Understanding Public Service Ethics Laws & Principles: AB 1234 Training

League of California Cities Mayors and Council Members Academy

Friday, January 26, 2024, 10:15 am



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 Melissa
Kuehne
(mkuehne@cailg.org) with questions
or concerns



ILG IS NONPROFIT, NONPARTISAN & HERE TO HELP

- ILG is the nonprofit 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









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 Training

January 26, 2024

About Us





Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm's attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients' interests at every turn. BBK is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

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Presenter





Frank Splendorio

Partner frank.splendorio@bbklaw.com (916) 551-2086

Best Best & Krieger LLP Of Counsel Frank A. Splendorio is a seasoned Municipal Law attorney who provides city attorney services and advice to public agencies. As city attorney, Frank provides advice on governance issues, such as Brown Act and California Public Records Act compliance, and on some of the most challenging issues California cities are facing today.

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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





FOR IMMEDIATE RELEASE June 22, 2022

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FOR FURTHER INFORMATION
CONTACT:
lay Wierenga EPPC

Jay Wierenga, FPPC (916) 322-7761

New report ranks FPPC among the best States in campaign finance laws

The Fair Political Practices Commission (FPPC), California's governmental ethics and campaign disclosure agency, is ranked among the nation's best in a newly released report ranking all state campaign finance and political ethics agencies.

The Coalition for Integrity (C4I) just released its first-ever, 2022 State Campaign Finance Index, which rates states on factors including strength of campaign finance laws, transparency, and requirements for disclosure in political advertising and campaign finance.

The 2022 Index ranks California (the FPPC) second, slightly behind Washington. The C4I Index gives California a score of 80.95, with Washington at 83.99. The methodology can be found in the full report, linked below.



The State Campaign Finance Index 2022

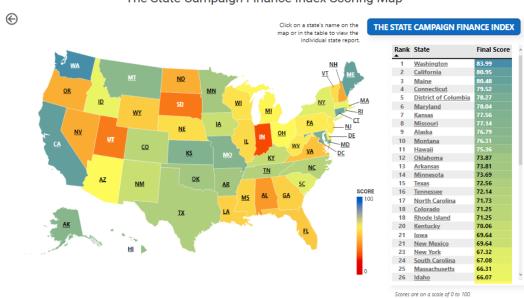
The State Campaign Finance Index 2022 analyzes the laws of 50 states and the District of Columbia relating to the scope, independence, and powers of state agencies which regulate campaign finance, as well as each state's laws on campaign coordination, campaign contributions, disclosure of those contributions, requirements for transparency of funding of independent expenditures and political advertisements, and the availability of campaign finance information. The Index focuses on laws pertaining to state executive and legislative races.

The State Campaign Finance Index 2022

June 21, 2022

Jump to: Recommendations & Major Findings | Rubric & Rankings | Full Report | Resources & Downloads

The State Campaign Finance Index Scoring Map





Personal Financial Interests

Conflict Laws Focus on Personal Financial Interests



Political Reform Act

Decisions of Government Entities,

Officers and Employees

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

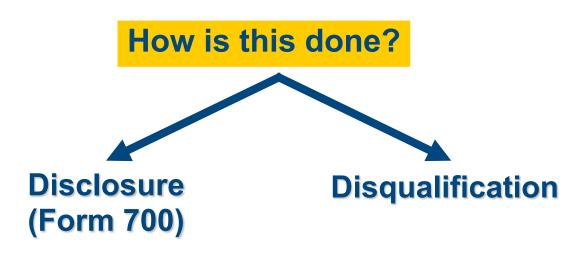


Political Reform Act of 1974 (Gov. Code § 87100, et seq.)



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





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



STATEMENT OF ECONOMIC INTERESTS COVER PAGE

Date Received
Official Use Only

Official Use Only



Please type or print in ink.

