AB 1234 Training

League of California Cities Annual Conference
Wednesday, October 16, 2019
About the Institute for Local Government

ILG is the non-profit training and education affiliate of...
What Does ILG Do?
Promoting good government at the local level

Program Areas
- Leadership & Governance
- Sustainable Communities
- Public Engagement
- Youth & Civics Education

Services
- Education & Training
- Technical Assistance
- Capacity Building
- Convening
KEEPING YOUR HANDS CLEAN AND YOUR DECISIONS TRANSPARENT:
A.B. 1234 TRAINING FOR PUBLIC OFFICIALS

LEAGUE OF CALIFORNIA CITIES
Gregory Murphy is a partner in Burke's Los Angeles office. Mr. Murphy is a trusted advisor, counselor, and transactional attorney for public entities throughout California.
ETHICS 102
AB 1234 FOR THE ADVANCED STUDENT
NOT A SENIOR SEMINAR;
BUT NOT YOUR FRESHMAN LECTURE HALL
WHY IS ETHICS TRAINING NEEDED FBORA

Bell: ‘Corruption on Steroids’

Former Member of Moreno Valley City Council Agrees to Plead Guilty to Federal Bribery Charge for Taking $2.3 Million Cash Payment

Former Vernon official pleads guilty to illegally using public money

Villaraigosa to pay $123,500 in fines for ethics violations

UPDATED: Six Jailed in $43 Million Beaumont Public Corruption Case

The district attorney outlined an alleged public corruption scheme dating back to the early 1990s.
The public expects local officials to act ethically, whether or not doing so is required by law.

“When a man assumes a public trust, he should consider himself as public property.”

- Thomas Jefferson
• We will cover legal requirements & general ethical principles
• There is a lot of law to digest in one session...so be SAFE:
  – Spot the Issues
  – Ask for Help
  – Focus on more than just the law
  – Exercise Ethics in Practice
• Three Types of Ethics Laws:
  1. Personal Advantages and Perks
  2. Governmental Transparency
  3. Conflicts of Interest & Fairness of Process
  4. Ethics in Practice
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

- **Rule:** No elected office holder, candidate or designated employee of a local agency may accept any gift or gifts from a single source aggregating in excess of $470 in a calendar year. (Gov’t Code § 89503)
  - Gift limit is adjusted annually.
  - Gifts aggregating $50+ must be disclosed on Form 700.
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

- Don’t forget local agency rules and codes
  - City charters
  - Ordinances
  - Local conflicts of interest rules
- Sometimes more restrictive than State law
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

• “Gifts” defined:
  - Includes any benefit for which the official does not provide goods or services of equal or greater value in return.
  - Gifts include money, goods, services, activities, meals, tickets, rebates, discounts and travel.
  - A gift is received when you take possession of it or exercise control over it, including discarding it or re-gifting.
In 2012, the regulations added new exemptions, including:

- Reciprocal gifts between friends.
- Bona fide prize winnings.
- Wedding & similar party favors.
- Bereavement gifts.
- Neighborly gestures.

**Exception** - Beware of anything from a lobbyist.
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

- Watch out for indirect gifts given to a family member:
  - If the official will financially benefit, use or control the gift, and/or
  - The donor has no established relationship with the family member,
  - Then the gift may be considered a gift to the official. (Reg. 18943).
• Options when you receive a gift over $50:
  – Decide if you want to report it on your Form 700.
  – If not, then within 30 days:
    • Reimburse the donor for the fair market value,
    • Return the gift unused, or
    • Donate the gift to charity (no tax deductions).
  – If the gift exceeds $470, you have a duty to reject it.
    • Or “buy down” the value.
● Some Gifts are Considered Gifts to the Agency:
  - If a gift that benefits an official may only be used for official business, and
  - The Agency controls the gift.
  - Then it will be reportable as a gift to the Agency, not the official.
  - Use a Form 801 rather than a Form 700.
  - Post the form on agency website.
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

- Many rules regarding free tickets or passes:
  - Some are not reportable:
    - When given to perform an official / ceremonial role.
    - When not used by the official or anyone else.
  - Some are Gifts: Reportable on Form 700 when provided directly to an official who has no official role in the event.
  - Some are Gifts to the Agency: Reportable on Form 802 when provided to the agency and then given to an official based on an unbiased agency ticket distribution policy.
Consequences:
- Disqualification from decisions that may affect sources of gifts.
- Criminal or civil sanctions
- Administrative fines.
PERSONAL ADVANTAGES & PERKS: GIFT RESTRICTIONS

• Don’t become another headline:

