electric (Tyrone Collins) – 163 invoices \$3.5 million
 - SCEJ – 98 invoices \$2.1 MILLION (Wooten affiliated with Church)
 - NCCF – 33 invoices \$712,810 (Wooten's own church)
 - Melody Jenkins – 2 invoices \$43,985
- > Tracking where the money went



Going Public

City Manager's Office

- December 30, 2014 Press Conference following arrest of three suspects



- Simultaneous letter to employees citywide
- KPMG Report available online



Going Public

City Manager's Office

- January 5, 2015 Special City Council Meeting



- Prepared and presented detailed response to embezzlement, which backfired
 - > Tried to have all the answers when the public just wanted to ask question and vent.



Response

City Manager's Office

- Council District forums
- Mayor and City Manager establish Internal Audit and Financial Controls Citizen Task Force
- Reestablished Internal Auditor
- Updated Personnel and Financial Policies
 - > Expanded training



How Did It Happen?

City Manager's Office

- Single person responsible for all aspects of program; excessive responsibility
 - > Well liked – charmed co-workers and used “reimbursement” to maneuver through systems
 - > Was a “good employee” = limited supervision
- Finance and Purchasing Policies were not being enforced
 - > Walked through payment request forms
 - Forged signatures
 - Swapped out back-up for higher invoice amounts
 - > Expedited payment/check pick-up
 - > Payments in excess of allowable limits
 - > Non-compliant vendors



Breakdown of Internal Controls

City Manager's Office

- No purchase orders – no property addresses, no owner signatures, repeating invoice amounts (\$20,000 & \$23,750), charges to future projects, vendors had no valid business purpose, altered invoice numbers, identical invoices submitted
- Everyone thought someone else was responsible – no checks/balances, no segregation of duties; requestor signed for the department head
- Expenditure review focused on sufficient money in the fund, not a focus on what was being spent



Lessons Learned

City Manager's Office

- **Reinforce Financial Responsibility**
 - > Know and follow procedures
 - > Watch your expenses
 - > Make sure your signature is meaningful
- **Make expectations clear**
 - > Policy and procedures must match
 - > Customer service should not be at all costs
 - > Empower your employees and mean it – if they see something; say something
 - > Maintain fraud hotline; conduct internal audits, don't rely on outside audits; rotate employees
 - > Train employees about rules and desired culture



Closing

City Manager's Office

- Always do the right thing, even if that will be difficult personally and professionally
- Develop a plan and seek help—you can't take on the world alone
- Be the calming voice
- Be open, transparent, and honest

Thank You!

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