UNDERSTANDING PUBLIC SERVICE ETHICS LAWS AND PRINCIPLES

AB 1234 Ethics Training

9.12.18

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AB 1234 Training: Principles of Ethics and the Law in Public Service

- Principles of Ethics
- Eliminating Self-Interest
- Personal Advantages and Perks
- Transparent Government
- Fairness and Due Process
No one can question the basic principle of good government which is that one should enter into public service to benefit the public and not one’s personal financial interest.

But, once in public office, public and private interests can become tangled and blurred.

Good government is based on the human values of fairness, openness, compassion, and honesty.

“Nearly all men can stand adversity, but if you want to test a man’s character, give him power.”
— Abraham Lincoln
Despite the political and philosophical dialogue on ethics and government throughout history, ethics laws consistently have been born from scandal.

Why Are We Here?

AB 1234

Enacted after investigative report by Sacramento Bee

- Water District officials misusing public resources
- Use of agency credit card for personal purposes
- Misreporting of income
- Double-dipping on expense reimbursements
Scandal in the City of Bell

AB 1234 Training: Principles of Ethics and the Law in Public Service

- AB 1234 Ethics training is not aimed at the few intentional lawbreakers but at the vast majority of public officials who want to do a good honest job.
The Relationship Between Ethics and the Law

- The law is the starting point for most ethical analyses
- The law is the floor for ethical conduct, not the ceiling
- Just because it’s legal, doesn’t mean the public will see it as being right
- Legal nuances are political losers

Law is enforceable
- Ethics is what we ought to do versus what we are legally required to do
- In public service, public perception is key to trust
Ethical Values

• Six Universal Ethical Values:
  • Trustworthiness
  • Loyalty
  • Responsibility
  • Respect
  • Fairness
  • Compassion

3 Principles of Good Government

- Transparency is easier
- Process is important
- There is such a thing as bad publicity
Conduct of Individual Public Officials Affects the Public Trust and Confidence in the City

The conduct of individual public officials is directly related to the trust and confidence that the public will have in the city as an institution and vice-versa.
**Four Groups of Ethics Laws**

1. Personal financial gain
2. Personal advantages and perks
3. Governmental transparency
4. Fair processes

**Group 1: Personal Financial Gain**
Group 1: Personal Financial Gain

**Political Reform Act**
- Disclosure Requirements
- Recusal (Abstention) Requirements

**Government Code Section 1090**
- Conflicts of interest in decisions involving contracts

**Prospective Employment**

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**The Political Reform Act (PRA)**

- Enacted in 1974
- Created the Fair Political Practices Commission (FPPC)
The Political Reform Act: Disclosure of Economic Interests

Form 700 Statement of Economic Interests

• As a candidate for office, upon assuming office and annually
• Purpose – helps prevent conflicts by letting the public know your interests
• Disclose your economic interests:
  • Sources of income
  • Real property interests
  • Investments
  • Business entities that you own
  • Sources of gifts

The Political Reform Act: Disclosure of Economic Interests

Form 700 Statement of Economic Interests

• Report Your Interests Accurately
• Penalties for late filing / failure to file
• Accurate reporting prevents conflicts & increases public confidence
• Failure to report an interest will almost always make the FPPC, public and press more suspicious
Other Types of Disclosure

- As a candidate, report campaign contributions
  - Various FPPC Reporting Forms (Form 410 and others)
- As an elected officeholder, report “Behested contributions”
  - Contributions by a third party to a nonprofit at your request equaling or exceeding $5,000 in a calendar year
  - Applies only when a single source contributes the $5,000 (not multiple sources) to the nonprofit
  - FPPC Reporting Form 803

The Political Reform Act: Recusal (abstention) Requirements

“No public official . . . shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

- Political Reform Act, Government Code § 87100
The Political Reform Act: Recusal (abstention) Requirements

Intent of Conflict of Interest Laws

• The law is aimed not just at actual misconduct, but at the perception of misconduct and temptation
• The PRA and the FPPC have had to draw lines as to what is and is not a conflict of interest
• Lines are not always intuitive or obvious
• Actions that seem “right” may still be illegal

FPPC Basic Elements of a Conflict:

Is it reasonably foreseeable that a governmental decision will have a material financial effect on any of your economic interests?
Is a Governmental Decision Involved?

