

Understanding Public Service Ethics Laws & Principles: AB 1234 Training

League of California Cities Mayors and Council
Members Academy

Friday, January 31, 2025



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@ca-
ilg.org](mailto:mkuehne@ca-ilg.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



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



BBK

BEST BEST & KRIEGER ^{LLP}
ATTORNEYS AT LAW

Ethics Training (AB 1234)

Cal Cities 2025 SoCal Mayors and Council Members Academy

Presenter



HongDao Nguyen

PARTNER

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HongDao Nguyen is a partner in the Municipal Law practice group of Best Best & Krieger LLP and assists public clients in transactional and litigation matters concerning municipal government. Recognizing that every city has its own political and cultural landscape, she helps municipalities navigate through a variety of legal issues that typically arise in the course of running a public agency, such as the Brown Act and the California Public Records Act. HongDao serves as city attorney to the cities of Artesia and Stanton, and assistant city attorney to the cities of Aliso Viejo, Lake Forest and Signal Hill.

About Us



12

OFFICES

250

ATTORNEYS

130+

YEARS OF SERVICE

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. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

Finding Your Way In Public Service



- **General ethics laws and principles**
- **Areas of ethics laws**
 1. Conflicts of interest
 2. Transparency Laws
 3. Fair Process
- **Hypotheticals**
- **Conclusion and Questions**

California Ethics Laws



Where?

- Statutes and Regulations
- National and State Constitutions
- City Policy

What?

- *Minimum* Legal Standards

Why?

- Power of Government
- Stewards of Tax Dollars
- Public Trust

Personal Financial Interests



1. Political Reform Act

- Disclosure
- Disqualification
- Campaigns

2. Contracts

- Gov. Code § 1090

3. Revolving Door

4. Decisions re Prospective Employer

5. Misuse of Public Funds

6. Bribery/Mail Fraud

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

Personal Financial Interests Political Reform Act of 1974



General Rule

Public officials shall not:

- **make**,
- **participate** in making, or
- attempt to **influence** a governmental decision in which they have a financial interest.

Personal Financial Interests Political Reform Act of 1974

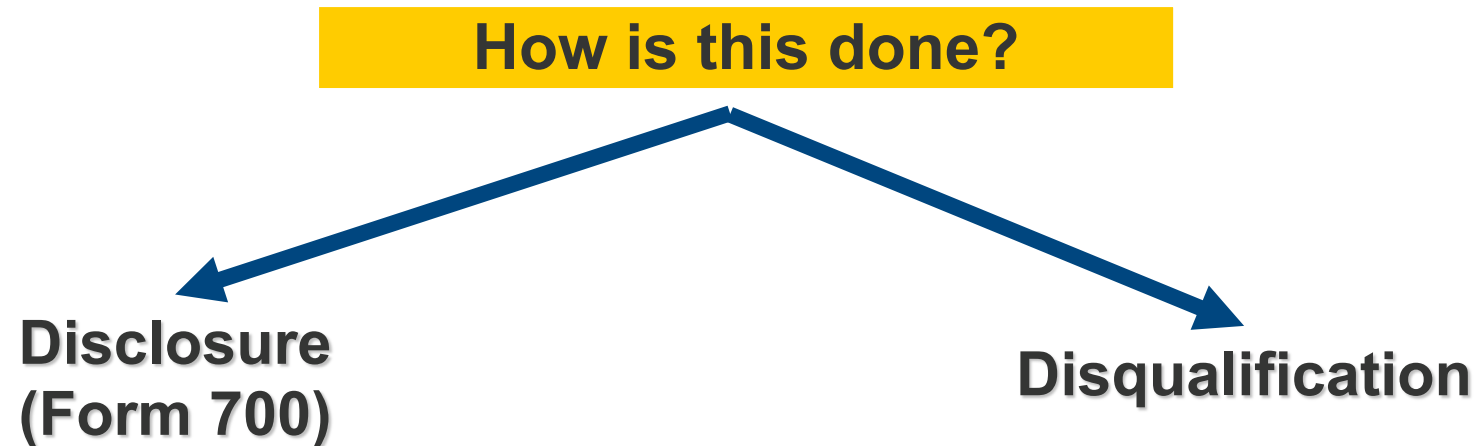


- WHO IS A PUBLIC OFFICIAL?
- A Public Official is every:
 - Member
 - Officer
 - Designated Employee
 - and certain Consultants of a State or Local Agency. (Gov. Code. sec. 82048)

Personal Financial Interests Political Reform Act of 1974



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



CALIFORNIA FORM 700
 FAIR POLITICAL PRACTICES COMMISSION
 A PUBLIC DOCUMENT

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Received _____
 Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

1. Office, Agency, or Court

Agency Name _____

Division, Board, Department, District, if applicable _____ Your Position _____

▶ If filing for multiple positions, list below or on an attachment.

