

How to Build and Maintain the Public's Trust: Practical Ethics and the Law (AB 1234 Training)

**League of California Cities
New Mayors and Council Members Academy
February 1, 2019**



**The Institute for Local
Government**
**ILG is the non-profit
research and education
affiliate of**



**California Special
Districts Association**
Districts Stronger Together

ILG's Mission



- Promoting good government at the local level
- Practical, impartial and easy-to-use materials

How to Build and Maintain the Public's Trust: Practical Ethics and the Law (AB 1234 Training)

League of California Cities

New Mayors and Council Members Academy

February 1, 2019

Presented by:
Thomas Jex and Erica Vega
Burke, Williams & Sorensen, LLP



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Why is Ethics Training Needed?

Bell: “Corruption on Steroids”

Rizzo gets 12 years in prison

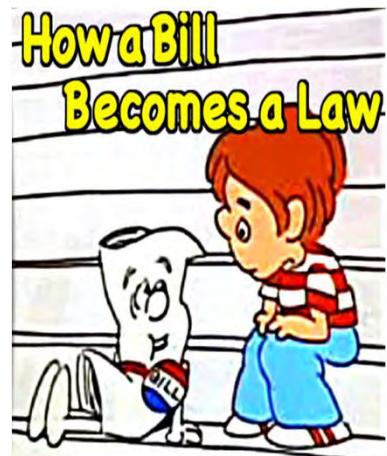
Former Vernon official pleads guilty
to illegally using public money

Former Vallejo official pleads guilty
to bribery charge

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AB 1234 – Ethics Training

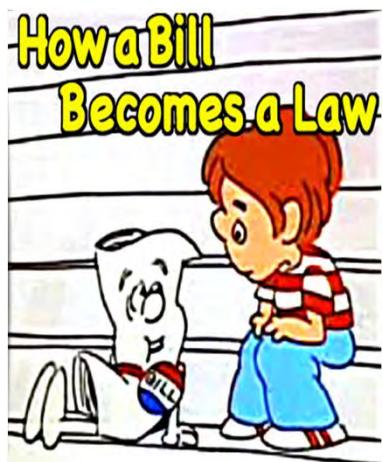
- In the wake of many reported political scandals, Legislature adopted AB 1234
- Requires mandatory ethics training for public servants



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AB 1234 – Ethics Training

- Local agency officials receive at least **two hours** of training every two years
- If you're new, must receive the training within the first year



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The Golden Rule

- The public expects local officials to act ethically, whether or not doing so is required by law.



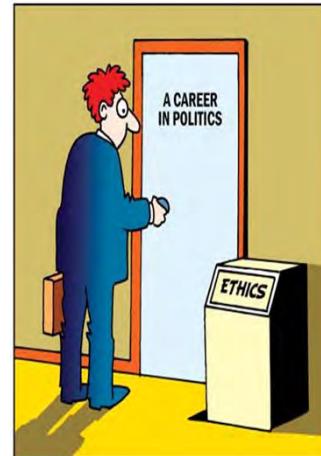
"When a man assumes a public trust, he should consider himself as public property."

— Thomas Jefferson

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The Golden Rule

- These rules are the minimum standard
- Universal Ethical Values such as trustworthiness, responsibility, loyalty and fairness



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Ethics Laws

1. Personal Financial Gain
2. Perks of Office
3. Government Transparency
4. Fair Process



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Goal of Training

There is a lot of law to digest in one session...so be **SAFE**:



- **S**pot the Issues
- **A**sk for Help
- **F**ocus on more than just the law
- **E**xercise Ethics in Practice

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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 \$500 in a calendar year.
 - Gift limit is adjusted annually.
 - Gifts aggregating \$50+ must be disclosed on Form 700.



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Gift Restrictions

- 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.



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Gift Restrictions

An Example

During 2019, different people from a consulting company take you to dinner at least two times per month.



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Gift Restrictions

- **Exemptions:**



- Reciprocal gifts between friends.
- Bona fide prize winnings.
- Wedding & similar party favors.
- Rebates/discounts offered to all.
- Neighborly gestures.

- **Exception** - Beware of anything from a lobbyist.

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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.



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Gift Restrictions

- **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 \$500, you have a duty to reject it.
 - Or “buy down” the value.



