Understanding Public Service Ethics Laws and Principles (AB 1234 Training)
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Why Is This Training Important

• Comply with the law
• Learn best practices
• Promote positive public perceptions
• Avoid legal problems
Finding Your Way In Public Service

• General ethics laws and principles
• Four areas of ethics laws
  ▪ Personal Financial Interests
  ▪ Personal Advantages and Perks
  ▪ Transparency Laws
  ▪ Fair Process
• Conclusion & Questions
California Ethics Laws

Where?
• Statutes and Regulations
• National and State Constitutions

What?
• Minimum Legal Standards

Why?
• Power of Government
• Stewards of Tax Dollars
• Public Trust
Personal Financial Interests
Personal Financial Interests

• Political Reform Act
  ▪ Disclosure
  ▪ Disqualification
  ▪ Campaigns
• Contracts
  ▪ Gov. Code § 1090
• Revolving Door
• Decisions re Prospective Employer
• Misuse of Public Funds
• Bribery/Mail Fraud
Political Reform Act of 1974
(Gov. Code § 87100, et seq.)
Personal Financial Interests

Political Reform Act of 1974

**General Rule**

Public officials shall not:

- make,
- participate in making, or
- attempt to influence a governmental decision in which they have a financial interest.
Personal Financial Interests
*Political Reform Act of 1974*

**WHO IS A PUBLIC OFFICIAL?**
A Public Official is every:
- Member
- Officer
- Designated Employee
- and *certain* Consultants
  of a State or Local Agency.

*(Gov. Code. sec. 82048)*
Personal Financial Interests

*Political Reform Act of 1974*

Officials should perform duties solely in the public’s interest, not for their own financial interests.

**How is this done?**

- **Disclosure** (Form 700)
- **Disqualification**
Personal Financial Interests Disclosure

Who?
• **87200 Filer:** Elected Officials, Finance Directors, Planning Commissioners, City Attorney
• **Code Filer:** Assistant City / County Clerk, Planner, Department Heads, Consultant

How?
• Use Form 700

When?
✓ Assuming Office
✓ Leaving Office
✓ Annually, by either March 1st or April 1st

Signed Under Penalty of Perjury
Personal Financial Interests

Political Reform Act of 1974

Four questions to ask:
• Are you participating in a decision?
• Will the decision affect your economic interest?
• Is the effect on your economic interest “reasonably foreseeable” and “material?”
• Does an exception apply?
Personal Financial Interests

*Political Reform Act of 1974*

Are you participating in a decision?
Personal Financial Interests

*Political Reform Act of 1974*

Will the decision affect your economic interest?
Personal Financial Interests

*Political Reform Act of 1974*

**Types of Economic Interests:**
- Business Investment, Employment or Management
- Source of Income
- Real Property
- Gifts
- Personal Finances
Personal Financial Interests
Political Reform Act of 1974

Is the effect on your economic interest “reasonably foreseeable” and “material?”
Personal Financial Interests
Political Reform Act of 1974

Will the decision affect your economic interest differently than the “public generally” or is participation “legally required”?
Personal Financial Interests

Political Reform Act of 1974

What do we do when a conflict exists?

- **Do Not** participate in the decision
- **Do Not** discuss, give opinion or influence
- Disclose
- Disqualify
- Leave the room?
Interest in Public Contracts
(Gov. Code § 1090)
Financial Interest in Public Contracts

*Government Code § 1090*

**If:**
- A Public Official
- Who Has a Financial Interest
- Makes
- A Contract

**Then:**
- Contract is VOID
- Penalties Apply
Financial Interest in Public Contracts

*Contract Defined*

- Use general contract principles

- **Examples:**
  - Construction contracts
  - Purchases
  - Development agreements
  - Civil service appointments
  - Grants and donations
Financial Interest in Public Contracts

“Making” the Contract

• “Making” includes:
  - Negotiations,
  - Discussions,
  - Reasoning,
  - Planning, and
  - The “give and take which goes beforehand in the making of the decision to commit oneself ....”
Financial Interest in Public Contracts
Types of Financial Interests

• Financial Interest
  ▪ Direct (contracting party)
  ▪ Indirect (related to contracting party)

• Effect
  • Positive or negative

• Certainty not required
Personal Financial Interests
Interest in Public Contracts

**Ramifications**

- **Criminal**
  - Willful Violation = Felony
- **Civil**
  - Contract = Void and unenforceable
  - Disgorgement of all money
- **Lifetime bar to public office**
Personal Financial Interests
“Rевolving Door”

AFTER LEAVING OFFICE:
Elected Official & Agency Head/CEO
• One Year Ban
• Prohibited from appearing before, or communicating with, agency on behalf any other person for compensation
Decisions re Prospective Employer
Personal Financial Interests

*Decisions re Prospective Employer*

**Influencing Prospective Employment:**
No Public Official Shall:

• Participate in decision making process when it relates to any prospective employer.