Agency: _____ Position: _____

2. Jurisdiction of Office (Check at least one box)

☐ State
☐ Multi-County _____
☐ City of _____

☐ Judge or Court Commissioner (Statewide Jurisdiction)
☐ County of _____
☐ Other _____

3. Type of Statement (Check at least one box)

☒ **Annual:** The period covered is January 1, 2012, through December 31, 2012.
 -or-
 The period covered is ____/____/____ through December 31, 2012.
☒ **Assuming Office:** Date assumed ____/____/____
☐ **Candidate:** Election year _____ and office sought, if different than Part 1: _____

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

4. Schedule Summary

Check applicable schedules or "None." ▶ Total number of pages including this cover page: _____

☐ **Schedule A-1 - Investments** – schedule attached
☐ **Schedule A-2 - Investments** – schedule attached
☐ **Schedule B - Real Property** – schedule attached

☐ **Schedule C - Income, Loans, & Business Positions** – schedule attached
☐ **Schedule D - Income – Gifts** – schedule attached
☐ **Schedule E - Income – Gifts – Travel Payments** – schedule attached

-or-
☐ **None** - No reportable interests on any schedule

5. Verification

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

DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS (OPTIONAL)
 ()

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed _____
(month, day, year)

Signature _____
(File the originally signed statement with your filing official)

Clear Page

Print Form

FPPC Form 700 (2012/2013)
 FPPC Advice Email: advice@fppc.ca.gov
 FPPC Toll-Free Helpline: 866/275-3772 www.fppc.ca.gov

Personal Financial Interests Disclosure

Who?

•87200 Filer:

Elected Officials, Finance Directors,
City Manager, City Attorney

•Code Filer:

Assistant CM, Department Heads,
Consultants

How?

- Use Form 700

When?

✓ Assuming Office

✓ Leaving Office

✓ Annually, by April 1st

Signed Under Penalty of Perjury

Personal Financial Interests Political Reform Act of 1974

Types of Economic Interests:

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



Personal Financial Interests Political Reform Act of 1974



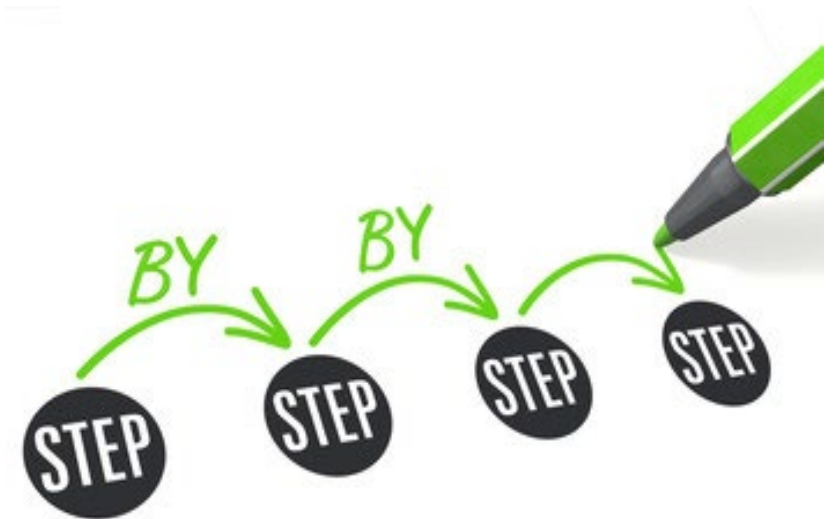
What is your role in the governmental decision?

- **Making**: authorizing, directing, voting on, or committing the agency to the decision.
- **Participating in Making**: providing info, opinions, or a recommendation for the purpose of affecting the decision.
- **Attempting to Influence**: (1) contacting any official in the agency for the purpose of affecting a decision, or (2) contacting another agency on behalf of your agency to affect a decision.