- Is the public official making, participating in the making, or using or attempting to use his or her official position to influence a governmental decision?

- “Makes a decision”
  - Votes
  - Makes appointments
  - Commits agency to a course of action
  - Enters into a contract
  - Determines not to act

- “Participates in making” a decision
  - Acts within authority of his/her office or position and advises or makes recommendations to decision-maker
  - Negotiates, without significant substantive review, with third party regarding governmental decision

- “Attempts to use an official position to influence a decision”
  - Contacts or appears before or otherwise attempts to influence any member, officer, employee or consultant of agency, or
  - Advocates on behalf of his/her agency to another governmental agency
What are your Economic Interests?

- Real property interests worth at least $2,000
  - Owned by you
  - Owned by you and your spouse together
  - Owned by your spouse separately
  - Your dependent child’s property
  - Your interest as a tenant in real property (except month-to-month)

- Sources of income of $500 or more in the last 12 months
  - Includes non-profit entities

- Investments worth $2,000 or more

- Business interests

- Gifts of $470 from a single source over the last 12 months
Your Sources of Income

- **Sources of income of $500 or more in the last 12 months**
  - Your own income such as salary from a private employer
  - Promised income
  - Child’s income
  - Loans
  - Spouse / partner income
  - Commission income

Investments and Business Interests

- **Investments**
  - Investments worth $2,000 or more
  - Mutual Fund exception

- **Business Interests**
  - Management or employment
  - “Related” business entities
  - Property interests of businesses
Sources of Gifts

Donors of Gifts

- Aggregating $470 from a single source in a 12 month period
- Cash, presents
- Meals, food and drink
- Entertainment
- Travel and lodging

Much More about Gifts Coming Up

You have an economic interest in your "personal finances"

Personal Finances

- Your personal expenses, assets or liabilities
- Will the decision cause you, your spouse or your dependent children to receive a measurable financial benefit or loss?
4-Step Test for Conflicts of Interest:

Will the governmental decision result in a “reasonably foreseeable” financial effect on one of your financial interests?

- If yes, is the effect on that interest “material”?
  - If the effect is material, is the effect the same as effects on the “public generally”?
  - If the effect is material and no exceptions apply, then you may not make, participate in, or use your official position to influence that governmental decision.

Identifying a Conflict

- Reasonably Foreseeable = Realistic Possibility
  - Presumption if financial interest explicitly involved in decision

- Apply “materiality” thresholds for each financial interest
  - For example, for interests in business entities:
    - Direct involvement
    - Prudent person test

- Financial effect is not material if it is “nominal, inconsequential, or insignificant”
Identifying a Conflict

Bottom line: If you are considering a “materiality” question, it is time to ask for legal assistance.

Materiality Standards for Impacts on Business Interests

- A presumption of materiality if the business is directly involved in the decision
  - For example, contracts between city and the business entity
- Otherwise, “the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the business entity’s publicly traded stock, or the value of a privately-held business entity”
  - For example, regulating the business activity
Materiality Standards for Impacts on Real Property Interests: Ownership

- **Direct Decisions**: Property is subject of a general plan amendment, zoning/rezoning, or permit decision
- **Indirect Decisions**: The decision could change the development potential, the character, or the use of the property, and the official’s property is near the affected property

**Exceptions**: There is no material financial effect if a decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities

General plan policy decisions

Common areas in common interest developments are now excluded from the definition of “real property” for the purpose of conducting a conflict of interest analysis
Materiality Standards for Impacts on Real Property Interests: Ownership

500 Foot Rule

- No longer a bright line but still very relevant:
- New Rules:
  - Would affect the real property value of property within 500 feet of the official’s property; or
  - Would the decision “cause a reasonably prudent person” to believe that its “reasonably foreseeable effect” would “influence the market value of the official’s property”

