

Understanding Public Service Ethics Laws and Principles (AB 1234 Training)

League of California Cities Annual
Conference – September 2017



The Institute for Local Government

**ILG is the non-profit
training and education
affiliate of**



**California Special
Districts Association**
Districts Stronger Together

www.ca-ilg.org



About ILG

The Institute's goals are:

- To assist local leaders in governing openly, effectively and ethically;
- To promote collaboration; and,
- To foster healthy and sustainable communities.



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ILG Programs



Ethics &
Transparency



Public
Engagement



Local Government
Basics



Collaboration &
Partnerships



Sustainable
Communities

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Ethics and Transparency

AB 1234 Training

Understanding Public
Service Ethics Laws

The Brown Act and
Open Meetings

Good Governance Checklist



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Today's Speakers

- **Gary Winuk, Kaufman Legal Group**
- **Maggie Stern, Kronick Moskowitz
Tiedemann & Girard**

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California's Ethics Laws

PRESENTED BY

GARY WINUK

KAUFMAN LEGAL GROUP

Basic Ethics Principles

- Holding public office or employment is a public trust.
- Elected officials and staff are obligated to act in the best interests of the public and not for personal or private benefit.
- The law only sets a *minimum* standard for ethical conduct.

The Role of Your City or Agency Attorney

- Your agency attorney is an important resource for information on what the law requires of you.
- His or her job is to promote compliance with public service ethics laws.
- Your agency attorney also wants to avoid a situation in which an agency action could be subject to challenge because an official participated in a decision that the official shouldn't have.

Headlines

- **“Corruption on Steroids”** - regarding the City of Bell corruption scandal:– *Los Angeles Times* 3/20/13
 - The Bell corruption scandal burst onto the nation’s front pages in 2010 as a story about a small city whose leaders paid themselves outsized salaries.
- **“Former Sweetwater Superintendent sentenced to Jail for Pay-to-Play Corruption Scandal”** – *Imperial Beach News (patch.com)* 6/28/14
 - Among 15 people indicted in 2012 in a probe into pay-to-play culture between contractors and officials from three school districts. Officials accepted trips, dinners, tickets, in exchange for votes on multi-million dollar construction projects. Former superintendent pled guilty to a felony conspiracy charge and a misdemeanor count of failing to report gifts. Sentenced to 220 days in jail and placed on two years probation.

State and Local Ethics Rules

Regulated by the FPPC

- Conflicts of Interest
- Gifts
- Honoraria Ban
- Economic Interest Disclosure
- Leaving Office
- Mass Mail Restrictions
- Restrictions on Personal Loans

Outside FPPC's Domain

- Prohibition on Bribery
- Misuse of Public Funds
- Ban on Free Transportation
- Incompatible Offices
- Brown Act
- Public Records Act
- Anti-Nepotism/Bias Prohibitions

State and Local Ethics Laws

- Economic Interest Disclosure (Form 700)
- Conflicts of Interest
 - Under the Political Reform Act (GC Section 87100)
 - "Pay-to-Play" – (GC Section 84308)
 - Conflicts of Interest in contracts – (GC Section 1090)
- Gifts
- Honoraria Ban
- Leaving Office Conflicts

The Political Reform Act

- The PRA seeks to bring a degree of credibility to government by providing that those who hold a public trust must act, and appear to act, ethically. Erosion of confidence in public officials is detrimental to democracy...To maintain confidence and to avoid public skepticism, conflicts of interest must be shunned.
- *Consumers Union of U.S. Inc. v. California Milk Producers Advisory Bd. (1978) 82 Cal.App.3d 433*

Financial Interest Disclosure (Form 700)

- Purpose of Disclosure:
- Assets and income of public officials that may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

Govt Code Section 81002(c)

Who Must File?



- 87200 Filers (including city councilmembers, planning commissioners)
- Persons in positions listed in agency conflict-of-interest code (“designated employees”)
- “Designated employees” include persons in agencies who make decisions that may foreseeably have a material effect on any financial interest of the employee (may include consultants under private contract)

What is Disclosed?

