

Understanding Public Service Ethics Laws & Principles: AB 1234 Training

*League of California Cities Planning
Commissioners Academy*



Wednesday, March 16, 2022

HOUSEKEEPING

You **MUST** be
signed in

You must be present
for the full two-hour
training

You will receive your
certificate at the end
of the training

We also have
certificates for
attorneys for MCLE
credit

Contact Kim Danko
at [kdanko@ca-
ilg.org](mailto:kdanko@ca-ilg.org) with
questions or
concerns

ILG IS NON-PROFIT, NON-PARTISAN & HERE TO HELP

- ILG is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



**California Special
Districts Association**
Districts Stronger Together

OUR PROGRAMS AND SERVICES

Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



Services

Education & Training

Technical Assistance

Capacity Building

Convening

Our mission is to help local government leaders **navigate complexity**, **increase capacity & build trust** in their communities



AB 1234 Ethics Guidance Planning Commissioners Academy

Best Best & Krieger LLP
March 16, 2022



BEST BEST & KRIEGER 
ATTORNEYS AT LAW

Presenter



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Why Is This Training Important



- Comply with the law
- Learn best practices
- Promote positive public perceptions
- Avoid legal problems



Spirit of the Law



Obey the spirit, not just the letter of the law

THE TRIBUNE EDITORIAL BOARD

Technically speaking, Arroyo Grande Planning Commissioner John Mack may not have had a conflict of interest when he voted against Nick Tompkins' development proposed for Grand Avenue — even though Mack lives a short distance away.

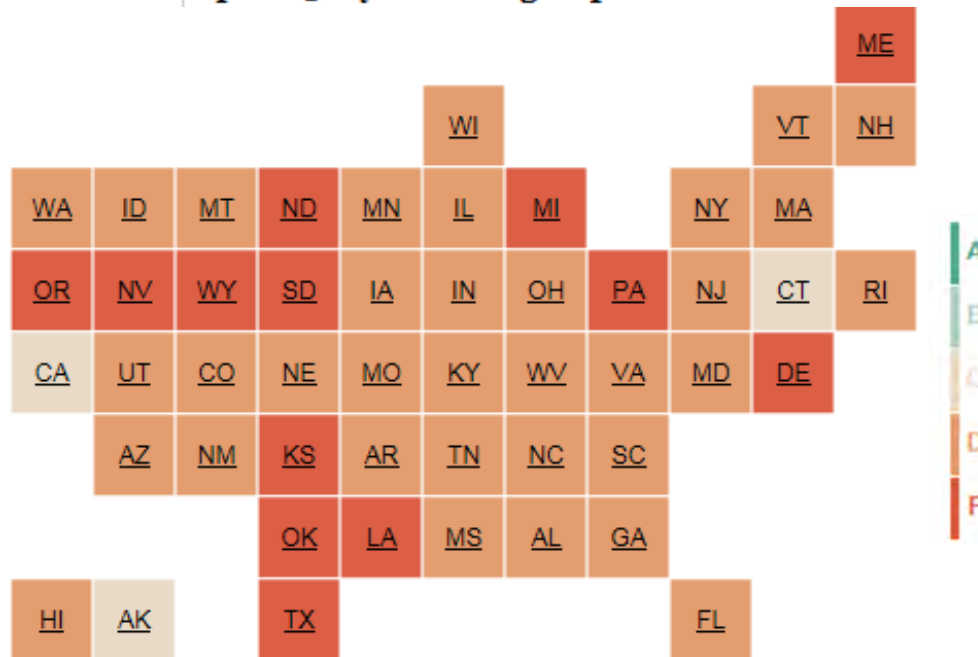
That doesn't make his actions OK.