Materiality Standards for Impacts on Real Property Interests: Leases

5 criteria apply when property is leased. The decision will:

- Change the termination date of the lease
- Increase or decrease the potential rental value of the property
- Increase or decrease the rental value of the property, and the official has a right to sublease the property
- Change the official’s actual or legally allowable use of the property
- Impact the official’s use and enjoyment of the property
Materiality Standards for Impacts on Real Property Interests: Exceptions

- Public Generally Exception
  - A significant segment of the public will be affected in the same manner

- Legally Required Participation Exception - Rule of Necessity
  - Not enough members of governing board to participate because of conflicts of interest
  - Random selection process
  - Explanation in minutes as to why exception must be used

If You Are Disqualified

Don’t discuss or influence (staff or colleagues)

Identify nature of conflict at meeting

Leave chambers after stating abstention (except for items on consent calendar)
Participation as a Member of the Public

- Recuse yourself from participating in your official capacity
- May only speak as a member of the public to represent your “Personal” interests
  - Owned property
  - Owned / controlled business

PRA Penalties

- Invalidation of decision
- Misdemeanor (could result in loss of office)
- Fines ($5,000 to $10,000 per violation)
- Attorney’s fees (yours and others)
- Embarrassment (personal / political)
Getting Help

Talk to Your City Attorney

Seek advice from the FPPC
• 1-866-ASK-FPPC
• Request a formal advice letter, if time permits

“If in doubt, sit it out.”

Government Code, Section 1090
A public official may not “make” a contract in which he or she is “financially interested”

- Officer or employee of a city or other local entity
- Financial interest or that of your spouse in a contract
  - Direct contractual interest
  - Indirect benefit from the making of a contract
- Contract made by the official or body of which you are a member
  - Broadly interpreted to include negotiations, discussions, design, planning, etc.
- If you have a financial interest in contract, you must recuse yourself from all acts leading up to contract approval
- Cannot un-ring the bell
Government Code Section 1090

**Exceptions**

- "Remote Interests" - Section 1091
  - Abstention and disclosure required

- "Non-interests" - Section 1091.5
  - No abstention required. Disclosure sometimes required

**Examples**

- You are the landlord or tenant of the entity that is seeking a contract from your agency
- You are a supplier of goods or services to the entity that is seeking a contract from your agency
- Non-profit entities and public agency employment

Section 1090 Penalties

- **Severe Penalties**
  - Contracts are not just "voidable," but void
  - May have to refund money
  - Willful violation is a felony
  - Fines (up to $1,000) or imprisonment
  - Prohibition against holding public office
  - Usual tool of the DA to prosecute for corruption
Section 1090 Penalties

Defenses that don't work

- Contract was fair, just and equitable to all parties
- City Attorney said it was okay to participate
- Abstention may not be enough to avoid 1090 violation and invalidation of the contract

1090 Case Study: Thomson v. Call
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- City required dedication of parkland as condition of development
- Developer paid $600K for parkland acquisition; a portion of land is owned by councilmember
- On city attorney’s advice, councilmember abstained from decision
- 1090 violation. Councilmember had to refund money he received, plus interest

1090 Case Study: Thomson v. Call

- 1090 Violation. The Calls...
  - Had to refund the $256,000, plus interest, and
  - Lost the land to the city
Conflicts in Decisions Affecting Prospective Employer

- You may not make, participate in, or use official position to influence, any governmental decision relating to an entity with whom you are negotiating prospective employment

  Government Code §87407

Conflicts in Decisions Affecting Prospective Employer

- This preclusion commences when either:
  - you have an interview with an entity for an employment position; or
  - Before you are interviewed, you get an offer or employment from an entity

  FPPC Regulation § 18747
Conflicts in Decisions Affecting Prospective Employer

This preclusion does not apply if you are seeking employment with a local, state or federal governmental entity

(FPPC Regulation § 18747)

Group 2: Gifts, Perks & Misuse of Public Funds
Gifts & Perks

Principles:
- Don’t use your office for personal gain
- Be mindful of perks given because of your office or role
- Perks can create appearance of bias

The Obvious: Do Not Take Bribes

- Do not solicit or accept contributions, things of value or payments in exchange for votes or other official action
The Obvious: Do Not Take Bribes

A gift is anything of value for which the recipient did not provide payment or services of equal or greater value to the donor.