Villaraigosa Ethics Fine: Record Punishment Recommended After Mayor Accepts Free Tickets
Rule: No elected official, candidate or designated employee of a local agency may accept any honorarium. (Gov’t Code § 89502)

- "Honorarium" – a payment for a speech, article, or attendance, from source other than your employer.
- Exception - earned income in private capacity.
PERSONAL ADVANTAGES & PERKS: HONORARIA BAN

• Exceptions
  – Items of nominal value – pens, etc.
  – Money received and donated to the agency general fund within 30 days (without claiming an income tax deduction)
  – Money donated to a bona fide charitable or other tax-exempt organization (and not a condition of speaking or attending)
An elected official who fundraises or solicits payments to be given to another individual or organization may be required to report the payment.

- May cover an honorarium if the official directs the honorarium to a specific organization

- File Form 803
A payment is considered "behested" and subject to reporting if:

- it is made at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination or concert with the public official;
- it is made for a legislative, governmental or charitable purpose; and
- it does not qualify as a gift (made for personal purposes), or a contribution (made for election-related activity) to the elected official.
Rule: No public officer shall accept a free pass or discount from a transportation company. (Cal. Const. Art. XII, § 7)

- Applies to:
  - Transportation received anywhere.
  - Both personal and business uses.
  - Elected and appointed officials, not employees.

Consequences: Forfeiture of office.
PERSONAL ADVANTAGES & PERKS: MASS MAILING RESTRICTIONS

- **Rule:** No mass mailing prepared or mailed at public expense shall feature an incumbent elected officer affiliated with the agency. (Gov’t Code §89001)
  - Use caution when sending out 200+ mailings per month that contain an elected official’s name, office, pictures, or other reference.
PERSONAL ADVANTAGES & PERKS: MASS MAILING RESTRICTIONS

• Purpose:
  – To conserve limited public funds and
  – To avoid arbitrary preference of a candidate over another by reason of incumbency.

• Consequences: Criminal and civil sanctions, and fines up to $5,000 per violation and attorneys fees.
PERSONAL ADVANTAGES & PERKS: MASS MAILING RESTRICTIONS

• Don’t become another headline:

Orange Cove faces fine over mailer

Full story: www.fresnobee.com

Mayor, city accused of misusing taxpayer funds.

11:42 PM, Tuesday, Dec. 15, 2009
By Chris Collins / Fresno Bee

The city of Orange Cove and its longtime mayor, Victor Lopez, each face possible fines amid accusations that they broke a state law prohibiting the use of taxpayer funds to mail campaign material to voters.
PERSONAL ADVANTAGES & PERKS: GIFTS OF PUBLIC FUNDS

- **Rule:** All expenditures of public funds must be for a public purpose. (Cal. Const. Art XVI, § 6)

- **Test:**
  - Is the expenditure for a public purpose?
  - Does it advance the agency’s purpose?
PERSONAL ADVANTAGES & PERKS: MISUSE OF PUBLIC RESOURCES

- **Rule**: No local officer, appointee, employee, or consultant shall use or permit others to use public resources for campaign, personal, or other unauthorized purpose. (Gov’t Code 8314; Penal Code § 424)
PERSONAL ADVANTAGES & PERKS: MISUSE OF PUBLIC RESOURCES

- Application:
  - “Personal or unauthorized purpose” means personal enjoyment, private gain or advantage, or an outside endeavor not related to official business.
  - “Public resources” includes land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and government-compensated time.
San Bernardino County Fire Chief faces discipline for improper use of equipment

By Joe Nelson, Staff Writer
Publication: San Bernardino County Sun (California)
Date: Tuesday, August 11 2009

San Bernardino County Fire Chief Pat Dennen will take punitive unpaid administrative leave for assisting Deputy Chief Dan Wurl move to Wurl’s new home on county time and with a county vehicle, officials said Tuesday.

Dennen is expected to go on leave for about two weeks when he returns from
If a public official or employee is convicted of abuse of public office, they must reimburse the Agency for certain funds. (Gov’t Code § 53243 et seq.)

- Reimbursable funds include paid leave, defense costs, and cash settlements for termination.
- Abuse of office includes bribes, waste, fraud, and violation of the law under color of authority, among others.
PERSONAL ADVANTAGES & PERKS: EXPENSE REIMBURSEMENT

• Rule: Where an agency reimburses officials for actual and necessary expenses:
  – Officials must timely submit expense reports on agency forms (with receipts);
  – Officials must make an oral report at next regular meeting of their attendance at Brown Act “meetings” at the agency’s expense. (Gov’t Code 53232.)