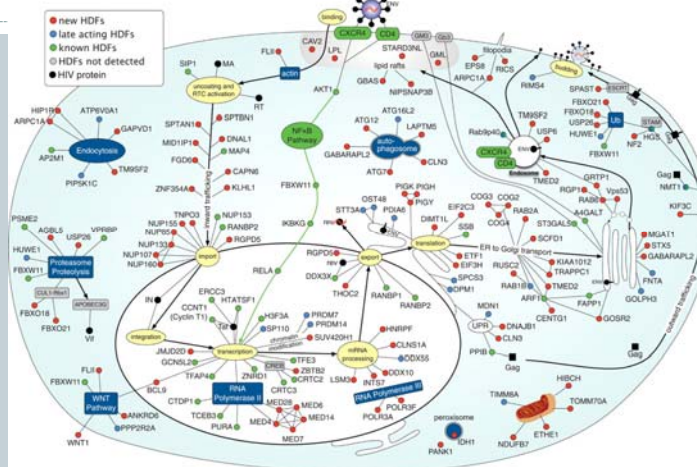


- Investments
- Income (including compensation & gifts of \$50 or more)
- Business Positions
- Real Property
- Disclosure based on position with the local agency

What is a Conflict of Interest?

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a financial interest.

(GC 87100)



Conflict of Interest (GC Section 87100)

- **A public official (includes elected officials and staff) cannot:**
 - Make, participate in making, or use official position to influence
 - A government decision in which
 - The public official, the official's spouse or dependent child
 - Has a financial interest

What Precautions Can Be Taken?

- **Identify the interests that may cause a conflict of interest.**
- **What are the interests that may be the basis for a conflict of interest?**
 - Business investment, employment or management position
 - Real Property (interests of \$2,000 or more)
 - Sources of Income (\$500 or more within 12 mos. of a decision)
 - Gifts (of \$460 or more within 12 mos. of a decision)
 - Personal Finances A public official has an interest in his or her own personal finances and those of his or her immediate family (GC Section 87103, Regulation 18700)
- **Consider the decision's effect on your interest**
 - Is it foreseeable and material?
- **Does an exception apply?**

Exceptions

- **Public Generally:**
 - Applies when the financial effect of a decision on an official's interest is indistinguishable from its effect on the public generally.
- **Legally Required Participation:**
 - Is the official's participation in the decision legally required? Applies only in certain very specific circumstances where a government agency would be paralyzed or unable to act.

Manner of Disqualification

- **Specific disqualification requirements apply to certain officials identified under Section 87200 (city councilmembers, members of boards of supervisors, planning commissioners, etc.)**
- **These officials must:**
 - Orally identify the economic interest that creates the conflict.
 - Must leave the room before discussion or vote takes place unless the item is on consent.



"Sure I'm depressed. I'm the senior senator from my state and the junior senator already has more conflicts of interest."

Four Step Process

Subdivision (d): NOTE: Language indicates FUTURE Action

- Step 1:** Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?
- Step 2:** Will the reasonably foreseeable financial effect be material?
- Step 3:** *Affirmative Defense:* Can the public official demonstrate that the material financial effect on his financial interest is indistinguishable from its effect on the public generally?
- Step 4:** *Prohibition:* If Three-Step analysis establishes a conflict, the official may not make, participate in making or attempt to use his official position to influence a governmental decision.

Public Officials



Initial Inquiry #1: Was the individual a Public Official?