What is a gift?
Gift Limit

- **Report**
  - All gifts worth $50 or more
  - Can be several gifts from same source given within one calendar year

- **Do not accept**
  - Gifts from a single person / entity worth $470 or more
  - Several gifts given in same calendar year count

- This limit is raised every odd-numbered year to account for inflation

Gifts Don’t Always Have Bows

- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Raffles
- Travel and lodging
- Tickets
Gift Rules Apply to:

- Elected officers of a local government agency
- Mayor
- Members of the city council
- City Manager
- Commissioners
- City Attorney
- City Treasurer
- Chief Administrative Officer or other public official who manages public investments
- Candidates for any of these offices at any election
- City employees or other officials who are designated in the city’s conflict of interest code

Relationships and Gifts

- Existing personal or business relationships
- Long term relationships—BFF’s
- Bona fide dating relationships
Family Exception to Gift Rules

- Spouse
- Child
- Parent
- Grandparent
- Grandchild
- Brother
- Sister
- Parent-in-law
- Brother-in-law
- Sister-in-law
- Nephew
- Niece
- Aunt
- Uncle
- First cousin
- Spouse of any of the above

Holiday Exception to Gift Rules

- Gifts exchanged between public official and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions
- Gifts exchanged must not be substantially disproportionate in value
Other Exceptions to Gift Rules

- Bereavement offerings
- Prizes/Awards in contests
- Awards or trophies
- Benefits of attending wedding
- Disaster assistance
- Leave credits
- Home hospitality
- Acts of neighborliness or human compassion
- Inheritances
- Informational materials at conferences, etc.
- Free admission to conferences
- Catch-All

Gifts To and From Your Agency

- Gifts made to an agency
- Agency provided tickets or passes
- Agency raffles or gift exchanges
- Gifts from public agencies to agency officials
- Group gifts
It's Party Time!

- Tickets and passes
- Nonprofits/Political fundraisers
- Invitation only events
- Wedding gifts
- Baby gifts

Watch Out!

- Watch out for gifts in disguise:
  - Gifts to your family that benefit you
  - Events honoring you
  - Official or ceremonial functions

- SPECIAL RULES APPLY!
Retumed or Donated Gifts

Item is not deemed accepted or received if, within 30 days after receipt:

- The gift is not used and is returned to the donor; or
- The donor is reimbursed; or
- The gift is donated to a charitable organization or federal, state or local government agency without claiming a tax deduction.

Disclose, Disqualify and Refuse

- **Disclose**
  - $50 or more
  - Track
  - FMV

- **Disqualify**
  - $470 cap

- **Refuse**
  - Refuse
  - Return
  - Donate
Prohibition Against Receipt of Honoraria

- **Honorarium** = “payment made in consideration for any speech given, article published, or attendance” at a conference, meeting, social event, or like gathering
- Some exceptions apply

Loans

- You cannot borrow more than $250 from other city officials, employees, consultants or contractors
- Loans of $500 or more from anyone else must be in writing
- Unpaid loans may become a gift
Loan Exceptions

- You usually don’t have to worry about:
  - Your mortgage (and other loans obtained from banks or financial institutions)
  - Your credit cards
  - Loans from family members

No Free or Discounted Transportation

- No free travel from transportation companies
  Cal. Const. art. XII § 7
- Only applies if you are an officer of city and not just an employee
- Exclusion for frequent flyer mileage and discounts given unrelated to your official position
Do Not Use Public Resources for Political/Personal Purposes

- No Mass Mailings
- No Personal Use of Staff
- No Personal Purposes
- No Campaign Use

Mass Mailing Rule

- No newsletter or other mass mailing shall be sent at public expense.
  - Political Reform Act, Government Code § 89001-89003
  - A mass mailing is the delivery of a tangible item, that “features” an elected official, at public expense, in a quantity of 200 or more, in a calendar month.