• UNLESS: An exception applies.
Bribery
Personal Financial Interests

Bribery

**Bribery**: The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.
Personal Advantages and Perks
Personal Advantages and Perks

- Gifts
- Honoraria
- Travel/Lodging Expenses
- Loans
- Reimbursements
- Mass Mailings
- Misuse of Public Funds
- Nepotism
- Charity Fundraising Disclosures
Personal Advantages and Perks
Gift Laws

**Gift**: Anything of value that provides a personal benefit for which adequate consideration was not provided.

- **Disclose**: $50+
- **Disqualify**: $460/12 mos.
- **Refuse**: $460+

- Calendar Year vs. Rolling 12 months
- If Gift Exceeds $460: Return, Pay or Donate
Personal Advantages and Perks

*Common Exceptions*

- Gifts to public agency
- Gifts returned unused or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Equal-value gifts on holidays, birthdays or similar occasions (other than lobbyist)
Personal Advantages and Perks

Tickets and Passes

• FPPC adopted Regulation 18944.1 regulating tickets or passes distributed by a public agency which applies to tickets/passes to recreational/entertainment/amusement events
Personal Advantages and Perks

Tickets and Passes

• Regulation 18944.1 provides that tickets/passes distributed to, or at the behest of, an official of the agency are not considered a gift if:
  ▪ The public official claims them as income for federal income tax purposes
  ▪ Tickets are distributed to employees/officials (other than elected) to promote morale/employee retention
  ▪ Tickets are distributed pursuant to the agency’s adopted ticket policy
Personal Advantages and Perks

Tickets and Passes

- Agency ticket policy must be adopted by legislative body and include:
  - List of public purposes for which tickets may be distributed
  - Requirement that all tickets distributed shall be to accomplish one of the public purposes
  - Prohibition against transferring tickets received except to an immediate family member
  - Ticket distribution must be recorded on form provided by the FPPC and posted on the local agency’s own website.
Personal Advantages and Perks
Agency Disclosures: Forms 801 & 802

**Gift to Agencies: Form 801**
- **Know the rules:** Exceptions on gifts of travel do not apply to elected officials and officials specified in Gov. Code § 87200.

**Tickets: Form 802**
- **Applies to tickets for entertainment, recreational or similar purpose.**
- **List of Public Purposes.**
- **New Definition of Ceremonial Use**
- **Written Ticket Policy Required**
Personal Advantages and Perks
Rules of the Road

• Acceptance of passes or discounts from transportation companies is prohibited.
• Gifts of travel for elected officials may not be accepted by agencies.
• Informational exception to gift rules does not include travel.
• Travel may be subject to gift limits. Evaluate on a case-by-case basis – source, purpose.
• Travel paid by using agency funds is totally exempt from limits and disclosure if for agency business.
Personal Advantages and Perks

Behested Payments: Form 803

FOR ELECTED OFFICIALS ONLY

- Contributions of $5000 or more
- made by a single source
- in cooperation with elected official
- Must be reported to official’s agency within 30 days.
Personal Advantages and Perks

*Gifts Limit Ramifications*

- FPPC civil action
- Penalty: 3 times the amount of the gift
- $5,000 fine
- 6 months jail
- Bribery/Extortion – Felony – Prison
Personal Advantages and Perks

Honoraria Is Illegal

- What is Honoraria?
- To whom does it apply?
- Application
- Exceptions
Personal Advantages and Perks

Loans / Reimbursements / Nepotism

- Personal Loans
- Reimbursement Policy
- Mass Mailings (special rules)
- Nepotism
Personal Advantages and Perks

**Misuse of Public Funds**

- **Ballot Measures**
- **Endorsements & Legislative Activities**
- **Informational Materials**
Transparency Laws

Transparency Laws

*The Ralph M. Brown Act & The California Public Records Act*

 Applies to:

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office
- Certain private organizations
Transparency Laws

The Ralph M. Brown Act

- What’s a “meeting”?
- No discussion or action, except on agenda
- Closed sessions
- Remedies and penalties
Transparency Laws

The Ralph M. Brown Act

What’s a “meeting”? 