NAME OF FILER (LAST) (FIRST)

l. 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:
Jurisdiction of Office (Check at least one box)	
☐ State	Judge or Court Commissioner (Statewide Jurisdiction)
Multi-County	County of
City of	Other
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/, through December 31, 2012.	O The period covered is January 1, 2012, through the date of leaving office.
Assuming Office: Date assumed	The period covered is/
Candidate: Election year and office sought, if	different than Part 1:
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 intere	sts on any schedule
Verification	
Verification MALING ADDRESS STREET CITY (Business or Agency Address Recommended - Public Document)	STATE ZIP CODE
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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



General Rule

Public officials shall not:

- make,
- participate in making, or
- attempt to use the official's position to influence
- a governmental decision in which they have a financial interest and which the official knows or has reason to know the official has such financial interest.





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)



What is your role in the governmental decision?

- Making: authorizing, directing, voting on, appointing a person, or committing the agency to any course of action.
- Participating in Making: providing info, opinions, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- Attempting to Influence: (1) contacting any official in the agency for the purpose of affecting a decision, or (2) contacting an official in another agency in our capacity as an official or on behalf of your agency to affect a decision.



Types of Economic Interests:

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





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?





- Reasonably foreseeable "Realistic possibility" (and more than hypothetical or theoretical)
- Material Check FPPC standards (e.g., decision of something within 500 feet of real property owned will be presumed material absent exceptions)
- Public generally exception Affects (1) 25% of properties, businesses, or individuals in the City (and 15% for primary residential property), and (2) no unique effect on public official
- Other exceptions e.g., rule of necessity for quorum to do business, speaking as a member of the public on an item of personal interest, public services and utilities, general fee or charges, limited neighborhood effects (e.g., on-street parking, traffic controls, etc.)



HYPO:

A city councilmember is going to vote to award a construction contract for a facility to a company who employs his sister's husband (brother-in-law) in a top executive position.

Can the councilmember vote on the decision to award the contract?





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 relationship is not enough to create a conflict.





HYPO:

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

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





Answer: Most Likely, No.

An official who has an financial interest of \$2,000 or more in real property is presumed to have a conflict in any matter affecting real property located within 500 feet of the property line of the official's property, and may not vote on the matter unless there would be no measurable impact to the property.





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 in their official capacity

Then:

- Contract is VOID
- Penalties Apply



Self-Dealing

Consultants & Independent Contractors May be "Public Officials"



- GC 1090 applies to officials, officers, and employees.
- The California Supreme Court has clarified that an outside consultant can be considered an "officer" under the law when that consultant acts in an advisory role similar to formal officers or has been entrusted to engage or advise on public contracting (e.g., prepare RFP's/RFQ's) on the government's behalf.

Financial Interest in Public Contracts Elected Official Scenario



• **Facts**: A City Council member owns a 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 Elected Official Scenario



- Holding: 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.

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Financial Interest in Public Contracts Employee Scenario



- Facts: A city staff member wants to contract to sell a unique device that he invented to the city's fire department. The decision would be made by the city manager without any input from the employee.
- Question: May the contract be made?



Financial Interest in Public Contracts Employee Scenario



Answer: Yes, if he

discloses his interest and

<u>disqualifies</u> himself from participating in, or influencing the decision making process.

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Financial Interest in Public Contracts Contract Defined





- Use general contract principles: mutual assent and consideration!
- Examples:
 - Construction contracts
 - Purchases
 - Development agreements
 - Civil service appointments
 - Grants and donations

Financial Interest in Public Contracts "Making" the Contract



"Making" includes:



- Preliminary Discussions,
- Negotiations,
- Compromises,
- Reasoning,
- Planning,
- Drawing of Plans and Specifications, and
- Solicitation for Bids.
- 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
- 17 Exceptions, including:
 - Employees, in certain cases
 - Suppliers, in certain cases



THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY

Financial Interest in Public Contracts Non-Interest Exceptions - § 1091.5(a)