- Don’t single out an elected official by photograph or signature.

- Websites are NOT a mass mailing because they are not a “tangible item”
No Campaign Use of City Resources or Staff

- No city official or employee may use city staff or resources to help in a campaign for a ballot measure or a candidate
  - No use of equipment – copying machines, phones, computers, etc.
  - No use of office space – no free use of office space or meeting rooms to meet and plan campaign events
  - No use of staff to assist – no use of secretaries to, for example, prepare and send out letters supporting a candidate of ballot measure

Prohibition on Gifts of Public Funds

- Local agency may not give away public funds or anything of value for free
- There must be consideration (contracts agreements)
- OR
- The grant must serve a “public purpose”
Reimbursements

- Adopt Reimbursement Policy
- Use Expense Form
- Require Documentation of Expense

Credit Cards

- Risk of misuse is high
- NEVER use card for personal expenses
- Reimbursement not a defense
Penalties for the Misuse of Public Funds

- No reimbursement
- Restitution to the agency
- Up to $5,000 per violation
- Own attorneys fees ($3,000-$30,000)
- Others’ attorneys fees (for private actions to enforce law)
- Up to four years in jail

Group 3: Governmental Transparency
Group 3: Governmental Transparency

The Public Records Act

The Brown Act
The Public Records Act

- Act affords any “person” the right to inspect and be provided a copy of any identifiable public record
- “Person” includes an individual or corporation and elected members of local agencies
- “Public record” definition is broad

What is a Public Record?

- “Public record” includes
  - any writing
  - containing information relating to the conduct of the public’s business
  - prepared, owned, used or retained by any state or local agency
  - regardless of physical form or characteristics
What is a Public Record?

A “writing” is broadly defined and includes much more than written or printed documents—i.e., photos or recordings, drawings, plans, maps, films, discs, emails, text messages, chat (Cisco Jabber), etc.

A “public record” does not include every piece of paper in the city’s offices.

Electronic Records

Emails can be public records

But which emails?

Electronic records of public business on personal devices
Avoid Combining Public & Private

- Personal business? Don’t tack it onto an email about city’s business
- Email threads - changing topics? Create new email

The Ralph M. Brown Act
“Open and Public”

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

- Government Code § 54953(a)
To whom does the Act apply?

What is a meeting?

What rules apply to meetings?

What are the remedies for a violation?

### The Brown Act Applies to “Legislative Bodies”

- **What is a “legislative body?”**
  - Governing body of the agency
  - Subordinate boards and commissions created by formal action of the governing body
  - Standing committees with regular meeting schedule and continuing subject matter jurisdiction

- **What is not a “legislative body?”**
  - Advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body
Meetings

Elements:

- Congregation of a majority
- Same time and location (including teleconference location)
- To hear, discuss, deliberate, or take action on any item
- Subject matter jurisdiction

Serial Meetings Are Illegal

What is an illegal serial meeting?

- Direct or indirect communication
- Employed by a majority
- To discuss, deliberate, or take action on any item of business or potential business
2 Types of Serial Meetings

Chain

Hub & Spoke

Serial Meetings: Chain

Tweet ➔ Retweet
Serial Meetings Are Illegal

- Don’t hit "Reply All"
- Remember the discussion must occur publicly on dais not via email or texts among members

Serial Meeting: Hub & Spoke

What an eyesore that project would be!
What a terrible project!
What are you doing about that awful application?
That one? Don’t worry - the mayor and councilmember Bob hate it as well.