Personal Financial Interests Political Reform Act of 1974

The FPPC Does a Four-Step Analysis:

1. Is it ***reasonably foreseeable*** that decision will have a financial effect on your economic interest?
2. Will financial effect be ***material***?
3. Is the financial effect ***indistinguishable*** from its effect on the ***public generally***?
4. Is there another exception?



Personal Financial Interests Political Reform Act of 1974



- **Reasonably foreseeable** – “Realistic possibility”
- **Material** – Above FPFC standards (e.g., within 500 feet of real property owned)
- **Public generally exception** – Affects: (1) 25% of properties, businesses, or individuals, and (2) no unique effect on public official
- **Other exceptions** – e.g., rule of necessity, speaking as a member of the public on an item of personal interest

Personal Financial Interests Political Reform Act of 1974



Real Property Interests:

- 500 feet or less
- 500-999 feet
- 1000 feet or more

Real Property Interests



- **500 feet or less:** financial effect is presumed material unless there is clear/convincing evidence of no measurable impact on property as determined by the official with advice from the General Counsel and/or FPPC
- **500-999 feet:** financial effect is material if decision would change:
 - Development potential
 - Income producing potential
 - Highest and best use
 - Character (by altering traffic, intensity of use, parking, etc.)
 - Or market value
- **1000 feet or more:** financial effect is presumed not material unless there is clear/convincing evidence of a substantial impact on the officials property

Personal Financial Interests Political Reform Act of 1974



- **HYPO:**

A 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?



Personal Financial Interests Political Reform Act of 1974

Answer: Yes.

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



Personal Financial Interests Political Reform Act of 1974



- **HYPO:**

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

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



Personal Financial Interests Political Reform Act of 1974

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.



Personal Financial Interests Political Reform Act of 1974

What do we do when a conflict exists?

- **DO NOT** PARTICIPATE IN THE DECISION
- **DO NOT** DISCUSS, GIVE OPINION OR INFLUENCE
- DISCLOSE
- DISQUALIFY



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)



Levine Act



In an “entitlement for use proceeding,” Officers are prohibited from accepting, soliciting, or directing a contribution of more than \$500 from any party or a party’s agent, or from any participant or a participant’s agent if the Officer knows or has reason to know that the participant has a financial interest in the proceeding:

1. While the proceeding is *pending*; and
2. 12 months following the date of the final decision in the proceeding.

Levine Act



Officer who exceeds the limits is prohibited from making, participating in making, or in any way attempting to influence the decision in the proceeding.

If Officer has received a contribution of more than \$500 from a party, participant, or agent within the 12 months before the proceeding, the Officer is required to disclose the contribution orally or in writing in the manner required by the Levine Act and implementing regulations. They can also return the contribution within 30 days and participate.

Interest in Public Contracts (Gov. Code § 1090)

Financial Interest in Public Contracts

Government Code § 1090



If:

- **A Public Official**
- **Has a Financial Interest in a Contract**
- **Approved by their Agency**

Then:

- **Contract is VOID**
- **Penalties Apply**

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

Consultants & Independent Contractors



- GC 1090 applies to officials, officers and employees.
- An outside consultant can be considered an “employee” under the law when that consultant acts in an advisory role and has duties to engage in or advise on public contracting that he/she is expected to carry out on the government’s behalf.

Financial Interest in Public Contracts Elected Official Scenario



- **Facts:** A councilmember owns the construction company that has been awarded the contract to remodel City's office. 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 councilmember is financially interested in the contract.
 - A councilmember's interest in the contract prohibits the City from entering into the proposed contract, even though the member does not participate in and abstains from the actual decision.

Financial Interest in Public Contracts Employee Scenario

- **Facts:** An agency staff member wants to contract to sell a unique device that he invented for the agency's engineering 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
disqualifies himself from participating in, or influencing the decision
making process.