- 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





THESE ARE FACT-SPECIFIC - CHECK WITH YOUR ATTORNEY

Financial Interest in Public Contracts Limited Rule of Necessity



- Permits a public body when it 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: Public official owns the only mortuary within 500 miles and the public agency needs to contract with a mortuary.
- Rule of Necessity allows the official 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





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Personal Financial Interests "Revolving Door"



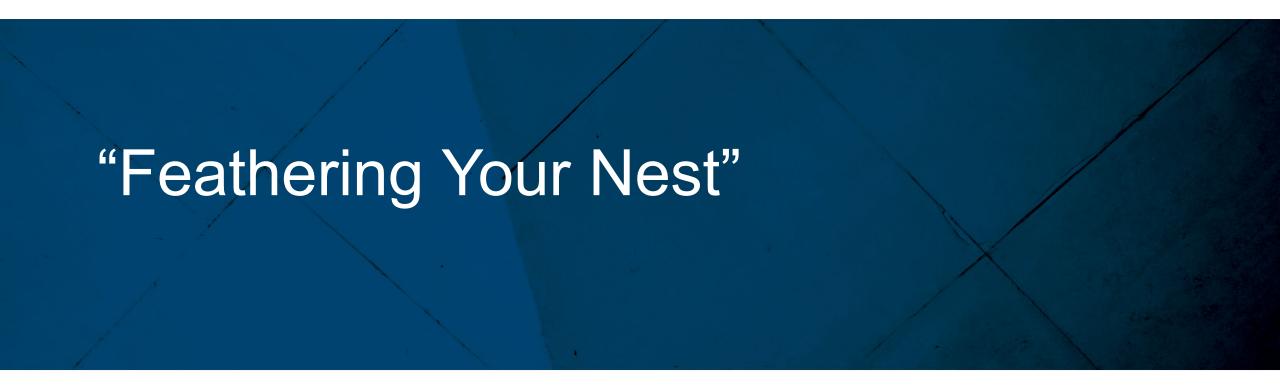
AFTER LEAVING OFFICE:

Elected Official & Manager

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







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.







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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.

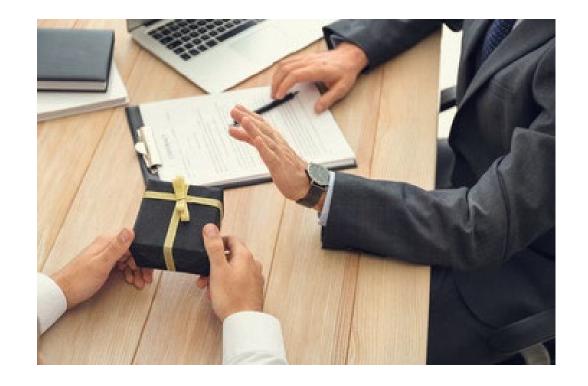


Difference between a Gift or Political Contribution and a Bribe



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



Disclose \$50+ Disqualify \$590/12mos.

Refuse \$590+

- Bottom Line: Watch your calendar
- Estimate
- Track
- If Gift Exceeds Limit: Return, Pay or Donate

Personal Advantages and Perks Common Exceptions



- 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

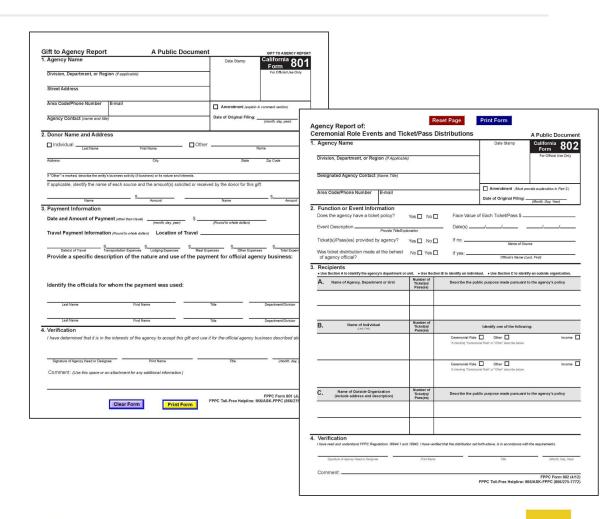


Gift to Agencies: Form 801

 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 Costs for Agency Busineess (Form 801)