Mayor
Council member
Council member
Serial Meetings Are Illegal

- Individual briefings are permitted
  - “Unidirectional”
  - Don’t describe views of any other members
  - Don’t ask member’s views

Meeting Exceptions

- When is a meeting not a “meeting?”
  - Individual contacts
  - Conferences and seminars
  - Community meetings
  - Another body of the agency when it is an open and noticed meeting of that body
Meeting Exceptions

- When is a meeting not a “meeting?”
  - Social or ceremonial events
  - Ad hoc committee meetings
  - Observation of standing committee meetings

Regular Meeting

- Agenda must be posted 72 hours in advance
- Brief description of items of business
- Posted agenda must be freely accessible to public
Special Meeting

- Called by presiding officer or majority of council
  - Notice must be posted 24 hours in advance
  - Notice must be received by each member and press unless waived
  - Consider only items on the agenda

Adjourned Meeting

- Regular or special meeting may be adjourned to specific time and place
- If no time stated, then meeting continued to the hour for regular meetings
- Less than a quorum may adjourn
Other Agenda Requirements

- No discussion or decision on items not on the posted agenda
- Agendas must be publicly accessible and distributed in advance to those who request copies

Agenda Requirements - Exceptions

- Items added to the agenda
  - Came to the agency’s attention after the agenda was posted; and
  - Need to take action before the next meeting
  - Two-thirds vote required
Exceptions - Continued

- Brief response to comments / questions
- Clarification / reference to staff
- Brief announcements / report on activities
- Requests for future report
- Placement of items on future agenda

Public agencies may not prohibit public criticism of the agency or the legislative body.

Civil Code Section 47 makes statements at a public meeting generally privileged.
Public Participation

- Not required to “register”
- Rules of decorum permitted
- Time limits okay
- Recording permitted

Closed Sessions

- Personnel matters
- Labor negotiations
- Real property matters
- Pending / threatened / contemplated litigation
Three types of enforcement actions:

1. **Civil action to invalidate an decision or action**
   - DA or any interested person
   - Notice and opportunity to cure
   - If not cured and there is subsequent court action, the challenger can recover attorneys fees and costs

2. **Civil action for a determination of a past violation**
   - Cease and Desist Letter
   - Unconditional commitment by city
   - If no unconditional commitment, then lawsuit to compel compliance in the future

3. **Criminal prosecution**
   - Brought by the District Attorney
   - There must have been an action taken at a meeting
   - In violation of the Brown Act
   - With Intent to deprive public of information
Enforcement & Consequences

Judge says Coliseum panel apparently violated open-meeting law.
He said the Coliseum Commission apparently violated the state’s Brown Act during deliberations on USC’s lease of the stadium.

October 03, 2013 | By Paul Pejuale and Roger Greg Liu

A judge Thursday said the Los Angeles Memorial Coliseum Commission appeared to have repeatedly violated the state’s open-meeting law during its month of closed-door deliberations on USC’s lease of the taxpayer-owned stadium.

In pointed language, Los Angeles County Superior Court Judge Lois A. Levin said he was prepared to issue an injunction against the commission that would restrict what it could discuss in secret sessions and require it to record all of its private meetings for three years.

Levin said the commission had “driven a Mack truck through” a narrow exception in the Ralph M. Brown Act that could allow government bodies to exclude the public from certain lease deliberations.

Another reason for open government

“The liberties of people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.”

Patrick Henry, 1788
Group 4: Fair Process Laws

- "Common Law" Conflicts & Due Process
- Campaign Contributions
- Qualifications for Office and Incompatible Offices
- Competitive Bidding
The Due Process Clause

“No person shall be ... deprived of life, liberty, or property, without due process of law . . . .”

U.S. Constitution amendment V

Due Process in Local Government

The Due Process Clause is implicated whenever a local agency conducts a public hearing:

- Conditional use permits
- License revocations
- Terminating or disciplining certain employees
What does “Due Process” Mean?

- Reasonable notice &
- A reasonable opportunity to be heard
- Before an impartial decisionmaker

An Impartial Decisionmaker

- Pre-existing views on the general policy issues related to a matter do not create disqualifying bias
- Due process does not require that the decisionmaker be an “intellectual eunuch” – someone with no views or opinions at all

An Impartial Decisionmaker

Disqualifying bias requires:

Concrete proof of a specific prejudice against a person affected by the decision

Bias which is sufficient to impair the decisionmaker’s ability to decide the matter on appropriate grounds

Bias: Nasha v. City of Los Angeles

- Planning commissioner wrote an article in a homeowners’ association newsletter, calling a proposed project a “threat to a wildlife corridor”
- Court found “unacceptable probability of actual bias”
- Because three votes were required to sustain the appeal, the commissioner’s tainted vote was decisive
Bias: Fairfield v. Superior Court

Campaign statements do not disqualify a councilmember from voting.