Financial Interest in Public Contracts

Contract Defined



- Use general contract principles
- Examples:
 - Construction contracts
 - Purchases
 - Development agreements
 - Civil service appointments
 - Grants and donations
 - Commissions

Financial Interest in Public Contracts

“Making” the Contract

“Making” includes:



- Negotiations,
- Discussions,
- Reasoning,
- Planning, and
- The “give and take which goes beforehand in the making of the decision to commit oneself”

Financial Interest in Public Contracts

Types of Financial Interests

- **Financial Interest**
 - Direct (contracting party)
 - Indirect (related to contracting party)
- **Effect**
 - Positive or negative
- **Certainty not required**
- **All contracts are City contracts**



Financial Interest in Public Contracts

Remote Interest Exceptions - § 1090(b)



- **Requirements:**

- Public disclosure noted on records
- No attempt to influence
- Council acts in good faith

- **17 Exceptions**, including:

- Employees, in certain cases
- Suppliers, in certain cases

WARNING!

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, that has a duty to act upon a matter before it, to do so despite a conflict of interest when the public agency is the only entity capable to act on the matter (where one or more of the Council members has a personal financial interest).

Example: 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

Revolving Door

Personal Financial Interests “Revolving Door”



AFTER LEAVING OFFICE:

Elected Official and Agency Head/CEO

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

“Feathering Your Nest”

Personal Financial Interests Decisions re Prospective Employer

Influencing Prospective Employment:

No Public Official shall participate in decision making process when it relates to any prospective employer.



Bribery

Personal Financial Interests

Bribery

Bribery: The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.



Difference between a Gift or Political Contribution and a Bribe

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

A promise to perform an official act or not.



Personal Advantages and Perks

Personal Advantages and Perks

- Gifts
- Honoraria
- Travel/Lodging Expenses
- Loans
- Reimbursements
- Mass Mailings
- Misuse of Public Funds
- Nepotism
- Charity Fundraising Disclosures

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

- Terry v. Bender (1956)

- **Gift:** Anything of value that provides a personal benefit for which adequate consideration was not provided.

Disclose
\$50+

Disqualify
\$630/12mos.

Refuse
\$630+

- Calendar Year vs. Rolling 12 months
- If Gift Exceeds \$630: Return, Pay or Donate

Personal Advantages and Perks

Common Exceptions



- Gifts to public agency
- Gifts returned unused or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Equal-value gifts on holidays, birthdays or similar occasions (other than lobbyist)

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



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 Rules of the Road



- Acceptance of passes or discounts from transportation companies is prohibited.
- Informational exception to gift rules does not include travel – exceptions apply.
- Travel may be subject to gift limits. Evaluate on a case-by-case basis – source, purpose.
- Travel paid by using agency funds is totally exempt from limits and disclosure if for agency business.



Personal Advantages and Perks

Agency Disclosures: Forms 801 & 802

Gift to Agency Report A Public Document

1. Agency Name

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number E-mail

Agency Contact (name and title)

Date Stamp

California Form 801

For Official Use Only

Amendment (explain in comment section)

Date of Original Filing (Month, Day, Year)

2. Donor Name and Address

☐ Individual ☐ Other

Last Name First Name

Address City

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

If applicable, identify the name of each source and the amount(s) solicited or received by the donor.

Name \$ Amount Name

3. Payment Information

Date and Amount of Payment (other than travel) (month, day, year) \$ (Round to nearest dollar)

Travel Payment Information (Round to whole dollars) Location of Travel

District of Travel Transportation Expenses Lodging Expenses Meal Expenses

Provide a specific description of the nature and use of the payment for the agency.

Identify the officials for whom the payment was used:

Last Name First Name Title

Last Name First Name Title

4. Verification

I have determined that it is in the interests of the agency to accept this gift and use it for the official's official duties.

Signature of Agency Head or Designee First Name Last Name Title (Month, Day, Year)

Comment: (Use this space or an attachment for any additional information.)

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

1. Agency Name

Division, Department, or Region (if applicable)

Designated Agency Contact (Name, Title)

Area Code/Phone Number E-mail

Date Stamp

California Form 802

For Official Use Only

Amendment (Must provide explanation in Part 3.)

