



Open Government Laws and Ethics

League of California Cities, Los Angeles County Division:
New Mayors and Council Members Governance Workshop
June 18, 2020



BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

LOS ANGELES COUNTY DIVISION



ABOUT THE LOS ANGELES COUNTY DIVISION

- The largest of 16 regional divisions in the League of California Cities®
- Representing 86 cities and over 11 million people in Los Angeles County
- Covering 4,500 square miles
- Over 450 Elected Officials
- Thousands of City Staff
- Membership includes the smallest in population (Vernon) to the largest (Los Angeles) of the state's 482 cities

ADVOCACY

- Bill Tracking and Advocacy
- Legislative Scorecard
- Engagement on County and Regional Issues
- Ballot Measure Engagement
- Appointments to League Policy Committees and County Regional Board and Commissions

NETWORKING

- Regular Countywide Membership Meetings
- All Cities Holiday Reception
- Division Networking Events at League Conferences

EDUCATION

- Newly Elected Governance Workshop
- Countywide City Managers Meeting
- Issue Specific Training Sessions

COMMUNICATIONS

- Monthly Newsletter
- Personal and Electronic Outreach to Mayors, Council Members, and City Staff
- Social Media Engagement and Outreach

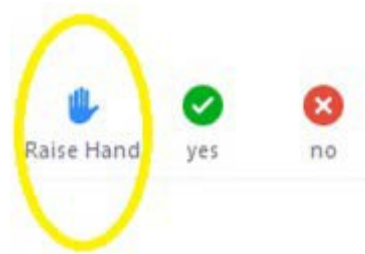


www.BBKlaw.com

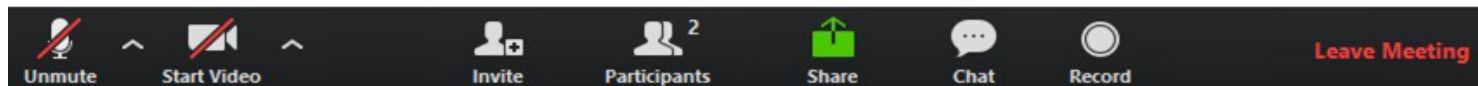
© 2020 BEST BEST & KRIEGER LLP

HOW TO ASK A QUESTION

- To verbally ask questions, use the 'Raise Hand' feature.
 - Click on the icon labeled "Participants" on the Zoom Menu.
 - Look for the little blue hand icon labeled "Raise Hand".



- To write questions, you may put it in the 'Chat' and a moderator will pose the question to the presenter.



Presenter



Scott H. Campbell, Esq.
Partner
Best Best & Krieger, LLP



THE RALPH M. BROWN ACT



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Purpose

The purpose of the Brown Act is to ensure that almost all aspects of the decision-making process of legislative bodies of local agencies be conducted in public and open to public scrutiny.



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Action on Agenda Items Only

The central provision of the Brown Act requires that all meetings of a legislative body be open and public. Under Section 54954.2(a)(3), the City can not discuss or take action on any matters that are not discussed at a public meeting and placed on the public agenda in accordance with the posting and noticing requirements described in the following slide.



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

No Meetings Outside of Public

Section 54952.2(b)(1) prohibits a majority of members of the City outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate, or take *action* on any item of business within the *subject matter jurisdiction* of the body.

- Items that are within the “subject matter jurisdiction” of the body include those matters that may come before the City.
- The Brown Act defines “action” as a collective decision made by a legislative body, like the City.



BROWN ACT

Posting and Noticing Requirements

Regular Meeting: The Act requires posting an agenda accessible to the public at least seventy-two (72) hours in advance of a regular meeting, with a brief general description (generally need not exceed 20 words) of each item of business to be transacted or discussed in both open and closed session.

Special Meetings: For special meetings, written notice may be provided by any means at least 24 hours in advance to members of the legislative body and to anyone who has requested notice in writing. The notice must specify the time and place of the meeting and the business to be discussed.

*No action or discussion is allowed for any item not listed on the agenda (except for brief response to persons exercising public comment rights at meeting).



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Adding Items

Need for Immediate Action: Adding an item by 2/3 vote of those present determining a need to take immediate action and that the need for action came to the attention of the agency subsequent to posting the agenda.



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Opportunity to Speak

Every agenda must provide an opportunity for members of the public to address the body on items of interest to the public, before or during the legislative body's consideration of that item, or concerning items not on the agenda that are within the subject matter jurisdiction of the legislative body.

The legislative body may adopt regulations limiting the total amount of time allocated for public testimony on particular issues and for each speaker. The legislative body may order the meeting room cleared (except non-disruptive news media) of persons willfully interrupting the orderly conduct of the meeting.