NO PER DIEMS ALLOWED!!!+
Rule: A public agent, upon taking office, leaving office, and annually must file a statement (Form 700) disclosing:
- Income (if $500),
- Investments,
- Interests in real property (except personal residence),
- Business positions, and
- Gifts (if $50) (Gov. Code 87200)
CalPERS board member Priya Mathur is fined $4,000

California’s Fair Political Practices Commission increases a $3,000 fine against Mathur, saying she evaded efforts to reach her over a missed financial filing.

May 14, 2010 | By Marc Lifsher, Los Angeles Times

Reporting from Sacramento — The state’s political watchdog panel fined public pension board member Priya Mathur $4,000 for not submitting a required statement of economic interests on time, and state Treasurer Bill Lockyer proposed that directors be barred from carrying out their official duties if they fail to file financial disclosure papers.
Brown Act: All meetings of a legislative body of a local agency shall be open and public, unless an exception applies. (Gov’t Code § 54950 et seq.)

- **Purpose:** Conduct the people’s business in the open; give public access to decision making.
“Meeting” - any congregation of a majority of legislative body members at the same time and place to hear, discuss, or deliberate upon an item within its jurisdiction.

- Includes:
  - any use of direct communication, personal intermediaries, or technological devices
  - employed by a majority of the members of the legislative body
  - to develop a collective concurrence
What is not a meeting?

Attendance by a majority at:

- a meeting of another body of their local agency or another local agency (e.g., County Supervisors);
- an open and publicized meeting organized by a person or organization other than the local agency to address a topic of local community concern (e.g., Chamber of Commerce);
- a conference or similar gathering (e.g., League of Cities);

PROVIDED:

a majority of the members do not discuss among themselves, other than as part of the scheduled program, agency business.
What is not a meeting? (cont.)

Attendance by a majority at:

- a purely social or ceremonial occasion;
- attendance by a majority at an open and noticed meeting of a standing committee of that body;

Provided:

that a majority of members do not discuss agency business (and in the case of a standing committee attend only as observers).
GOVERNMENT TRANSPARENCY LAWS: BROWN ACT

What is not a meeting? (cont.)

Individual contacts or conversations
Conducting a Lawful Meeting:

- Agenda Requirements:
  - Include a brief general description of matters to be discussed.
  - Post 72 hours before regular meetings.
  - Post 24 hours before special meetings.
  - Post in an accessible location and on the agency’s website.
Limit Discussion at Meetings:
- Council may only discuss agendized matters.
- Allow for public comment on:
  • Agenda items, and
  • Any item within Agency’s jurisdiction.
Action or discussion on non-agendized items is generally prohibited. Members may only:

- Briefly respond to public statements or questions,
- Ask a question for clarification,
- Make a brief announcement,
- Make a brief report on his or her activities,
- Provide a reference to staff or other sources for factual information, or
- Request staff to report back to the legislative body in a subsequent meeting.

The legislative body may direct staff to place the matter on a future agenda. § 54954.2(a)(2)
GOVERNMENT TRANSPARENCY LAWS:
BROWN ACT

• Don’t become another headline:

Judge Rules L.A. Planners Hid Environment Reports, Violated Brown Act

By Peter B. Matuszak
Daily Journal Staff Writer

LOS ANGELES — Open government advocates won a victory last week when a judge ruled that the city’s practice of using internal city codes to disguise key environmental matters before the Planning Commission was illegal.

Los Angeles County Superior Court Judge David Yaffe ruled in favor of public interest attorney Robert Silverstein on Oct. 6, finding that the city had repeatedly violated the Brown Act, the state’s open government law, by not clearly disclosing when commissioners were deciding whether to approve environmental reports for new developments mandated by the California Environmental Quality Act.

“The evidence before the court, which is uncontradicted, shows that the City Planning Commission of the City of Los Angeles repeatedly posted agenda items on its meetings during the year 2007 that clearly disclosed each action that it intended to take or discuss at a meeting except actions to be taken or considered under the California Environmental Quality Act,” Yaffe wrote. La Mirada Avenue Neighborhood Assn. v. Los Angeles, BS108652 (L.A. Super. Ct., filed March 30, 2007).

The judge pointed out that all other items on at least six Planning Commission agendas were spelled out in simple understandable terms but that environmental matters to be taken up under CEQA were only mentioned in “a cryptic reference like the following ‘CEQA: ENV-2005-7720 EIR.”

“Such cryptic references are meaningless to most members of the public... Such descriptions not only violate the Edmund M. Brown Act, but they also violate the fundamental purposes of CEQA,” he wrote.