Date of Original Filing (Month, Day, Year)

2. Function or Event Information

Does the agency have a ticket policy? Yes ☐ No ☐ Face Value of Each Ticket/Pass \$

Event Description Provide Title/Explanation Date(s) / /

Ticket(s)/Pass(es) provided by agency? Yes ☐ No ☐ If no: Name of Source

Was ticket distribution made at the behest of agency official? No ☐ Yes ☐ If yes: Official's Name (Last, First)

3. Recipients

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

A. Name of Agency, Department or Unit Number of Ticket(s)/Pass(es) Describe the public purpose made pursuant to the agency's policy

B. Name of Individual (Last, First) Number of Ticket(s)/Pass(es) Identify one of the following:

Ceremonial Role ☐ Other ☐ Income ☐

If checking "Ceremonial Role" or "Other" describe below:

Ceremonial Role ☐ Other ☐ Income ☐

If checking "Ceremonial Role" or "Other" describe below:

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

4. Verification

I have read and understand FPCC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.

Signature of Agency Head or Designee First Name Last Name Title (Month, Day, Year)

Comment:

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

Gift to Agencies: Form 801

- **Know the rules:** Exceptions on gifts of travel do not 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

Behested Payments: Form 803

Behested Payment Report		A Public Document		Behested Payment Report	
1. Elected Officer or CPUC Member (Last name, First name)		Date Stamp		California Form 803 For Official Use Only	
Agency Name					
Agency Street Address					
Designated Contact Person (Name and title, if different)		☐ Amendment (See Part 5)			
Area Code/Phone Number	E-mail (Optional)	Date of Original Filing: (month, day, year)			
2. Payor Information (For additional payors, include an attachment with the names and addresses.)					
Name					
Address		City	State	Zip Code	
3. Payee Information (For additional payees, include an attachment with the names and addresses.)					
Name					
Address		City	State	Zip Code	
4. Payment Information (Complete all information.)					
Date of Payment: (month, day, year)		Amount of Payment: (In-Kind PMU) \$ (Round to whole dollars.)			
Payment Type: ☐ Monetary Donation or ☐ In-Kind Goods or Services (Provide description below.)					
Brief Description of In-Kind Payment:					
Purpose: (Check one and provide description below.) ☐ Legislative ☐ Governmental ☐ Charitable					
Describe the legislative, governmental, charitable purpose, or event:					
5. Amendment Description or Comments					
6. Verification					
I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.					
Executed on _____ DATE		By _____ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER			
Clear Form		Print Form			
FPPC Form 803 (December/09) FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)					

FOR ELECTED OFFICIALS ONLY

- Contributions of **\$5000 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



- FPPC civil action
- Penalty: 3 times the amount of the gift
- \$5,000 fine
- 6 months jail
- Bribery/Extortion – Felony – Prison

Personal Advantages and Perks Loans / Reimbursements / Nepotism



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

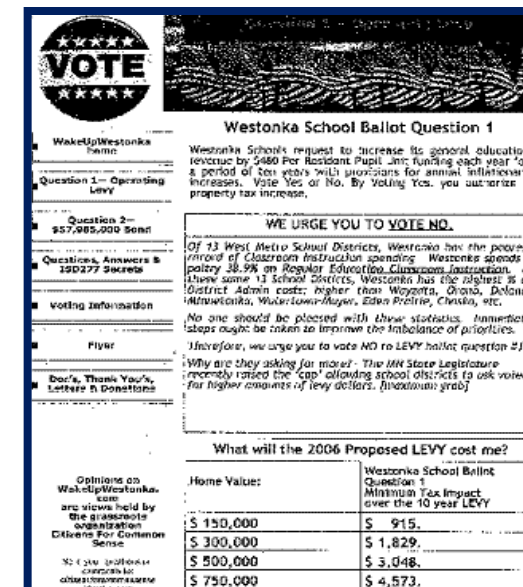
Personal Advantages and Perks Misuse of Public Funds



Ballot Measures



Endorsements &
Legislative Activities



Westonka School Ballot Question 1

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

WE URGE YOU TO VOTE NO.

Of 13 West Metro School Districts, Westonka has the poorest record of Classroom Instruction spending. Westonka spends a paltry 38.9% on Regular Education Classroom Instruction. In these same 13 School Districts, Westonka has the highest of District Admin costs, higher than Weymouth, Olathe, Delano, Minnetonka, Wauwatosa-Ripon, Eden Prairie, Chaska, etc.

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

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

Why are they asking for more? The MN State Legislature recently raised the 'cap' allowing school districts to ask voters for higher amounts of levy dollars. (Westonka: grab!)