The courts expect local elected officials to express their views to their constituents on issues of policy and public controversy.

Common Law Doctrine Against Conflicts of Interests

- Law made by court decisions
- Applies when public official is tempted by personal interests
- Reduced application of the doctrine . . . . but it is not dead
Common Law Conflict Case Study: Clark v. Hermosa Beach

Lessons from the Clark case

- **Why no violation of the PRA?**
  Month-to-month tenancy is not an interest in real property under Political Reform Act

- **Public officials should not participate in decisions that affect their personal interests**

- **Requirement for objective & unbiased decisionmakers**
Tips for Decisionmakers

- If you think you cannot be fair, don’t participate
- Avoid statements before the close of a hearing that suggest your mind is made up
- Behave judiciously; avoid the appearance of bias

Tips for Decisionmakers

- If you make private site visits, don’t make any commitments to applicants or neighbors
- Disclose at the hearing any “off-the-record” information you have obtained
- City policy and fair hearing procedures prohibit receipt of information or comments via email or text during a meeting
Campaign Contributions and Lobbying

Campaign Contributions

- Generally no conflict of interest
- Special rule for appointed boards and commissions
  - $250 / 12 month / 3 month rule
  - Application to planning commissioners
Campaign Contributions

- Prohibition on soliciting campaign contributions from other officers or employees of your agency - Government Code Section 3205
- Prohibition applies to direct or indirect solicitation of contributions

Campaign Contributions

- Exception for mailed requests to a significant segment of the public
- Violation of section is a misdemeanor subject to prosecution by the county district attorney
Limitations on Lobbying – “Revolving Door” Limitations

- One-year ban on lobbying
- Applies to elected officials and city managers
- Applies to legislative and administrative decisions but not ministerial
- Cities and counties may have stricter ordinances
- Enforcement through the Political Reform Act and the FPPC
To hold office as a councilmember you must be an “elector” of the city.

To be an “elector” you must be a U.S. citizen and a resident in your election precinct.

You must also be a registered voter in the city at the time nomination papers are issued.

You must maintain your principal residence (your domicile) in the city – intent plus conduct.

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- If during your term of office, you move your domicile to a place outside the city limits, you cease to be an elector.
- If you cease to be an elector, your office becomes vacant (Gov. Code Section 36502).
Residency within City or District You Represent

Cannot concurrently hold two "Incompatible" Offices

- Cannot hold two incompatible offices
- Office / employment contrasted
- Loss of first office upon accepting incompatible office
You may not concurrently hold two “Incompatible Offices”

- Examples:
  - City councilmember and school board member
  - City councilmember and fire chief
  - City planning commissioner and county planning commissioner
  - Public utility district member and board of supervisors member
  - Water replenishment district board member and city councilmember

Competitive Bidding

- Required by State Law
- Principles:
  - Everyone has right to compete for agency’s business
  - Competition produces the best price for taxpayers
  - Prevents favoritism, extravagance, fraud
Competitive Bidding

- Contract goes to lowest responsive, responsible bidder
- Exceptions
  - Emergencies
  - Small contracts
  - Financial, engineering, legal services
  - Professional services

Questions to Ask

- What would make the public feel best / inspire public confidence?
- What would you want to read about on the front page?
- How do you want to be remembered?
Key Lessons

The law sets minimum standards for ethical behavior
- Violations of ethics laws carry stiff penalties
- When in doubt, ask and ask early

It's your choice how high you want to set your sights above the minimum requirements of the law

Getting Help with Ethical Issues

Talk to the City Attorney

Seek advice from the FPPC
- 1-866-ASK-FPPC
- Request a formal advice letter, if time permits

The Institute for Local Self Government
- www.ilsg.org/trust
THANK YOU.

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