The ruling will force the city to change how it informs the public about pending environmental and land use decisions. The order enjoined the Planning Commission from taking any actions under CEQA that are not “described with clarity, particularity and in detail,” understandable to the general public.

The ruling will not stop any current projects, including the Paseo Plaza, which the suit was originally filed against. The preservationists who opposed the mixed-use project have settled their grievances with the developer, who agreed to pay into a fund that will be used to fix potential traffic problems. The plan calls for 437 residential units and 577,000 square feet of commercial space to be built near the corner of Santa Monica Boulevard and Western Avenue.

Despite the agreements, Silverstein continued to pursue See Page 4 — L.A., “It has now become a lawsuit to vindicate the public’s right to a transparent government,” said attorney Robert Silverstein.
Government Transparency: Public Records Act

- Rule: Public records maintained by a local agency in any form are subject to public inspection and/or copying, unless a specific exception applies. (Gov’t Code § 6250 et seq.)
  - Purpose: Ensure public access to info concerning the conduct of the people’s business.
GOVERNMENT TRANSPARENCY: PUBLIC RECORDS ACT

• “Public Record” – 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 characteristic. (Gov’t Code §6252(e))
• Exceptions include:
  – Preliminary drafts not ordinarily retained,
  – Pending litigation,
  – Personnel, medical, or similar files,
  – Attorney-client privileged info, and
  – Catch-all (public interest balancing test).
GOVERNMENT TRANSPARENCY LAWS:
PUBLIC RECORDS ACT

• Don’t become another headline:

January 2009
Sixth District Court Upholds Attorney’s Fee Award in Action Brought Pursuant to California Public Records Act
Bernardi, et al. v. County of Monterey,
___Cal. App. 4th___
CONFLICTS OF INTEREST: CONTRACTUAL CONFLICTS

- **Rule**: Public officials are absolutely prohibited from having a financial interest in a contract made by them or their board. (Gov. Code §1090)
  - **Purpose**: Prohibits contractual self-dealing.
CONFLICTS OF INTEREST: CONTRACTUAL CONFLICTS

- **Application of § 1090:**
  - “Public officials” - Virtually all agency board members, officers, and employees.
  - “Financial interest” - One penny is enough.
  - “Absolutely prohibited” – the individual’s conflict extends to entire board and his/her participation is presumed.

- **Exceptions** - may apply under a “rule of necessity,” or if the financial interest is minor or remotely involved.
CONFLICTS OF INTEREST: CONTRACTUAL CONFLICTS

• To avoid §1090 Conflicts:
  – Be vigilant about how your financial interests may be involved in your agency’s contracts.
  – Consult your City Attorney as early as possible if there may be an issue.
  – Recognize that recusing yourself will not resolve the conflict.
Consequences of §1090 Violation:
- Contract is void and unenforceable.
- Official must return any money, but agency keeps the benefits received.
- Violation is a felony (if willful):
  - Fine,
  - Imprisonment, and
  - Disqualification from public office.
CONFLICTS OF INTEREST: FINANCIAL INTEREST

- **Rule**: “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, Gov’t Code § 87100)
CONFLICTS OF INTEREST: FINANCIAL INTEREST

Four Step Test to Identify Financial Conflict:

1. Is it reasonably foreseeable that the decision will have a financial effect on the official’s economic interests?
2. Will the effect be material?
3. If the effect indistinguishable from the effect on the public generally?
4. Is the official “making, participating in making, or attempting to influence” the decision?
What are the official’s financial interests?

- **Business**: (a) investment of more than $2,000 in a for-profit organization or (b) a business position.
- **Real Property**: equity or lease interest in real property worth more than $2,000.
- **Source of Income**: any source that provided or promises $500 or more in prior 12 months
- **Source of Gifts**: a person or business that gave gifts totaling $470 or more in prior 12 months.
- **Personal Finances**: expenses, income, assets, liabilities.
A financial effect is reasonably foreseeable if:

- The official’s economic interest is expressly involved, or
- The financial effect “is a realistic possibility and more than hypothetical or theoretical.”
CONFLICTS OF INTEREST: FINANCIAL INTEREST

- Materiality standards are complex . . . Consult with your City Attorney!
- Rule of Thumb: if the economic interest is expressly involved in the decision, then the impact is presumed to be material.
CONFLICTS OF INTEREST: FINANCIAL INTEREST

Making, participating in making, or influencing a governmental decision?

• Includes voting, providing advice, or using your position to influence a decision.
CONFLICTS OF INTEREST: FINANCIAL INTEREST

• If a Financial Conflict Exists the Official Must:
  – Publicly identify the financial interest,
  – Step down from participating in the decision, and state the reason,
  – Leave the room when matter is discussed, &
  – Confirm that the record reflects these actions.

• Exception: Participation in private capacity.
CONFLICTS OF INTEREST:
FINANCIAL INTEREST

• Don’t become another headline:
• **Rule**: “A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.”
  - Bans using an official position for private gain.
  - Regulates both financial and personal interests.
Remedy: The official is disqualified from participating in the discussion and from voting on the particular matter.

Consequences: A violation of the common law doctrine may result in:
- Unwinding of any transaction involved,
- Disgorgement of profit, and
- Damages, as well as costs and attorney’s fees.
• **Bribery Rule**: No officer or employee can ask for, receive, or agree to receive, any bribe, upon any agreement or understanding that they will take a particular action in their official capacity upon any pending or future matter. (Penal Code § 68)

• **Consequences**:
  - Imprisonment or fine,
  - Permanent loss of office
State files bribery charges in Postmus corruption case

2010-02-10 11:22:30

The following statement is from the California Attorney General’s Office.

Click here to read the related story.

SAN BERNARDINO • Attorney General Edmund G. Brown Jr. and San Bernardino County District Attorney Michael A. Ramos on Wednesday announced the filing of criminal charges against former Chairman of the San Bernardino County Board of Supervisors William Postmus and James Erwin, former Chief of Staff to Supervisor Neil Derry, on "conspiracy, corruption and bribery" charges related to a $102 million land-development settlement paid by San Bernardino County.
Revolving Door Rule: Certain local officials cannot appear before their former agency for 1 year. (Gov’t Code § 87406.3)

- “Appear” means act as a compensated agent or attorney for another.
- Rule applies to appearances made to influence the outcome of agency action.
• **Future Employment Rule:** Local officials are prohibited from participating in decisions involving prospective employers. (Gov’t Code § 87407)
FAIR PROCESS: INCOMPATIBLE OFFICES

- **Incompatible Offices Rule:** An official can not hold two public offices simultaneously if there is a potential conflict or responsibilities overlap. (Gov’t Code § 1099)
  - Example: City council and school board.
- **Consequence:** The official will be deemed to have forfeited the first office.
Public Projects – see Public Contract Code: Local Agency Public Construction Act OR Uniform Public Construction Cost Accounting Act

Other Purchases – See Agency’s Purchasing Policy
- E.g., supplies, equipment, professional services

Purpose
- Get the best deal for the agency’s money, &
- Ensure the process is fair, avoids favoritism.
Consequences:
- If contract is not awarded to the lowest responsible bidder, the agency may be liable for reimbursing the low bidder’s cost in submitting the bid (but not the lost profits).
A massive expansion of classroom technology has come to a grinding halt in Los Angeles. The LA Unified School District had planned to buy some 700,000 iPads for its students and teachers. The Apple tablets would include learning software built by publishing giant Pearson. But Superintendent John Deasy announced earlier this week he is canceling the contract and restarting the bidding process.

The decision comes on the heels of an investigation by NPR member station KPCC, which obtained emails between Deasy and tech executives that bring into question whether the initial bidding process was fair.
ESSENTIAL ETHICS FOR PUBLIC AGENCIES: SUMMARY

- Avoid the appearance of impropriety.
- Be aware of your financial interests.
- Use public funds for public purposes.
- Conduct the people’s business in the open.
- Use fair procedures when making decisions.
- Ask your attorney for help – sooner rather than later!
How can a public servant determine the “right thing” to do?
- Laws establish what the official must do.
- Ethics establish what the official should do.
When faced with a difficult issue, take an “ethical gut check.”

Ask yourself:
- Is the action legal?
- Is it consistent with my values?
- How will it look in the newspaper?
GENERAL ETHICAL PRINCIPLES

- Use your ethical compass to guide you:
  - When making unpopular decisions.
  - When choosing whether to conduct public business openly.
  - In balancing competing interests.
  - In evaluating how to use public resources.
  - When deciding whether to participate in decisions you are passionate about.
The sooner you speak to legal counsel the better, but remember...

- The City Attorney represents the City, not you personally.
- Reliance on advice from the City Attorney is not a defense if your actions result in a violation.
- Only a formal FPPC advice letter protects you from violations of FPPC regulations.
• California Attorney General  
  www.caag.state.ca.us  

• Fair Political Practices Commission  
  www.fppc.ca.gov  

• Institute for Local Government  
  http://www.ca-ilg.org/ethics-education-ab-1234-training  

• http://www.ca-ilg.org/ethics-law-information
ANY QUESTIONS?
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