- **Public Official – Section 82048 and Regulation 18700(c)(1)**
 - Every member, officer, employee or consultant of a state or local government agency
- **State Agency – Section 82049**
 - Every state office, department, division, bureau, board and commission, and the Legislature
- **Local Government Agency – Section 82041**
 - A county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing
- **Governmental Agency – Regulation 18700(c)(1)**
 - Any state or local agency or any entity or organization acting as a governmental agency – Very Broad – Also see *In re Siegel* @ Slide 19

Financial Interests



Initial Inquiry #2: What Were the Official's Financial Interests? – Six Types



- (1) Business entity in which the official or a member of his/her immediate family has an investment of \$2,000 or more.**
- (2) Real property in which the official or a member of his or her immediate family has an interest worth \$2,000 or more.**
- (3) Sources of income aggregating \$500 or more, received by or promised to the official within 12 months prior to the time the decision is made.**

Initial Inquiry #2: What Were the Official's Financial Interests? – Six Types

- (4) Business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
- (5) Sources of a gift or gifts valued at \$460 or more received by or promised to the official within 12 months prior to the time the decision is made.
- (6) Personal finances of public official or of his/her immediate family.

Source of Income

- Any Source of Income
 - ✦ Except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status
- Aggregating \$500 or more in value
 - ✦ Affiliated entities
- Provided to, received by, or promised to the public official
- Within 12 months prior to the date of the governmental decision

Income Defined

- **Income**

- Any payment (salary, wage, rent, proceeds from any sale, loan, outstanding loan, etc.)
- Includes community property interest in the income of a spouse
- Jurisdiction
 - ✦ Income must be within or doing business within the jurisdiction

Income Defined - 10% rule

- ☞ Income of an individual includes his pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater
- A public official who owns 10% or more of a business entity is deemed to receive “pass-through” income from the business’s clients in proportion to his or her ownership stake
- These clients may be sources of income to the public official, if the official’s proportionate share of the payments is \$500 or more
- **NOTE: Disclosure only required if \$10,000 or more**

Income Defined - Exceptions

- **Exceptions include:**
 - Campaign Contributions
 - Governmental salary – also consult Regulation 18232
 - Alimony or child support payments
 - Commercial loans and credit cards
 - Loans from family members
 - Payments on loans to family members

Source of Income

- Includes income that has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income
- Any Business Entity from which official received \$500 or more is a source of income plus
 - ✦ Any individual owning a 50 percent or greater interest in that business entity
 - ✦ Any individual, regardless of the extent of the individual's ownership interest in that entity, who has the power to direct or cause the direction of the management and policies of the business entity

Source of Income

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Special Rules

- **Subdivision (c): Commission Income**
 - Insurance Brokers and Agents
 - Real Estate Agents
 - Travel Agents and Salespersons
 - Stockbrokers
 - Retail and Wholesale Salespersons
- **Subdivision (d): Incentive Income**

Source of Gifts

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- **Subdivision (e):**
 - Any donor of a gift or gifts
 - × Includes any intermediary or agent for a donor
 - Aggregating \$460 or more in value
 - × At or above the gift limit can cause a conflict of interest
 - × Note: If above Gift Limit, also Gift Limit violation
 - Provided to, received by, or promised to the public official
 - Within 12 months prior to the date of the governmental decision

Gifts Defined

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- **Gifts –**
 - Any payment that confers a personal benefit on the recipient
 - × **Consideration of equal or greater value is not received**
 - Includes a rebate or discount unless the rebate or discount is made in the regular course of business to members of the public without regard to official status
- **Exceptions include**
 - Returned items, informational material, from family, campaign contributions, inheritance, plaques/trophies

Personal Financial Effect

- Personal finances of public official or of his/her immediate family

Decisions

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- **Make, participate in or influence**



Reasonably Foreseeable –



- **Financial Interest Explicitly Involved:** A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest

Step 1: Reasonably Foreseeable –



- **Financial Interest Not Explicitly Involved in Decision:** A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.
- **Factors:** intervening events, create advantage or disadvantage, cause weighing of advantages to interest.

Material Financial Effect

- **The Big Picture**

- If the financial interest is explicitly involved in the governmental decision, the materiality standard is automatically met.
- If the financial interest is not explicitly involved, the materiality standard is generally based on a reasonable person standard.