- 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 (Form 802)



- FPPC adopted Regulation 18944.1 regulating tickets or passes distributed by a public agency to officials or employees
- 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 members of the official's immediate family or no more than one guest
 - Prohibition against disproportionate use of tickets or passes by certain officials
- Ticket distribution must be recorded on form provided by the FPPC and forwarded to the FPPC for posting on its website

Behested Payments: Form 803



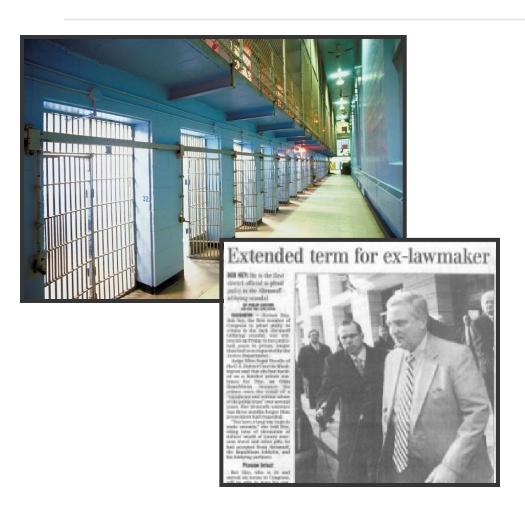
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	Elected Officer or CPUC Member (Last name, First name)		Date Stamp	California 803	
	Agency Name				For Official Use Only
	Agency Street Address				
	Designated Contact Person (Name and title, if different)			_	
				Amendment (See Part 5)	
	Area Code/Phone Number	E-mail (Optional)		Date of Original Filing:	(month, day, year)
	Payor Information (For additional payors, include an attachment with the names and addresses.)				
	ame				
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	Payee Information (For additional payees, include an attachment with the names and addresses.)				
	Name				
	Address	City	,	State	Zip Code
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	trief Description of In-Kind Payment:				
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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.

Personal Advantages and Perks Gifts Limit Ramifications





- 1. FPPC civil action
- 2. Penalty: 3 times the amount of the gift
- 3. \$5,000 fine
- 4. 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 Rules of the Road





- Acceptance of passes or discounts from transportation companies is prohibited.
- Travel may be subject to gift limits. Evaluate on a case-by-case basis – source, purpose.
- Travel paid by using agency funds is totally exempt from limits and disclosure if for agency business.



Personal Advantages and Perks Loans / Reimbursements / Nepotism





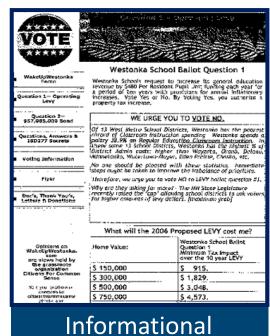
- Personal Loans
- Mass Mailings (special rules)
- Nepotism (Agency Policy)

Personal Advantages and Perks Misuse of Public Funds









Informationa Materials



Transparency Laws

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

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Spirit of the Law





"Tuesday's City Council meeting provided a rare opportunity to look behind the curtain as the council debated, sometimes hotly, aspects of the state's open-meeting law and who broke it.

It also showed that the city government needs a new culture of transparency — its priorities at the moment are backward."

Real Newspaper quote somewhere

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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?
- 2. When is a meeting <u>not</u> a meeting?

Transparency Laws The Brown Act – Serial Meetings



SERIAL MEETINGS

Use of:

- direct communication;
- intermediaries; or
- technology

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

to develop a collective

concurrence outside of a meeting is expressly prohibited.