Spirit of the Law

California gets C-minus in government integrity survey; 47 states score D-plus or lower

By Thomas Peele | tpeele@bayareanewsgroup.com



www.bbklaw.com

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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



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



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



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



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.
- Leaving Office:** Date Left ____/____/____
 (Check one)
 The period covered is January 1, 2012, through the date of leaving office.
- Assuming Office:** Date assumed ____/____/____
 The period covered is ____/____/____, through the date of leaving office.
- 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

None - No reportable interests on any schedule

5. Verification

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

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



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
- Employee
- and *certain* Consultants

of a State or Local Agency.

(Gov. Code. sec. 82048)



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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
- ✓ Personal Finances



*Includes immediate family

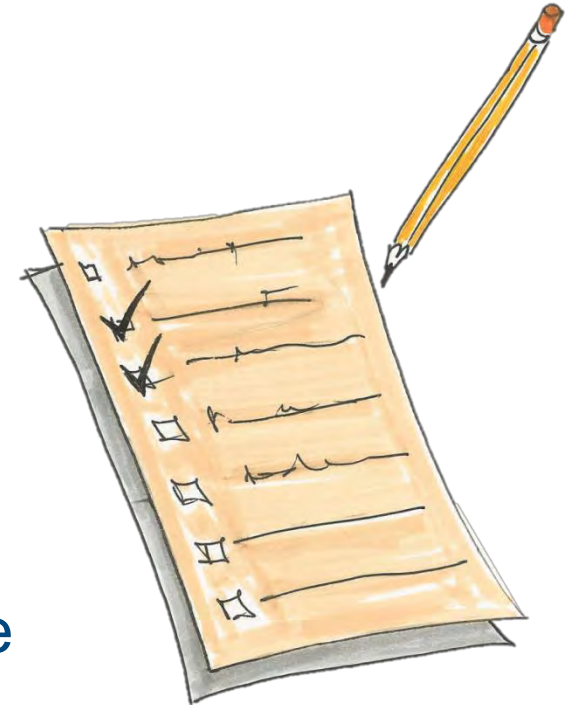


Personal Financial Interests

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?



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*

HYPOTHESIS:

A planning commissioner is going to vote to approve a development on a property owned by his sister's husband (brother-in-law).

Can the planning commissioner vote on the decision to award the contract?



Personal Financial Interests

Political Reform Act of 1974

Answer: Yes.

An official has an economic interest in his or her own finances and those of his or her immediate family (spouse and dependent children). A mere sibling / sibling-in-law relationship is not enough to create a conflict.



Personal Financial Interests

Political Reform Act of 1974

HYPO:

A city is considering constructing a hiking trail on city property on the opposite side of a creek that borders a planning commissioner's backyard.

Can the planning commissioner who owns the property vote on the decision to develop the trail?



Personal Financial Interests *Political Reform Act of 1974*

Answer: No.

Unless an exception applies, an official who has an financial interest of \$2,000 or more in real property may not vote on a matter affecting real property located within 500 feet of the property line of the official's property.



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)



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



Who It Applies To: Legislative Body Members vs. Others

- GC 1090 applies to officials, officers and employees, and sometimes consultants.
- When GC 1090 applies to a legislative body member, the entire body is precluded from entering into the contract unless an exception applies.
- For employees and advisory body members, full abstention and recusal is usually sufficient.



Consultants & Independent Contractors

- 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

City Council Scenario

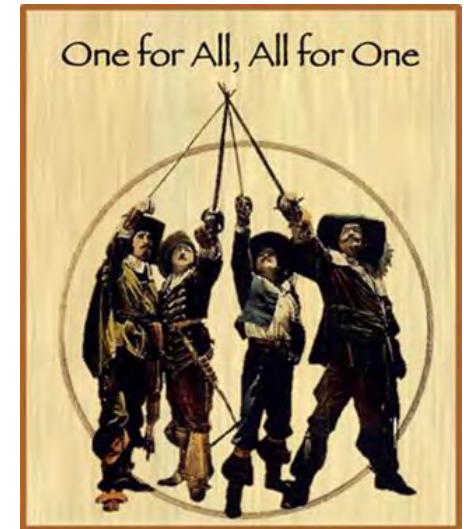
- **Facts:** A city councilmember owns the construction company that has been awarded the contract to remodel City Hall. She recuses herself from participating or voting to approve the contract.