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Exceptions to the Public Session Requirements



- Pending Litigation: The legislative body may discuss in closed session "pending litigation".
- Personnel: The legislative body may go into closed session to consider the appointment, employment, evaluation of performance or dismissal of a public employee or to hear complaints or charges brought against such employee unless such employee requests a public session.
- Salaries and Compensation of Employees: The legislative body may discuss in closed session salaries or compensation of public employees.
- Real Estate Negotiations: The legislative body may discuss in closed session price and terms of payment for real estate deals.



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

BROWN ACT

Violations

- For violations, Court may:
 - Enjoin action,
 - Invalidate action, or
 - Mandate correction.
- Court costs & attorney fees are recoverable
- Individuals who intentionally violate may be guilty of a misdemeanor



“Secrecy is for losers”

-U.S. Senator Patrick Moynihan



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Personal Financial Interests



Conflict Laws Focus on Personal Financial Interests

1. Political Reform

Act, Decisions of
Government
Entities, Officers
and Employees

2. Gov. Code § 1090,
Contracts “Made” by
Government Entities



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

What's the Difference between the PRA and GC 1090?

All Contracts made by a Government Entity Involve
a Governmental Decision BUT not all Governmental
Decisions Involve a Contract

Thus, when a decision affects a contract, both the
PRA and GC 1090 apply



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Political Reform Act of 1974 (Gov. Code, § 87100, *et seq.*)



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

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



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

COVER PAGE

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

1. Office, Agency, or Court

Agency Name

Division, Board, Department, District, if applicable

Your Position

► If filing for multiple positions, list below or on an attachment.

Agency: _____

Position: _____

2. Jurisdiction of Office (Check at least one box)

☐ State

☐ Judge or Court Commissioner (Statewide Jurisdiction)

☐ Multi-County _____

☐ County of _____

☐ City of _____

☐ Other _____

3. Type of Statement (Check at least one box)

☒ **Annual:** The period covered is January 1, 2012, through December 31, 2012.

-or-

The period covered is _____ through December 31, 2012.

☒ **Leaving Office:** Date Left _____ (Check one)

☐ The period covered is January 1, 2012, through the date of leaving office.

☐ The period covered is _____ through the date of leaving office.

☒ **Assuming Office:** Date assumed _____

☐ **Candidate:** Election year _____ and office sought, if different than Part 1: _____

4. Schedule Summary

Check applicable schedules or "None."

► Total number of pages including this cover page: _____

☐ **Schedule A-1 - Investments** – schedule attached

☐ **Schedule C - Income, Loans, & Business Positions** – schedule attached

☐ **Schedule A-2 - Investments** – schedule attached

☐ **Schedule D - Income – Gifts** – schedule attached

☐ **Schedule B - Real Property** – schedule attached

☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-

☐ **None** - No reportable interests on any schedule

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
(Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER

E-MAIL ADDRESS (OPTIONAL)

()

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed _____
(month, day, year)

Signature _____
(File the originally signed statement with your filing official)

Clear Page

Print Form

FPPC Form 700 (2012/2013)
FPPC Advice Email: advice@fppc.ca.gov
FPPC Toll-Free Helpline: 866/275-3772 www.fppc.ca.gov

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 April 1st

Signed Under Penalty of Perjury



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

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

What is your role in the governmental decision?

- **Making**: authorizing, directing, voting on, or committing the agency to the decision.
- **Participating in Making**: providing info, opinions, or a recommendation for the purpose of affecting the decision.
- **Attempting to Influence**: (1) contacting any official in the agency for the purpose of affecting a decision, or (2) contacting another agency on behalf of your agency to affect a decision.



Personal Financial Interests

Political Reform Act of 1974

Types of Economic Interests:

- ✓ Business Investment
- ✓ Source of Income
- ✓ Business Position or Employment
- ✓ Real Property
- ✓ Gifts over limit
- ✓ Personal Finances

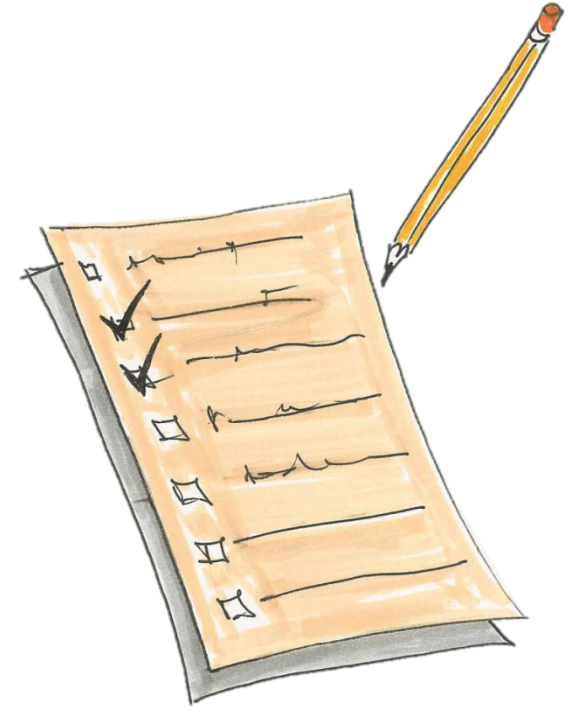


Personal Financial Interests

Political Reform Act of 1974

The FPPC Does a Four-Step Analysis:

1. Is it ***reasonably foreseeable*** that decision will have a financial effect on your economic interest?
2. Will financial effect be ***material***?
3. Is the financial effect ***indistinguishable*** from its effect on the ***public generally***?
4. Is there another exception?