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 about agency business
 - 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 – Recent Legislation



- Teleconferencing
 - AB 361 (2021)
 - AB 2449 (2022)
 - AB 557 (2023)

- Disruption of Meetings
 - SB 1100 (2022)
- Distribution of Writings
 - AB 2647 (2022)

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



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





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





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





SB 272 - The California Public Records Act: Local Agencies: Inventory. Each local agency, except an educational agency, is now required to create a catalog of enterprise systems, make the catalog publicly available upon request, and post the catalog on the agency's Website.

The catalog is to list the following information:

- Current system vendor.
- Current system product.
- 3. A brief statement of the system's purpose.
- 4. A general description of categories or types of data.
- 5. The department that serves as the system's primary custodian.
- 6. How frequently system data is collected.
- 7. How frequently system data is updated.

EXEMPT: IT security systems, video monitoring systems, systems used for 911 dispatch and emergency services, etc.



Best Practices

- Always respond to requests
- Adopt a policy / procedures
- Develop standardized fees





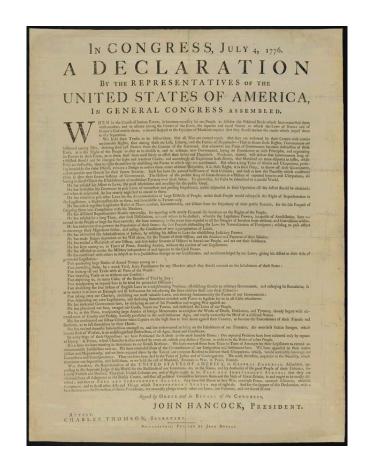


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Fair Process



- 1. Due Process
- 2. Bias
- 3. Competitive Bidding
- 4. Incompatible Offices
- 5. Incompatible Activities







The Outh of Allegiance

Therefore decision on code, that is obtained a and attention translate and objects all differences and following to any promps the production of the control of the control

What does Due Process mean?

- Notice
- Opportunity to be heard
- Fair and impartial decision-maker

"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 Conflict of Interest Often Relates to Fair Process



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



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."

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"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."







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)).



HYPO:

The adult child of a Councilmember has sued the City 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?

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- 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



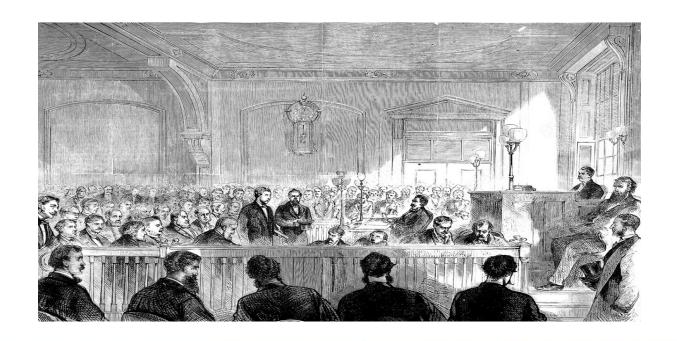
HYPO:

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.



Any Due Process concerns?

Can Councilmember Smith participate in the decision by the Council?





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 Campaign Finances



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

- Due to recent legislation (SB 1439) the answer is now YES
- Levine Act (Gov. Code § 84308)
- Proceedings involving entitlements, licenses,
 permits (land use permits, franchise, zoning variances,
 consulting contracts)

Fair Process Best Practices for Decision-Makers



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



"Of course we'll make a decision ... once we have considered the 5243 factors."

Conclusion Finding Your Way – Ethics Laws



Summary of 4 Major Areas

Personal Financial Interest

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

Personal Advantages & Perks

- 1. Gifts
- Honoraria
- 3. Travel/Lodging Expenses
- 4. Loans
- Mass Mailings
- 6. Misuse of Public Funds
- 7. Nepotism

Transparency Laws

- 1. Brown Act
- Public Records Act

Fair Process

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

Ethics Laws

BBK BEST BEST & KRIEGER LLP ATTORNEYS AT LAW

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





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