Financial Interest in Public Contracts

City Council Scenario

- **Result:** The contract is void.
- **Analysis:**
 - The director is financially interested in the contract.
 - A director's interest in the contract prohibits the district from entering into the proposed contract, even though the member does not participate in and abstains from the actual decision.



Financial Interest in Public Contracts

Planning Commissioner Scenario

Facts: A planning commissioner is an architect who designed a project that is subject to a development agreement. The development agreement must be approved by the City Council, but the planning commission will make a recommendation to the Council.



Question: If the planning commissioner recuses himself, can the contract be made?



Financial Interest in Public Contracts

Planning Commissioner Scenario

Answer: Yes, if he

- discloses his interest and
- disqualifies himself from participating in, or influencing the decision making process.
- The planning commission is advising only—the City Council is the body making the contract.



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**



Financial Interest in Public Contracts

Remote Interest Exceptions - § 1091(b)

- **Requirements:**
 - Public disclosure noted on records
 - No attempt to influence
 - Council/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



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



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 Council members has a personal financial interest).

Example: A county supervisor owns the only mortuary within 500 miles and the county needs to contract with a mortuary.

Remote Interests allows the supervisor 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**



Requesting Advice

Agency Attorney

- Usually via agency staff



Fair Political Practices Commission

- Informal advice (e-mail, phone)
 - Does not provide immunity
- Formal advice (written inquiry)
 - Can provide immunity from FPPC enforcement; may be helpful in criminal/civil actions if full, accurate information is provided and advice followed



Revolving Door



Personal Financial Interests

“Revolving Door”



AFTER LEAVING OFFICE:

Elected Official & Manager

- One Year Ban
- Prohibited from appearing before, or communicating with, Council on behalf any other person for compensation



“Feathering Your Nest”



Personal Financial Interests

“Feathering Your Nest”



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.



Difference between a Gift or Political Contribution and a Bribe

The commonly accepted borderline is that a gift or contribution (money or anything of value) is a bribe if there is proof of a quid pro quo.

A promise to perform an official act or not.



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

“ When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office ... ”

- Terry v. Bender (1956)



Personal Advantages and Perks

Gift Laws



Meals



Entertainment



Travel

A gift is anything of value that provides a personal benefit for which adequate consideration was not provided.



Personal Advantages and Perks

Gift Laws

Disclose
\$50+

Disqualify
\$500/12mos.

Refuse
\$520+

Bottom Line: Watch your calendar

- **Estimate**
- **Track**
- **If Gift Exceeds Limit: 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
- Reciprocal exchanges
- Tickets/passes to certain fundraisers



Agency Disclosures

Gift to Agencies: Forms 801 & 802

Gift to Agency Report A Public Document

1. Agency Name
 Division, Department, or Region (if applicable)
 Street Address
 Area Code/Phone Number E-mail
 Agency Contact (name and title)

Agency Report of: Ceremonial Role Events and Ticket/Pass Distributions A Public Document

1. Agency Name
 Division, Department, or Region (if Applicable)
 Designated Agency Contact (Name/Title)
 Area Code/Phone Number E-mail

2. Function or Event Information
 Does the agency have a ticket policy? Yes No Face Value of Each Ticket/Pass \$ _____
 Event Description _____ Date(s) _____
 Ticket(s)/Pass(es) provided by agency? Yes No If no _____ Name of Source _____
 Was ticket distribution made at the behest of agency official? No Yes If yes _____ Official's Name (Last, First)

3. Recipients
 Use Section A to identify the agency's department or unit. Use Section B to identify an individual. Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Tickets/ Passes	Describe the public purpose made pursuant to the agency's policy

B. Name of Individual	Number of Tickets/ Passes	Identify one of the following: Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> <small>(Ceremonial Role: State or County Seal, Seal of Office)</small>	Income <input type="checkbox"/>

C. Name of Outside Organization (include address and description)	Number of Tickets/ Passes	Describe the public purpose made pursuant to the agency's policy

4. Verification
 I have read and understand FPCC Regulations 19847.1 and 12942. I have verified that the distribution set forth above is in accordance with the requirements.

Comment _____

FPCC Form 802 (4/12)
 FPCC Toll-Free Helpline: 855/ASK-FPCC (866/275-7772)

Gift to Agencies: Form 801

- Know the rules: NEW - Exceptions on gifts of travel now 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

- Third party payments to agency used for travel and conference costs, in lieu of agency funds, are only allowed if:
 1. The costs are for “official agency business”
 2. The agency head decides who will attend
 3. The agency reports the payment (Form 801)
 4. Plans are coordinated with the agency
 5. Reimbursements go directly to the agency
 6. No personal benefit (only for business)
 7. Travel time is not extended



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 forwarded to the FPPC for posting on its website



Personal Advantages and Perks

Rules of the Road



- Acceptance of passes or discounts from transportation companies is prohibited.
- Informational exception to gift rules does not include travel – exceptions apply.
- 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.



Behested Payments: Form 803

FOR ELECTED OFFICIALS ONLY

- Contributions of **\$5,000 or more**
- made by a single source
- in cooperation with elected official
- **Must be reported to official's agency within 30 days.**

Behested Payment Report		A Public Document		Behested Payment Report	
1. Elected Officer or CPUC Member (Last name, first name)		Date Stamp	California Form 803 For Official Use Only		
Agency Name					
Agency Street Address					
Designated Contact Person (Name and title, if different)		<input type="checkbox"/> Amendment (See Part 6)			
Area Code/Phone Number	E-mail (Optional)	Date of Original Filing: _____ (month, day, year)			
2. Payor Information (For additional payors, include an attachment with the names and addresses.)					
Name _____					
Address _____ City _____ State _____ Zip Code _____					
3. Payee Information (For additional payees, include an attachment with the names and addresses.)					
Name _____					
Address _____ City _____ State _____ Zip Code _____					
4. Payment Information (Complete all information.)					
Date of Payment: _____ <small>(month, day, year)</small>		Amount of Payment: (In-kind PM's) \$ _____ <small>(Round to whole dollars)</small>			
Payment Type: <input type="checkbox"/> Monetary Donation or <input type="checkbox"/> In-Kind Goods or Services (provide description below)					
Brief Description of In-Kind Payment: _____					
Purpose: (Check one and provide description below) <input type="checkbox"/> Legislative <input type="checkbox"/> Governmental <input type="checkbox"/> Charitable					
Describe the legislative, governmental, charitable purpose, or event: _____					
5. Amendment Description or Comments					

6. Verification					
I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.					
Executed on _____		By _____ <small>(Signature of Elected Officer or CPUC Member)</small>			
Clear Form		Print Form			
FPPC Form 803 (December/09) FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)					



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 (Agency Policy)



Personal Advantages and Perks Misuse of Public Funds



Ballot Measures



Endorsements & Legislative Activities

Westonka School Ballot Question 1

Westonka School's request to increase its general education levies by \$480 Per Resident Pupil Unit, funding each year for a period of 10 years with provisions for annual inflationary increases. Vote Yes or No. By Voting Yes, you authorize a property tax increase.

WE URGE YOU TO VOTE NO.

Of 13 West Metro School Districts, Westonka has the poorest record of Classroom Instruction spending. Westonka spends a paltry 38.9% on Regular Education Classroom Instruction. In these same 13 School Districts, Westonka has the highest: 1) District Admin costs; higher than Weygata, Okonko, Delano, Alameda, Wake-Linn-Meyer, Eden Prairie, Chaska, etc.

No one should be pleased with these statistics. Immediate steps ought to be taken to improve the imbalance of priorities.

Therefore, we urge you to vote NO to LEVY ballot question #1.

Why are they asking for more? The MN State Legislature recently raised the cap* allowing school districts to ask voters for higher amounts of levy dollars. [Westonka grab]

Home Value:	Westonka School Ballot Question 1 Minimum Tax Impact over the 10 year LEVY
\$ 150,000	\$ 915.
\$ 300,000	\$ 1,829.
\$ 500,000	\$ 3,048.
\$ 750,000	\$ 4,573.

Informational Materials



Transparency Laws

*(Gov. Code § 54950, et seq.;
Gov. Code § 6250, et seq.; and
California Constitution)*



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 Brown Act - Meetings



- What is a meeting?
- When is a meeting not a meeting?



Transparency Laws

The Brown Act – Serial Meetings

SERIAL MEETINGS

Use of:

- direct communication;
- intermediaries; or
- technology

to develop a collective concurrence outside of a meeting is expressly prohibited.

E-MAILS

When e-mailing:

- Don't "reply to all"
- Do not take a position or make a commitment
- Take caution to ensure compliance with law



Transparency Laws

The Brown Act – Social Media

- AB 992 (2020) – It is not a serial meeting to provide information to, or solicit information from, the public about agency business using social media
 - Must be “open and accessible” to general public (no blocking)
 - Cannot “discuss among themselves”
 - No responding directly to other members’ posts
 - No use of emojis, etc., on other members’ posts



Transparency Laws

The Brown Act – Rules Governing Meetings

- Regular meeting
- Special meetings
- Emergency meetings
- Adjourned meetings
- Public's right to comment
- Report individual votes or abstentions



Transparency Laws

The Brown Act – Closed Sessions

Must be:

- Expressly authorized
- Briefly described in agenda
- Verbally announced

If action is taken, may need to report it to the public and report individual votes or Abstentions

- Disclosure of closed session matter is illegal



Transparency Laws

The Brown Act - Ramifications

- 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



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?

Any writing containing information related to the conduct of the public's business retained by any public agency



Emails, Social Media and Other Communications on Private Devices and Accounts

“Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act.”

City of San Jose v. Superior Court (2017)

2 Cal.5th 608



Why the Court Ruled As It Did

“Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state,” according to the Public Records Act and the state constitution.



The court made it clear it would not permit public officials to conduct the public’s business on private devices and place those communications beyond the reach of the Public Records Act and thereby encourage public officials to conduct the public’s business in private.



What Factors Help Determine Whether a Communication on a Private Device is a “Public Record”

The opinion suggested looking to the following factors:

- content
- context
- purpose
- audience
- whether the employee was acting within the scope of employment in preparing or receiving the communication



Transparency Laws

California Public Records Act

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”

Hours
Monday 8AM—5PM
Tuesday 8AM—5PM
Wednesday 8AM—5PM
Thursday 8AM—5PM
Friday 8AM—3PM



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 a policy / procedures
- Develop standardized fees



Fair Process



Fair Process

- Due Process
- Bias
- Competitive Bidding
- Incompatible Offices
- Incompatible Activities



Fair Process

Due Process



The Oath of Allegiance

Approved by the Congress of the United States, July 4, 1776. The Oath of Allegiance is a solemn promise to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; to bear arms and assist in the national defense; to support the Government in times of war; and to remain true to the United States in all other respects. The Oath of Allegiance is a solemn promise to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; to bear arms and assist in the national defense; to support the Government in times of war; and to remain true to the United States in all other respects.

- 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



Common Law Conflicts of Interest



Common Law Conflict 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



Common Law Conflict 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."



Common Law Conflict 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."



Common Law Conflict 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)).



Common Law Conflict of Interest

HYPOTHESIS:

The adult child of a special district director has sued the district in connection with a vehicle collision between the child and an on-duty district employee. The board is to vote on approving a substantial settlement with the adult child.

May the director vote under the PRA, GC 1090, common law conflict rule?



Common Law Conflict of Interest

- PRA---yes, because the member does not have a financial interest in his adult child's personal finances.
- GC 1090---yes, same reason, no financial interest.
- Common law conflict---no, should not because of private, personal interest and bias

Remedy: Recuse or abstain



Fair Process *Due Process*

HYPO:

Councilmember Smith rents an apartment month to month next to a property whose owner is seeking a variance to build a home that will interfere with the Councilmember's view of a park. The Councilmember opposed the variance application before the Planning Commission which approved it. The Councilmember appealed and now the matter is before the Council.



Fair Process *Due Process*

Any due process concerns?

Can Councilmember Smith participate in the decision by the Council?



Fair Process

Due Process

Yes, there are due process concerns.

- Bias
- Lack of impartiality
- Personal, private stake in the outcome

Should he participate?

No. The member would not be a neutral and fair decision maker, denying the applicant procedural due process.



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 (audit, overrule remove or exercise supervisory powers)

Ramifications:

- Immediate forfeiture of first office



Fair Process

Incompatible Activities

Gov. Code §1026

- Applies to officers and employees, but NOT ELECTED OFFICIALS
- Agency must adopt a statement of incompatible activities, statutory prohibition is not self-executing
- Agency may prohibit activities involving:
 - Private gain or advantage
 - Receiving consideration for performing duties
 - Acts outside scope of employment
 - Impairment of efficiency
- Attorney exception---GC 1128: government entity lawyer may serve on another board or commission



Fair Process

Campaign Finances

CAN AN ELECTED OFFICIAL BE DISQUALIFIED FROM VOTING/DECISION-MAKING FOR RECEIVING CAMPAIGN CONTRIBUTIONS?

- General Rule – NO.

Campaign Disclosure Forms Sufficient = NO Disqualification (e.g., campaign contribution)

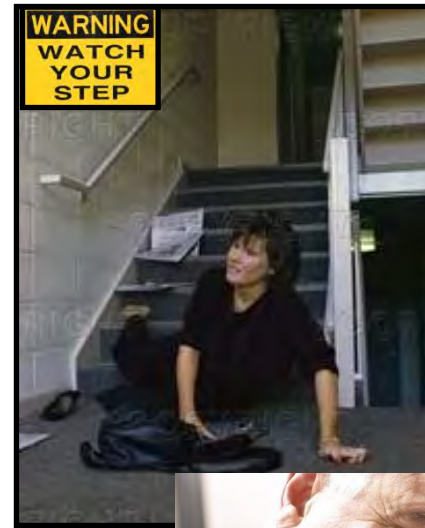
- “BIG” Exception (Gov. Code § 84308)
 - Proceedings involving entitlements, licenses/permits (land use permits, franchise, zoning variances, consulting contracts)



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



Conclusion

Finding Your Way – Ethics Laws

Summary of 4 Major Areas

Personal Financial Interest

1. Political Reform Act
2. Contracts
3. Revolving Door
4. Feathering Your Nest
5. Bribery/Mail Fraud

Personal Advantages & Perks

1. Gifts
2. Honoraria
3. Travel/Lodging Expenses
4. Loans
5. Reimbursements
6. Mass Mailings
7. Misuse of Public Funds
8. Nepotism
9. Charity Fundraising Disclosure

Transparency Laws

1. Brown Act
2. Public Records Act

Fair Process

1. Due Process
2. Bias
3. Competitive Bidding
4. Incompatible Offices
5. Incompatible Activities
6. Campaign Finances
7. Best Practices



Ethics Laws

California's ethics laws set the minimum standards for public service



In civilized life, law floats in a sea of ethics
(US Supreme Court Justice Earl Warren 1964)



*“We are what we repeatedly do.
Excellence, then is not an act, but a habit.”*

–Aristotle



Thank you for attending!



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ATTORNEYS AT LAW