Material Financial Effect

- 1) The financial effect of a governmental decision is not material if it is
 - Nominal
 - Inconsequential
 - Insignificant

Step 2: Material Financial Effect Sources of Income

- For income from the **sale of goods and services provided in the ordinary course of business, including a salary**, the **financial effect is material if**:
 - 1) The source is a claimant, applicant, respondent, contracting party, or is otherwise **named** or identified as the **subject of the proceeding**
 - 2) The source is an **individual** whose personal finances will be affected by the decision per Regulation 18702.5, or
The official knows or has reason to know that the individual has
 - × An interest in a business entity that will be financially affected by the decision 1 or
 - × An interest real property that will be financially affected by the decision
 - 3) The source is a **nonprofit** that will receive a **measurable** financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected by the decision
 - 4) The source is a **business entity** that will be financially affected by the decision

Step 2: Material Financial Effect –Sources of Income

- For income from the **sale of personal or real property** belonging to the official, or the official's spouse if the property is community property, **the financial effect** of the decision **is material if** the official knows or has reason to know that the source of income is
 - A **claimant**, applicant, respondent, contracting party, or is otherwise **named** or identified as the **subject of the proceeding**
 - Has an interest in any **business entity** that will be financially affected by the decision
 - Has an interest in any **real property** that will be financially affected by the decision

Step 2: Material Financial Effect –Sources of Income

- Nexus: “Income for Outcome” **Any reasonably foreseeable financial effect** on a person who is a source of income to a public official **is deemed material if**
 - The public official receives or is promised the income to achieve a goal or purpose
 - The goal or purpose would be achieved, defeated, aided, or hindered by the decision

Step 2: Material Financial Sources of Income

- **Exception - Income from Retail Sales of a Business Entity**
 - Retail customers = significant segment of the public generally if
 - × Business is open to the public and
 - × Customers comprise a broad base of persons in jurisdiction
 - Income from an individual customer is not distinguishable from the amount of income received from other customers when
 - × The official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business.
 - × An official is unable to recognize a significant monetary difference when either:
 - 1) The business is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or
 - 2) The business has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

Step 2: Material Financial Effect: Sources of Gifts

- **The financial effect** of a governmental decision on the source of a gift to a public official **is material if**:
 - a) The source is a **claimant**, applicant, respondent, contracting party, or is otherwise **named** or identified as the **subject of the proceeding**; or
 - b) The source is an **individual** whose personal finances will be affected by the decision, or
 - The official knows or has reason to know that the individual has
 - × An interest in a business entity that will be financially affected by the decision or
 - × An interest real property that will be financially affected by the decision
 - × The source is a **nonprofit** that will receive a **measurable** financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected by the decision per Regulation 18702.2
 - a) The source is a **business entity** that will be financially affected by the decision

Step 2: Material Financial Effect –Personal Finances

- **Subdivision (a)**
 - The **financial effect is material** if
 - × The official or the official's immediate family member will receive a **measurable** financial benefit or loss from the decision
 - × New: *no specified monetary threshold*

Exceptions

- **Public Generally:**
 - Applies when the financial effect of a decision on an official's interest is indistinguishable from its effect on the public generally.
- **Legally Required Participation:**
 - Is the official's participation in the decision legally required? Applies only in certain very specific circumstances where a government agency would be paralyzed or unable to act.

Conflicts of Interest in Contracts (GC 1090)

- **Rule:** No government officer or employee may participate in making a governmental contract in which he or she is financially interested.
- **Purpose:** To make certain that "every public officer be guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity."
- **Penalties:** The contract is void. The official who is convicted may be subject to criminal penalties and is forever disqualified from holding office.

1090

- Board members are conclusively presumed to have made any contract executed by the board or an agency under its jurisdiction, even if the board member has disqualified himself or herself from any and all participation in the making of the contract. Therefore, if a board member is financially interested in the contract and no exception applies, section 1090 prohibits the contract from being made.
- However, when an employee, as opposed to a board member, is financially interested in a contract, the employee's agency may still enter into the contract, as long as the employee plays no role whatsoever in the contracting process.

Conflicts of Interest Gov. Code § 1090

- Section 1090 does not define when an official is financially interested in a contract; however, courts have applied the prohibition to include a broad range of interests.
- Sections 1091-1091.6, enumerate certain "remote" and "non-interests" that, once disclosed, do not prevent an officer from participating in the making of a contract.

1090 Conflicts

- **Financial Interests:**

- An employment relationship
- Attorney, agent or broker of a contracting party
- Supplier of services or goods to a contracting party
- Landlord or tenant of a contracting party
- Officer or employee of a nonprofit corporation that is a contracting party
- Community property and separate property interests of the official's spouse

The Prohibition is Absolute

- **1090 applies regardless of whether:**
 - The contract is fair or equitable
 - The contract is let for bid
 - The official abstains
- **Contracts in violation of 1090 are void**
- **Violation of 1090 is a FELONY**

“Pay-to-Play” Statute (Section 84308)



- Section 84308 is a law aimed at preventing so called “pay-to-play.”
- It prohibits a party seeking a **contract** (other than competitively bid), **license, permit, or other entitlement** for use from making a contribution of more than \$250 to an officer of the agency awarding the contract.

Gifts



What is a Gift?

- Any payment (or benefit) that confers a personal benefit for which an official does not provide goods or services of equal or greater value
- Includes a **rebate or discount** in the price of goods or services not available to general public

Gifts



- **Reporting threshold**: \$50 or more from a single source in a calendar year if source required to be reported on the official's Statement of Economic Interests
- **Gift Limit**: \$460 from a single source in a calendar year
- **Disqualification**: Disqualification with respect to sources of gifts of \$460 or more

Exceptions to the Definition of Gift



- Gifts that are **returned (unused) or donated** within 30 days to a charity or a government agency— (No tax deduction)
- Gifts that are **reimbursed to the donor** within 30 days
- **Gifts from close family relatives**
- **Gifts of in-home hospitality**, including food and lodging when the host is present
- **Gifts exchanged** on holidays, birthdays, or similar occasions. Includes food and drink at event (not applicable to lobbyists)

Exceptions to the Definition of Gift

- **Informational material** that helps an official perform his or her job
- **A bequest or inheritance**
- **Campaign contributions**
- **Personalized plaques and trophies** worth less than \$250
- **Tickets to campaign fundraisers** and fundraisers for 501(c)(3) charitable organizations
- **Passes or tickets not used** or not given to another person

GIFTS

- **BASIC RULES:**
 - \$50 report
 - \$470 limit
 - if over, can pay down
 - Aggregate for calendar year
 - Disclose once a year on Form 700
 - Gifts can be to you or to immediate family members

Gifts



- **Something is not a gift or income when it is from a:**
 - “former spouse”
 - “step-child”
 - “current or former” parent-in-law
 - “grand nephew”
 - “grand niece”
 - “grand aunt”
 - “grand uncle”
 - “first cousin once removed”
- Spouses or former spouses of any listed person, BUT NOT spouses of “former in-laws”

Gifts



- **EXCEPTIONS TO GIFTS:**
 - Informational material
 - Not used or reimbursed
 - A **campaign contribution**
 - Any **devise or inheritance.**
 - A **personalized plaque or trophy valued at less than \$ 250.**

Gifts



- **Home hospitality**
- Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions
- BFF reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events
- Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.
- Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under *Section 501(c)(3) of the Internal Revenue Code* designed to provide **disaster relief** or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.
- Payments for campaign activities as specified in Regulation 18950.4.
- A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a **ceremonial role** on behalf of his or her agency
 - "Act performed at an event by the official as a representative of the official's agency at the request of the holder of the event or function where, for a period of time, the focus of the event is on the act performed by the official."

Gifts



- A prize or award received in a manner not related to the official's status in a **bona fide contest**, competition, or game of chance.
- Benefits received as a guest attending a **wedding** or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.
- **Bereavement offerings** typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.
- **Acts of Neighborliness.**
- **Bona Fide Date or Dating Relationship.**
- **Acts of Human Compassion.** Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the
- A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency.

Gifts



- Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

Gifts of Travel



Reportable, Not Subject to Gift Limits: Any payments for actual transportation expenses and related lodging and subsistence that are made for a purpose reasonably related to:

- (1) A legislative or governmental purpose, or
- (2) An issue of state, national, or international policy so long as the travel is either:
 - (a.) In **connection with a speech** given by the official and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States, or
 - (b.) **Provided by a government agency or authority**, (including a foreign government), a bona fide public or private educational institution as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit organization that qualifies under Section 501(c)(3) of the Internal Revenue Code or a foreign organization that substantially satisfies the criteria of that section.

Honoraria Ban



Who is Covered?

- **87200 Filers:** (including city councilmembers, members of boards of supervisors, planning commissioners, etc.)
- **Designated Employees:** if the employee would be required to report income or gifts from that source on the Form 700.

What is an Honorarium



- An “honorarium” is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

Exceptions

- **Certain Travel Payments** (covered under gift rules)
- **Earned Income Exception.** Payments in connection with a bona fide business, trade or profession (No speechmaking business)
- **An honorarium may be returned, donated or the source reimbursed** (within 30 days of receipt)

Leaving Office Conflicts

- **One-year Ban** applicable to high-level local officials (Section 87406.3) and a one-year ban applicable to officials and employees of air pollution control and air quality management districts (Section 87406.1).
- **Ban on influencing prospective employment,** prohibits current local officials from taking part in decisions that directly relate to a prospective employer. (Section 87407.)

Penalties for Violating Ethics Rules

- Possible criminal prosecution (felony or misdemeanor penalties may apply)
- Civil or administrative fines by FPPC
- Forfeiture of office
- Discipline or dismissal
- Bad publicity

Help Is Available

- Help is There: Seek help if necessary
- Where to go for help?
 - FPPC (www.fppc.ca.gov 916-322-5660)
 - Attorney General
 - Agency Attorneys – County Counsel, City Attorney, Special Counsel
 - Private counsel

Additional Resources



For a copy of the Political Reform Act, regulations, fact sheets, FPPC meeting materials, or general information:

- Visit the Commission's website (www.fppc.ca.gov)
- Call Toll-free (866) ASK-FPPC or (866) 275-3772.
- The Commission's advice letters are available on the legal research services Westlaw and Lexis-Nexis

2017 Local Agency Ethics Training

Presented by:
Maggie W. Stern



Three Topics

- Fair Processes
- Government Transparency
- Use of Public Funds



Fair Processes

Common Law Bias Prohibitions

- Officials may be biased if they have a personal interest in the outcome of a decision or action (whether financial or not)
- Officials must have an undivided allegiance to their agency



Fair Processes

Due Process

- If a person or a person's property interest may be affected by a decision, the person must be provided notice and an opportunity to be heard
- Generally applies to judicial and quasi-judicial decisions and not legislative decisions



Fair Processes

Due Process, cont.

- Contact with either side outside of the proceedings is discouraged and must be disclosed. The other side must have an opportunity to respond



Fair Processes

Doctrine of Incompatible Public Offices

- An official may not hold two incompatible public offices at the same time
- An incompatibility may exist if the duties could hypothetically conflict, for example: a City Council Member who is on the Fire District Board in overlapping jurisdictions



Fair Processes

Competitive Bidding Requirement

- Public works (construction) contracts must be put out to a competitive bid



Fair Processes

Bribery

Pursuant to Penal Code section 68, it is a felony for a public official to accept, or agree to accept, anything of value in exchange for an official act.



Fair Processes

Anti-Nepotism Policies

- No state mandate
- Rules may be adopted by each agency



Fair Processes

- Consequences for breaking the rules:
 - Forfeiture of office
 - Fines from the FPPC
 - Fines against the city
 - Injunctions against the city

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Government Transparency

Brown Act

- Requires that “meetings” of “legislative bodies” be open to the public
- A meeting of a legislative body triggers many requirements
 - Meeting Notice Requirements
 - Public Participation Requirements
 - Open Deliberation
 - And more

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Government Transparency

Brown Act

- A “legislative body” includes the city council, lower decision-making bodies (e.g. planning commission), and many advisory bodies



Government Transparency

Brown Act

- A “meeting” can occur when a majority of the members of the body meet
- Meetings may occur virtually or through intermediaries
- Teleconferencing
- When is a meeting *not* a meeting?



Government Transparency

Brown Act – Types of Meetings

- General
- Special
- Adjourned or Continued
- Emergency



Government Transparency

Brown Act – Agenda Requirements

- Posting
- Contents
- Additions
- Restrictions



Government Transparency

Brown Act

Closed Session meetings are non-public meetings of a legislative body. Closed session meeting may **only** be held for:

- real property negotiations,
- conference with the City's attorney for existing or anticipated litigation, and
- certain personnel issues
- limited other special cases



Government Transparency

Brown Act

Closed session meetings notice and disclosure requirements

- Safe harbor agenda descriptions
- Reporting-out



Government Transparency

Public Records Act

- Public records must be disclosed promptly upon request unless the record clearly falls within a listed exception
- Agencies are required to take a liberal view of requests. Public Records Act requests need not be made in writing, nor must the requesting party cite the Government Code or state that they are requesting the records pursuant to the Public Records Act

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Government Transparency

Public Records Act

- “Public record” is defined broadly
- The agency must respond within 10 days; and provide records within reasonable amount of time thereafter
- Exceptions exist for some sensitive or private records

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Government Transparency

Public Records Act

- No duty to create records that do not already exist
- Form of document production
- Payment of copying costs
- Rolling productions are permissible



Government Transparency

- Consequences for breaking the rules:
 - Litigation under the Public Records Act or Brown Act.
 - Unnecessary costs to the city
 - Injunctions against the city
 - Bad PR for you and the city



Use of Public Funds

Pursuant to Penal Code section 424 - The unauthorized use of public funds is punishable by up to four years in prison and disqualification from holding public office

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Use of Public Funds

Pursuant to Government Code section 8314 - The use of public resources (e.g. facilities, equipment) for campaign activity or personal use is prohibited

- Excluding voter education as discussed in the following slide.

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Use of Public Funds

- Public funds may not be used for campaign activity (i.e. advocacy on how to vote)
- Public funds may be used to educate the voters on effect of ballot measure on an agency
 - Be careful when preparing this type of publication. Consult with your agency attorney!



Use of Public Funds

- Public agencies may not make a gift of public funds
 - A gift occurs when the public or public agency does not receive a benefit
 - “Gifts” may also include public agency property or other non-cash assets
 - Exceptions include official grants or acts that advance the public interest of the donor agency



Use of Public Funds

- Public officers may not accept free or discount transit passes.
 - Part of the California Constitution! Cal. Const. art. XII section 7.

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Use of Public Funds

- Consequences for violating the rules:
 - Monetary fines from the FPPC (gifts, honoraria)
 - Vote does not count (gifts)
 - Forfeiture of office
 - Violation of free transit pass prohibition
 - Imprisonment (misuse of funds)

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Questions?



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Thank You!

- Gary Winuk, Kaufman Legal Group
(916) 498-7715
gwinuk@kaufmanlegalgroup.com
- Maggie Stern, Kronick Moskowitz Tiedemann & Girard
(916) 321-4541 mstern@kmtg.com
- Martin Gonzalez, Institute for Local Government
(916) 658-8259 mgonzalez@ca-ilg.org

www.ca-ilg.org