What will the 2006 Proposed LEVY cost me?

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

Informational
Materials

Misuse of Public Funds



- Misappropriation of funds, supplies, or other assets;
- Impropriety in the handling or reporting of money or financial transactions;
- Profiteering as a result of insider knowledge of City activities; Disclosing confidential and proprietary information to outside parties;
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the City that does not comply with the City policy;
- Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment and/or any similar or related irregularity

Prohibited Mass Mailing



- An **physical** publicly **mailed** item:
 - Features an elected officer affiliated with the agency that produces or sends the mailing.
 - Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
- More than 200 substantially similar items are sent in a single calendar month
- “Mass mailing” is not an item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms, etc.

Misuse of Public Funds



- Violation of City Policies, i.e. Code of Conduct, Operating Policy, Ethics/Conflict of Interest Policy, Purchasing Policy and Travel/Expense Reimbursement Policy.

Transparency Laws

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

Transparency Laws

The Ralph M. Brown Act & The California Public Records Act

Applies to:

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office,
- Certain private organizations



Transparency Laws, The Ralph M. Brown Act & The California Public Records Act



What's a "meeting"?

- When a quorum:
 - Hears
 - Discusses
 - Deliberates
 - Takes action on something within the City's subject matter

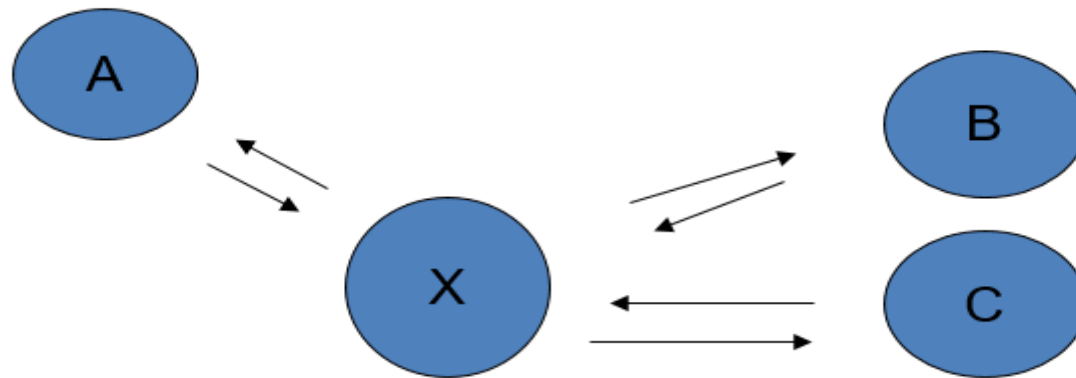
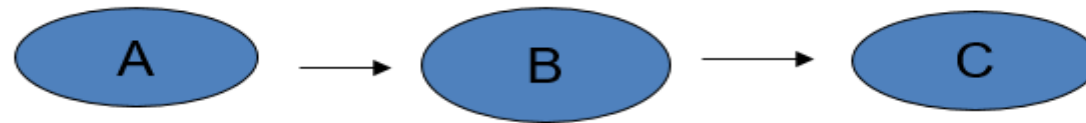
Transparency Laws - *The Ralph M. Brown Act*



- What's a “meeting”?
- No discussion or action, except on agenda
- Closed sessions
- Remedies and penalties

Transparency Laws - *The Ralph M. Brown Act*

Serial Meetings Chain - Spoke



Transparency Laws - *The Ralph M. Brown Act*



E-Mail, Text, or Phone

- Potential for serial meetings:
 - Chain
 - Spoke
- Best practices:
 - City Manager briefings
 - Lobby in a public meeting

Exclusion

- Separate conversations with an employee . . . to answer questions or provide information “if that person does not communicate to the members of the legislative body the comments or positions of any other member or members of the legislative body.”

Social Media or Other Public Lobbying

- Issue of comments, replies, tweeting, and “likes” on social media and other mainstream media sites
- AB 992 – effective January 1, 2021
- Permits public officials to answer questions, provide information to the public, or to solicit information from the public regarding agency business on social media

AB 992 – effective January 1, 2021

- Prohibits a majority of members of a legislative body from discussing agency business on social media
- Prohibits one member of a legislative body from “directly responding” to another member on social media about agency business
- Even a “thumbs up” could be a Brown Act violation

Transparency Laws - *The Ralph M. Brown Act*



Agenda

- Set by CM or full Council
- Must include public forum
- A member of the public has the right to speak
 - At a regular meeting: on each and every agenda items and generally on item of public interest including consent calendar and closed session items
 - At a special meeting: on each agenda item only
 - Before or during the Council's consideration
- No discussion or action, except on agenda
 - Late-breaking exception
 - Came to City's attention after posting and
 - Can't wait till next meeting

Transparency Laws - *The Ralph M. Brown Act*



Agenda

- Salaries and fringe benefits must be approved by the Council off-consent in a regular public meeting.
- Compensation of senior executives must be off-consent.

Responses to Public Comment

- ***Briefly*** respond to public statements or questions
- Provide reference to staff or other resources for factual information (confirm it's underway.)
- Request staff to report back at a subsequent meeting
- Take action to direct staff to place a matter on future agenda

Transparency Laws

The Ralph M. Brown Act



Recent Legislation

- Teleconferencing
 - AB 361 (2021)
 - AB 2449 (2022)
- Disruption of Meetings
 - SB 1100 (2022)
- Distribution of Writings
 - AB 2647 (2022)

Transparency Laws - *The Ralph M. Brown Act*



Closed Session

- Pending litigation
 - Threat or exposure (documented)
 - Actual case
 - Initiation
- Public employee performance evaluation
- Labor negotiations
- Real estate negotiations (price and terms of payment for the purchase, sale, exchange, or lease)

Closed Session Disclosures

- OK to disclose (1) votes and (2) your position.
- Not OK to disclosure (1) attorney-client communications or (2) Council comments, positions, thought process, or deliberations

Examples of Closed Session Disclosures

- “I want the press to know that I voted in closed session against filing the eminent domain action,” said Councilmember Chang (after action was filed and became public)
- “Don’t settle too soon,” reveals Councilmember Watson to the property owner, over coffee. “The City’s offer coming your way is not our bottom line.”

Transparency Laws - *The Ralph M. Brown Act*



Remedies

- Closed session leaks
 - Abrogate attorney-client privilege
 - Probably prosecutable criminally
- Violations of Act
 - Writ to set aside action
 - Injunction to bar future violations
 - City pays all attorney's fees

Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- A Councilmember bumps into Councilmember Doe at a coffee shop, and says, “I saw your post, and I’m also worried about this project.” Is there a Brown Act issue?
- Another Councilmember responds to the Facebook post with a “sad face” emoji? Is that OK?

Transparency Laws

California Public Records Act (CPRA)

Every person has a right to
inspect public records of any
state or local agency.

What is a public record?

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



Transparency Laws

California Public Records Act

Handling Requests

- Public records must be available during office hours.
- Agencies must make copies of disclosable records “promptly available”...“upon request.”
- Agency shall:
 - Within 10 days: determine disclosable records
 - Within 14 days: request time extension for “unusual circumstances”

Hours

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



Transparency Laws

California Public Records Act

When is a public record exempt from disclosure?

- Preliminary drafts, notes or memos not kept in ordinary course of business
- Real estate appraisals
- Personnel, medical, similar files
- Records about pending litigation
- Records pertaining to an investigation
- Deliberative process
- Catch-all exemption



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

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

The opinion suggested looking to the following factors:

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



Transparency Laws

California Public Records Act



Best Practices

- Always respond to requests
- Adopt regulations
- Adopt a policy
- Develop standardized fees
- Use City email account

Transparency Laws

Social Media as a Public Forum?



- *Lindke v. Freed* (2024) 601 U.S. 187

If a governmental official posts about job-related topics on social media, their site is “attributable to the State only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.”

Transparency Laws

Social Media as a Public Forum?



- Best practice is for public officials and public employees to have a disclaimer on their personal social media accounts that they are posting in their personal capacity.
- But there are still other issues PRA and Brown Act issues.

Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- If a member of the public requests the post, would the City have to disclose it?
- If yes, how would the City be able to obtain the post?

Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

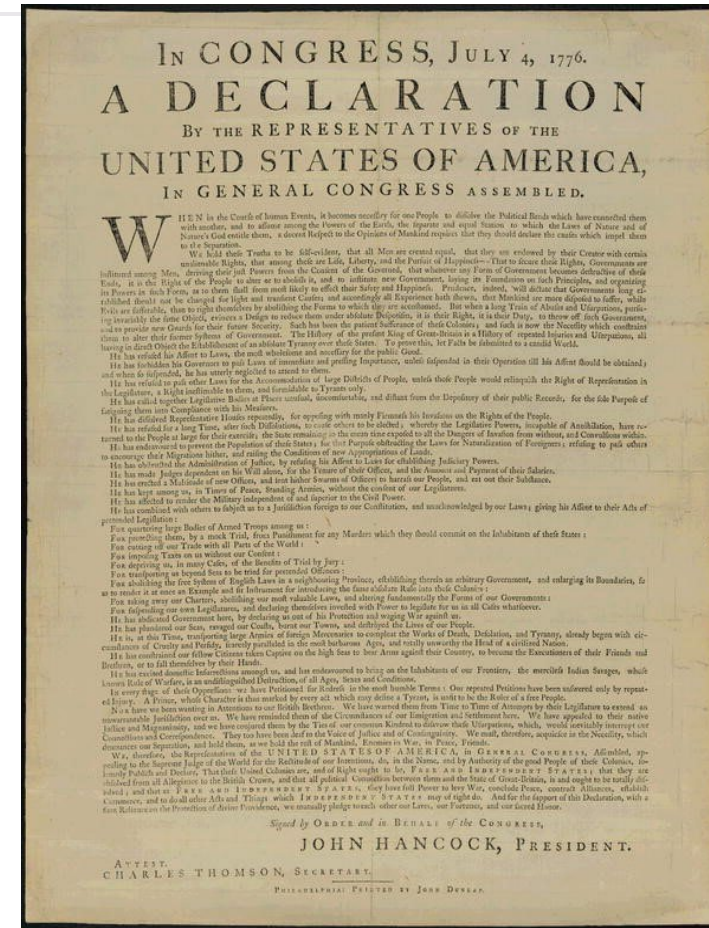
Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- Someone comments, “You don’t care about the animals! We all know you want to shut them down to let Amazon build a mega warehouse that will ruin this town!”
- May the Councilmember delete the post?
- Block the commenter?

Fair Process

Fair Process

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



Fair Process Due Process



The Oath of Allegiance

I hereby declare, on oath, that I am a native-born citizen of the United States, and I will support and defend the Constitution and laws of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when so required by the laws; that I will perform noncombatant service in the Armed Forces of the United States when so required by the law; that I will perform work of national importance under civilian direction when so required by the law; and that I will not do anything to obstruct or frustrate the efforts of the United States to win the war.

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

Fair Process, Due Process Hypothetical



A Councilmember published an article in the local paper about a project pending review before the Council. It was entitled, “Housing Project—a Threat to Wildlife Corridor,” and included the following points:

- A proposed project of five homes was winding its way through City review.
- The main street that would serve the homes is “absolutely a crucial habitat corridor.”

Any fair process or due process issues?

Common Law Conflict of Interest

“The common law doctrine against conflicts of interest . . . prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.”



Fair Process Competitive Bidding

- Purposes
- General Rule
 - Only when required by statute or ordinance
 - Lowest, responsive, responsible bidder
 - Thresholds for Public Works
- Exceptions



Fair Process Incompatible Offices Doctrine



Elements:

- Official holding two public offices simultaneously
- Conflicting or overlapping functions (audit, overrule, remove, or exercise supervisory powers)

Ramifications:

- Immediate forfeiture of first office

Fair Process

Incompatible Activities

Gov. Code §1126



- Applies to officers and employees, but NOT ELECTED OFFICIALS
- Agency must adopt a statement of incompatible activities, statutory prohibition is not self-executing
- Agency may prohibit activities involving:
 - Private gain or advantage
 - Receiving consideration for performing duties
 - Acts outside scope of employment
 - Impairment of efficiency

Attorney exception – Gov. Code 1128: government entity lawyer may serve on another board or commission

Fair Process

Best Practices for Decision-Makers

1. If you can't be fair, don't participate
2. Avoid statements before the close of a hearing
3. Make decisions based on administrative record
4. Avoid the appearance of bias
5. 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.”**



Questions?

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