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Gift Restrictions

An Example

During 2019, several executives from your local solid waste hauling company take you to lunch many times and you take turns paying. You also go to a Dodger game (\$300). Near the end of the year, you are invited to play in a golf tournament and dinner event with one of them valued at \$350. You really want to go. What are your options?



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Gift Restrictions

- **Some Gifts are Considered Gifts to the Agency:**
 - If a gift that benefits an official is 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.

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Gift Restrictions

An Example

Local store donates iPad computers to the City. City Manager, per City policy, gives iPads to all Department Heads for work purposes. Is the value of the iPad reportable as a gift?



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Gift Restrictions

- **Free tickets or passes:**

- **Not Gifts:**

- When given to perform an official / ceremonial role or give a speech

- **Gifts:**

- Reportable on Form 700 when provided directly to an elected official who has no official role in the event.



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Gift Restrictions

- **Free tickets or passes:**

- **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.



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Gift Restrictions

- **Consequences:**

- Disqualification from decisions that may affect sources of gifts.
- Criminal or civil sanctions
- Administrative fines.



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Gift Restrictions

- Don't become another headline:

Villaraigosa Ethics Fine: Record Punishment Recommended After Mayor Accepts Free Tickets



By DON THOMPSON and MICHAEL R. BLOOD | 04/11/11 11:49 PM ET | AP

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Honoraria

- Elected officials cannot accept a payment for a speech, article, or attendance at a public or private conference, convention, meeting, social event, meal, or like gathering (an “honorarium”)

~~Speaking Fees~~

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Honoraria

- Exceptions:
 - Give to your agency
 - Trophy/plaque worth \$250 or less
 - Earned income in a bona fide profession
 - Free admission and meals / lodging
 - Campaign contribution
 - Charitable donation (not bequested, not in your name, and no tax deduction)



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Honoraria

An Example

You are being honored with a lifetime achievement award at an annual black tie fundraiser for a local nonprofit. You are given a plaque and make an acceptance speech. They announce that a scholarship fund is being created in your name.

Is there an honorarium?



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Travel Restrictions

- Elected and appointed officials cannot accept free or discounted travel **from a transportation company**.
- Consequence: Forfeiture of office.
- No violation if same deal is offered to the public.



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Mass Mailings

- No *mass mailing* (200+ items) prepared or mailed at public expense shall *feature* an elected officer affiliated with the agency.



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Mass Mailings

- “Feature” = photograph, signature or singles out the elected officer’s name or office in the layout of the document.
- Doesn’t apply to emails.
- Numerous exceptions



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Mass Mailings

- Don't become another headline:

Dec 16, 2009 | Posted by: thompson-Western Maverick

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.

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Gifts of Public Funds

Expenditures of public funds must be for a public purpose.

- **Test:**

- Is the expenditure for a public purpose?
- Does it advance the agency's purpose?



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Gifts of Public Funds

- Includes any financial aid (including credit) or any other “thing of value”
- Must be a reasonable basis for finding a public purpose exists.
- Incidental private benefit is okay



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Misuse of Public Resources

- Public resources cannot be used for campaign, personal or other unauthorized purpose.



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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.

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Abuse of Office

- Abuse of office = abuse of authority and crimes against public justice
- Conviction may result in reimbursement to agency
 - Retirement benefits
 - Defense costs
 - Termination payout



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Expense Reimbursement

- If an agency reimburses officials expenses:
 - Must timely submit expense reports with receipts;
 - Make an oral report at next regular meeting of attendance at Brown Act “meetings” at the agency’s expense.



NO PER DIEMS ALLOWED!!!

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CALIFORNIA FORM 700
STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Please type or print as applicable
NAME OR FIRM (LAST) _____ (FIRM) _____ (FIRM #) _____

1. Office, Agency, or Court
Agency Name (Do not use acronyms)
Offices: _____ Board: _____ Department: _____ District: _____ If applicable _____
_____ Vice-Chair _____ Chair _____ Position _____
If filing for multiple positions, list below on an attachment. (Do not use acronyms)

Agency _____ Position _____

2. Jurisdiction of Office (Check at least one box)
 City _____ County _____ Other _____
 City of _____ County of _____ Other _____