WARNING!

THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Personal Financial Interests

Political Reform Act of 1974

1. **Reasonably foreseeable** – “Realistic possibility”
2. **Material** – Above FPPC standards (e.g., within 500 feet of real property owned)
3. **Public generally exception** – Affects: (1) 25% of properties, businesses, or individuals, and (2) no unique effect on public official
4. **Other exceptions** – e.g., rule of necessity, speaking as a member of the public on an item of personal interest



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



Interest in Public Contracts (Gov. Code § 1090)



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

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



Self-Dealing



Consultants & “Additional Work”

- GC 1090 applies to officials, officers and employees.
- An outside consultant can be considered an “employee” under the law when that consultant acts in an advisory role and has duties to engage in or advise on public contracting that he/she is expected to carry out on the government’s behalf.



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**



THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY

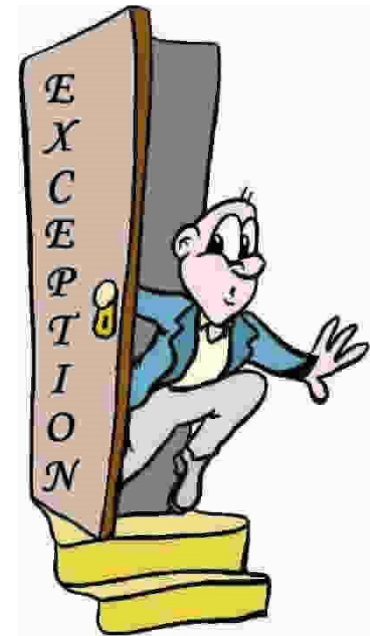


Financial Interest in Public Contracts

Remote Interest Exceptions - § 1091(b)

- **Requirements:**
 - Public disclosure noted on records
 - No attempt to influence
 - Board acts in good faith
- **16 Exceptions, including:**
 - Employees, in certain cases
 - Suppliers, in certain cases

(for at least 5 years before election/appointment to office)



WARNING!

THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Financial Interest in Public Contracts

“Non-Interest” Exceptions - § 1091.5

- **Requirements**
 - Some do not require disclosure or disqualification
- **14 Exceptions**, including:
 - Corporate ownership
 - Less than 3% of shares, and
 - Income of less than 5% of total
 - Expense reimbursements
 - Recipient of public services



WARNING!

THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Financial Interest in Public Contracts

Limited Rule of Necessity

Permits a public body, that has a duty to act upon a matter before it, to do so despite a conflict of interest when the public agency is the only entity capable to act on the matter (where one or more of the board members has a personal financial interest).

Example: Public official owns the only mortuary within 500 miles and the public agency needs to contract with a Mortuary.

Remote Interests allows Board member to disclose and disqualify



Personal Financial Interests

Interest in Public Contracts



Ramifications

- **Criminal**
 - Willful Violation = Felony
 - Lifetime bar to public office
- **Civil**
 - Contract = Void and unenforceable
 - Disgorgement of all money
 - Civil Penalties
- **Administrative Fines**



Common Law Conflicts of Interest



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Common Law Conflicts of Interest Often Relate to Fair Process



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Common Law Conflicts of Interest

Pre-dates the financial conflicts of interest in the Political Reform Act and Government Code section 1090

AND

Those laws now supplant common law conflicts of interest based on financial interests

SO

What's left is a mere vestige of the common law doctrine



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Common Law Conflicts of Interest

What Is It?

"A public officer is impliedly bound to exercise the powers conferred on him primarily for the benefit of the public. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal."



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Common Law Conflicts of Interest

"The common law doctrine against conflicts of interest . . . prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties."



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Common Law Conflicts of Interest

Avoiding the Conflict

The conflict "may usually be avoided by complete abstention from any official action with respect to or attempt to influence the transaction" (64 Ops.Cal.Atty.Gen. 795, 797 (1981)).



HELPFUL RESOURCES

- **Los Angeles County Division**

www.lacities.org

- **League of California Cities**

www.cacities.org

- **California City Finance**

www.californiacityfinance.com

- **Institute For Local Government**

www.ca-ilg.org



www.BBKlaw.com

© 2020 BEST BEST & KRIEGER LLP

Thank you for attending

Presented By:
Scott H. Campbell
T: (213) 617-7489
Scott.Campbell@bbklaw.com



BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW