How to Stay out of Trouble: Avoiding Council Chaos

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Today’s Discussion

- Is ripped from the headlines
- Only the names are changed to protect the innocent.

The story you have just heard is true. Only the names have been changed to protect the innocent.

- Jack Webb -
Scene One . . .
Jean is elected to City Council
What’s wrong with that?
“A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated to discharge their responsibilities with integrity and fidelity.”

City Council v. McKinley (1978) 80 Cal.App.3d 204, 213.)
Public Trust

Duty of loyalty to the City
- Act in the best interest of the City
- Do not put personal interests ahead of City’s interests.

- Conflict of Interests Laws
- Misuse of Public Resources
- Unlawful Compensation

Laws set minimum standards
Public Trust

• Duty to behave in a manner consistent with the public trust.

• Don’t: Clark v. City of Hermosa Beach
Power is vested in Council

• Individual Council members have no power
• Council may only act at a public meeting by a majority vote (the Brown Act)
Power to Direct City Manager

CITY ORGANIZATION CHART

RESIDENTS OF CITY

CITY COUNCIL

CITY ATTORNEY

CITY MANAGER

ADMINISTRATION & FINANCE

PUBLIC WORKS

PLANNING & BUILDING

PLANNING COMMISSION, PARK & REC COMMITTEE

PARKS DEPARTMENT
No Interference in Administrative Services

Example:

The City Council and its members shall deal with the administrative services of the City *only through the City Manager*, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager.
Scene Two . . .
What’s wrong with that?
Who's the client?

The client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.

California Rules of Professional Conduct, Rule 1.113(a);
Who’s the Client

While the city acts through its city council, its officers, and its employees, the individual actors do not establish an attorney-client relationship with the city attorney.

Ward v. Superior Court (1977) 70 Cal. App. 3d 23
The City is the Client

- The City is the client acting through the highest officer, employee, or constituent part overseeing each particular.

- The highest decision maker is Council or City Manager depending on the issue.
Scene Three . . .

You only advise me and my friends!
What’s wrong with that?
Extortion

“Extortion is the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.”

Penal Code §518.
The Client is the City

The City Attorney represents the City and not individual Councilmembers.
Scene Four . . .

My Newsletter: I tell all!
What’s wrong with that?
The Client is the City

Communications between an attorney and client are confidential. The “client” holds the privilege to refuse to disclose the communication.

(Evid. Code sec. 952-954.)

The **Client is the City** and not an individual Councilmember.

Only the Council – as a body – can waive the privilege.
The Brown Act

“A person may not disclose confidential information that has been acquired by being present in a closed session authorized by [the Brown Act] unless the legislative body authorizes disclosure of that confidential information.”

Govt. Code section 54963
Violation is Official Misconduct

- Can enjoin official from disclosure
- Can refer to grand jury for indictment for misconduct
Scene Five . . .

You are just a pea-brained dumb jock who I’m going to get fired
What’s wrong with that?
City is an Employer

• Duty to employees to maintain a work environment free from harassment and bullying
• Employees can sue costing City $$
• It’s just bad government
Bullying is on the Rise

2021-2022 Censuring for bullying:
• Cypress
• South Lake Tahoe
• Laguna Beach
• San Bruno
• Hollister
• Flint
• Big Bear Lake
• Langley
Scene Six... Not on my watch!
What’s wrong with that?
Fair Process for Quasi-Judicial Proceedings

**Legislative Acts:**
Adopt rules of general application on basis of broad public policy

**Quasi-Judicial Acts:**
Determination and application of facts in a particular case
Quasi-Judicial Decisions

Decisions must be made:
  • Based on the evidence presented at hearing

Members:
  • Avoid ex parte contacts
  • May not prejudge specific facts
  • Must be free of prejudice against or for any party
  • Must refrain from advocacy
Scene Seven... Anything for my son
What’s wrong with that?
It’s likely criminal

- Conspiracy
- Bribery
- Fraud
Government Code section 1090

- Prohibits public officials and public employees from “making” public contracts in which they have a financial interest.
  - Direct and indirect interests
  - Includes preliminary discussions, planning and any action up to and including voting.
Thank you!

Additional questions?

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