3. Type of Statement (check at least one box)
 Annual: The period covered is January 1, 2016, through December 31, 2016.
-or- The period covered is _____ through _____, coverage December 31, 2016.
 Assessing Officer: _____
 General: _____ (other specify, if different from Firm)
Total number of pages including this cover page: _____

4. Schedule Summary (must complete) • Total number of pages including this cover page: _____
Schedules attached
 Schedule K - Investments - corporate interests
 Schedule K-1 - Investments - personal interests
 Schedule K-2 - Real Property - corporate interests
-or-
 Annex - Non-reimbursable interests or drug purchases
 Schedules G - Income, Assets, & Business Positions - schedules attached
 Schedule H - Income - investment interests
 Schedule I - Income - gifts or Travel Payments - schedules attached

5. Verification
I, _____, declare under penalty of perjury under the laws of the State of California that the foregoing is true and accurate.
Date Signed: _____ Signature: _____
(Signature)
I, _____, declare under penalty of perjury under the laws of the State of California that the information contained herein and in any attached schedules is true and complete. I acknowledge that it is a public document.
I hereby waive penalties of perjury under the laws of the State of California that are imposed in this and related cases.

PPPC Form 700 (2016/2017)
PPPC Address Email: info@pppc.ca.gov
DPPC Toll-Free HelpLine: 866/256-5212 www.dppc.ca.gov

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Government Transparency: Economic Interest Disclosure

The image shows the California Form 700 Statement of Economic Interests Cover Page. It contains fields for the filer's name, address, and title; the office or agency they represent; and the date of filing. Section 2 asks about multiple offices. Section 3 asks about the type of statement (e.g., annual, transition, or leaving office). Section 4 is a schedule summary. Section 5 is a verification section where the filer certifies they have filed accurately and truthfully.

- **Political Reform Act:** Requires public officials, candidates and certain employees to disclose their financial interests.
 - **Purpose:** Avoid conflicts of interest by making the financial interests publicly available.

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Government Transparency: Economic Interest Disclosure

- **Rule:** A public agent, upon taking office, leaving office, and annually must file Form 700 disclosing:
 - Income (if $\geq \$500$),
 - Investments,
 - Interests in real property (except personal residence),
 - Business positions, and
 - Gifts (if $\geq \$50$)

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Government Transparency: Economic Interest Disclosure

- Don't become another headline:

Los Angeles Times | ARTICLE COLLECTIONS

← Back to Original Article

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.

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Government Transparency- The Brown Act



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The Brown Act

“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

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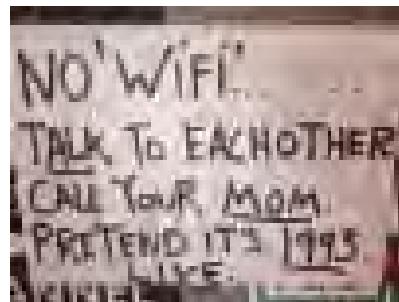
The Brown Act

- Meetings Defined:
 - A “**meeting**” is any gathering of a **majority** of the **members** of a legislative body at the same time and location to **hear, discuss, deliberate or take action** upon any item which is within its **subject matter jurisdiction**.

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The Brown Act

So, when can we talk to each other?



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The Brown Act



Individual contacts or conversations
Email or text message

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The Brown Act

A complicated item will be on the City Council agenda at an upcoming meeting. A few days before the meeting, the City Manager meets individually with all 5 Council Members to provide information and answer questions about the complex item.

- Is this OK?



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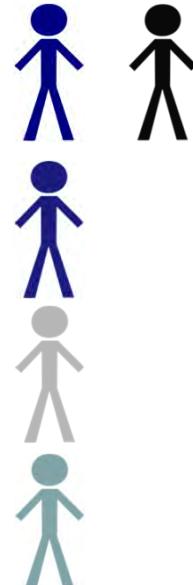
City Manager



Item on Agenda



Council Member



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The Brown Act

- Not a violation of Brown Act
- City Manager / staff member are not part of the legislative body
 - A “**meeting**” is any gathering of a **majority** of the **members** of a **legislative body** at the same time and location to **hear, discuss, deliberate or take action** upon any item which is within its **subject matter jurisdiction**.



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The Brown Act

- Meetings Distinguished:
 - Employees/officials may engage in “**separate conversations or communications**” outside of a meeting to “**answer questions or provide information,**” **so long as:**
 - That person “*does not communicate to members of the legislative body the comments or positions of any other member or members.*”

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The Brown Act

- Council member “A” talks to Council member “B” about a specific matter of City business. **OK so far?**
- Council member “A” then talks about the same specific matter of City business with Council member “C”, *but does not say anything about what Council member “B” said.*

Is this OK?



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Council Member “A”



Council Member “B”



Council Member “A”



Council Member “C”



← City Business →

Same City Business
But does not say anything
about what “B” said

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The Brown Act

- Meetings Distinguished:
 - Employees/officials may engage in “separate conversations or communications” outside of a meeting to “answer questions or provide information,” so long as:
 - That person “does not communicate to members of the legislative body the comments or positions of any other member or members.”



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The Brown Act

- Takeaway
 - Staff members can have separate conversations with a majority of Council – as long as staff doesn’t tell Council what the other Council members said.
 - One Council member can’t talk separately with two other Council members – even if the Council member doesn’t say anything about what the other two said.

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The Brown Act

- **Legal Challenges, Remedies and Penalties:**
 - Criminal Charges
 - Civil Action
 - Request to Cure
 - Invalidation
 - Costs and Attorney's Fees



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The 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 would be 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 agendas of 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 Assoc. 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-2006-7720-EIR.'

"Such cryptic references are meaningless to most members of the public ... Such descriptions not only violate the Ralph 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 detail," understandable to the general public.

The ruling will not stop any current projects, including the Paso 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 37,500 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.



ROBERT LEVINS / Daily Journal

"It has now become a lawsuit to vindicate the public's right to a transparent government," said attorney Robert Silverstein.

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Public Records Act

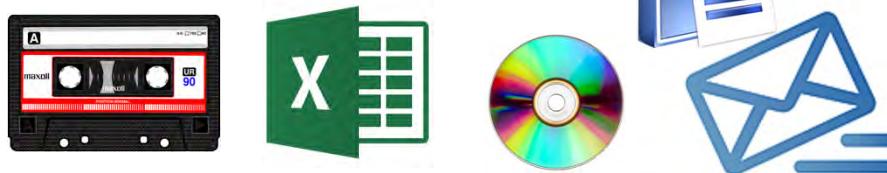
- Public records in the actual or constructive possession of an agency are subject to disclosure unless an exemption applies.



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Public Records Act

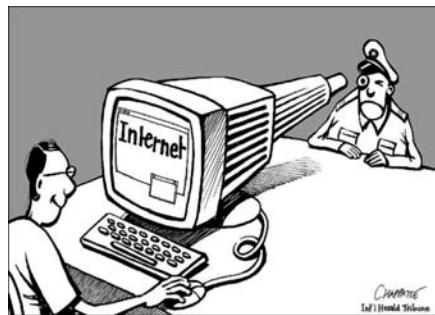
- **“Public Record”** – any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic.



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Public Records Act

- Emails and texts on private devices and accounts of public officials are public records if they pertain to public business.



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Public Records Act

- **Exceptions include:**
 - Preliminary drafts
 - Pending litigation
 - Personnel, medical, or similar files
 - Attorney-client privileged info
 - Catch-all (public interest balancing test)
 - Deliberative Process Privilege
 - Law enforcement records



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Public Records Act

- Your job – search or assist with search
- Inadequate search = violation
- Clerk / City Attorney will review for exemptions



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Public Records Act

- 10 days to provide initial response and assert any exemptions
- Extension of time up to 14 days in unusual circumstances
- Records provided “promptly”



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Public Records Act

An example:

Jane Doe requests all of the Mayor's emails related to a specific development project. The request is submitted on Friday, 12/23 and the Mayor and Clerk are on vacation until 1/2.

How should the Clerk handle this request?



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Contractual Conflicts of Interest:

- **Rule:** Public officials are absolutely prohibited from having a financial interest in a contract made by them or their board.
- [Government Code § 1090](#)
 - **Purpose:** Prohibits contractual self-dealing.



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Contractual Conflicts of Interest:

- **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.