• When a quorum:
  ▪ Hears
  ▪ Discusses
  ▪ Deliberates
  ▪ Takes action on something within the City’s subject matter
Transparency Laws

*The Ralph M. Brown Act*

Serial Meetings
Chain - Spoke

Diagram:

- A → B → C
- A ↔ X ↔ B ↔ C
Transparency Laws

The Ralph M. Brown Act

E-Mail

• Potential for serial meetings:
  ▪ Chain
  ▪ Spoke

• Best practices:
  ▪ City Manager briefings
  ▪ Public lobbying
Transparency Laws

*The Ralph M. Brown Act*

Exclusion

Separate conversations with an employee . . . to answer questions or provide information “if that person does not communicate to the members of the legislative body the comments or positions of any other member or members of the legislative body.”
Transparency Laws

*The Ralph M. Brown Act*

**Agenda**

- Must include public forum
- A member of the public has the right to speak
  - At a regular meeting: on each and every agenda items and generally on item of public interest including consent calendar and closed session items
  - At a special meeting: on each agenda item only
  - Before or during the council’s consideration
- No discussion or action, except on agenda
  - Late-breaking exception
    - Came to City’s attention after posting and
    - Can’t wait till next meeting
Transparency Laws

The Ralph M. Brown Act

Responses to Public Comment

• Briefly respond to public statements or questions
• Provide reference to staff or other resources for factual information (Confirm it’s underway.)
• Request staff to report back at a subsequent meeting
• Take action to direct staff to place a matter on future agenda
Transparency Laws

*The Ralph M. Brown Act*

Closed Session

- Pending litigation
  - Threat or exposure (documented)
  - Actual case
  - Initiation
- Public employee performance evaluation
- Labor negotiations
- Real estate negotiations (price and terms of payment for the purchase, sale, exchange, or lease)
Transparency Laws
*The Ralph M. Brown Act*

Closed Session Disclosures

- OK to disclose (1) votes and (2) your position.

- Not OK to disclosure (1) attorney-client communications or (2) Council thought process or deliberations
Transparency Laws
The Ralph M. Brown Act
Examples of Closed Session Disclosures

• “I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.

• “Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”
Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. No. However, there are differing opinions over the scope of the phrase “price and terms of payment” in connection with real estate closed sessions. Many agency attorneys believe that any term that directly affects the economic value of the transaction falls within the ambit of “price and terms of payment.” Others take a narrower, more literal view of the phrase.
Transparency Laws

**The Ralph M. Brown Act**

Remedies

- Closed session leaks
  - Abrogate attorney-client privilege
  - Probably prosecutable criminally

- Violations of Act
  - Writ to set aside action
  - Injunction to bar future violations
  - City pays all attorney’s fees
Transparency Laws

California Public Records Act (CPRA)

• Every person has a right to inspect public records of any state or local agency.

• What is a public record?
Handling Requests

• Public records must be available during office hours.
• Agencies must make copies of disclosable records “promptly available”...“upon request.”
• Agency shall:
  ▪ Within 10 days: determine disclosable records
  ▪ Within 14 days: request time extension for “unusual circumstances”
Transparency Laws

*California Public Records Act*

When is a public record exempt from disclosure?

- Preliminary drafts, notes or memos not kept in ordinary course of business
- Real estate appraisals
- Personnel, medical, similar files
- Records about pending litigation
- Records pertaining to an investigation
- Deliberative process
- Catch-all exemption
Transparency Laws
California Public Records Act

Best Practices

• Always respond to requests
• Adopt regulations
• Adopt a policy
• Develop standardized fees
Fair Process
Fair Process

• Due Process
• Bias
• Competitive Bidding
• Incompatible Offices
• Incompatible Activities
Fair Process

Due Process

• What does Due Process mean?
  ▪ Notice
  ▪ Opportunity to be heard
  ▪ Fair and impartial decision-maker

• Due Process Clause

“No state shall deprive any person of life, liberty or property without due process at law”

- U.S. Constitution Amend XIV, sec 1
Fair Process

Competitive Bidding

• Purposes

• General Rule
  ▪ Only when required by statute or ordinance
  ▪ Lowest, responsive, responsible bidder
  ▪ Thresholds for Public Works

• Exceptions
Fair Process

**Incompatible Offices Doctrine**

- **Elements:**
  - Official holding two public offices simultaneously
  - Conflicting or overlapping functions
  - Ramifications
Fair Process

Incompatible Activities

• Applies to officers and employees
• Agency may prohibit activities involving:
  ▪ Private gain or advantage
  ▪ Receiving consideration for performing duties
  ▪ Acts outside scope of employment
  ▪ Impairment of efficiency
• Attorney exception
CAN AN ELECTED OFFICIAL BE DISQUALIFIED FROM VOTING OR DECISION-MAKING FOR RECEIVING CAMPAIGN CONTRIBUTIONS?

• General Rule – NO.
  Campaign Disclosure Forms Sufficient = NO Disqualification (e.g., campaign contribution from a developer)
• “BIG” Exception (Gov. Code §84308)
• Proceedings involving entitlements, licenses/permits (land use permits, franchise, zoning variances, consulting contracts)
Fair Process

*Best Practices for Decision-Makers*

- If you can’t be fair, don’t participate
- Avoid statements before the close of a hearing
- Make decisions based on administrative record
- Avoid the appearance of bias
- Pay attention
- Above all, you will be judged by your fairness and integrity
Thank you for attending.

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