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Contractual Conflicts of Interest:

- **Can’t serve two masters simultaneously**

Examples

- Council member owns a car dealership from which Council purchases City vehicles
- Council contracts with landscaping company owned by Council member

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Contractual Conflicts of Interest:

- **Can't serve two masters simultaneously**

Examples

➤ County supervisor sold his printing business to his son in return for a promissory note secured by the business. County printing contracts that were awarded to the son enhanced the security for the promissory note and therefore violated section 1090.

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Contractual Conflicts of Interest:

- **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.
 - Recognize that recusing yourself will not resolve the conflict.

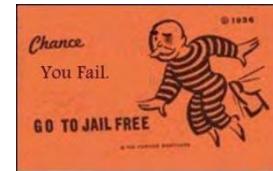


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Contractual Conflicts of Interest:

- **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
 - Lifetime bar from holding office in California.



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Conflicts of Interest: Financial Interests

- “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.”



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Conflicts of Interest: Financial Interests

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?



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Conflicts of Interest: Financial Interests

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 \$500 or more in prior 12 months.
- **Personal Finances:** expenses, income, assets, liabilities.



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Conflicts of Interest: Financial Interests

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."



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Conflicts of Interest: Financial Interests

- 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.



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Conflicts of Interest: Financial Interests

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

- Includes voting, providing advice, or using your position to influence a decision.



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Conflicts of Interest: Financial Interests

- **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.

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Conflicts of Interest: Financial Interest

- Don't become another headline:



Paul Wellman (file)
MAINTAINING INNOCENCE: Joni Gray admitted no wrongdoing to the state watchdog agency that docked her but paid the fine it was asking "in order to put this issue behind me."

Joni Gray's Gotta Pay

Former Supervisor Fined For Conflict of Interest

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Fair Process: Common Law Bias

- Even if no financial conflict under Political Reform Act or conflict due to a contract under Govt. 1090
- Through case law, Judges have created a common law conflict of interest



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Fair Process: Common Law Bias

- Public official must be fair, unbiased, impartial and objective
- You should not participate in decisions where your personal interests conflict with the public's interests



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Fair Process: Common Law Bias

- **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.

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Fair Process: Common Law Bias

- **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.

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Fair Process: Common Law Bias

Example

- Council member in Hermosa Beach rented an apartment with a great view
- Proposed development project would block view



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Fair Process: Common Law Bias

Example

- Council member participated in the decision on the project
- Court said Council member was not fair, impartial and objective



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Fair Process: Bribery

- **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.
- **Consequences:**
 - Imprisonment or fine,
 - Permanent loss of office



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Fair Process: Revolving Door Rule

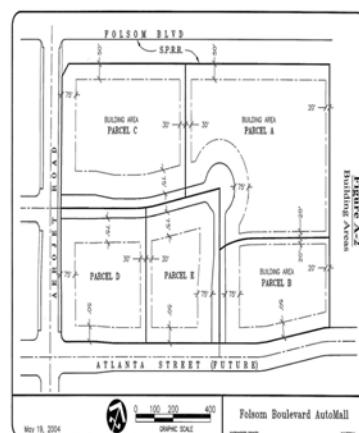
- **Revolving Door Rule:** Certain local officials cannot appear before their former agency for 1 year.
 - “Appear” means act as a compensated agent or attorney for another.
 - Rule applies to appearances made to influence the outcome of agency action.

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Fair Process: Revolving Door Rule

Example

- Six months after Council member is not re-elected, she is hired by a local developer to appear before the City Council at the public hearing on the project



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Fair Process: Future Employment

- **Future Employment Rule:** Local officials are prohibited from participating in decisions involving prospective employers.



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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.

FORFEITED

- **Consequence:** forfeiture of first office

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Fair Process: Competitive Bidding

- **Public Projects**
 - 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.



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Fair Process: Competitive Bidding

- **Consequences:**
 - If public works contract is not awarded to the lowest responsive, responsible bidder, the agency may be liable for reimbursing the low bidder's cost in submitting the bid.



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Fair Process: Competitive Bidding

The LA School iPad Scandal: What You Need To Know

By ANNIE GILBERTSON, *NPR*

August 27, 2014



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.*



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General Ethical Principles

- 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.



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General Ethical Principles

- 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?

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Final Thoughts

“Live so that you
wouldn’t be ashamed
to sell the family
parrot to the town
gossip.”

– Will Rogers



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