
Ethics and Public Service

**Laws, Principles and
Resources for Information**

AB 1234 Ethics Training

December 13, 2018

Nevada Irrigation District

Andrew McClure

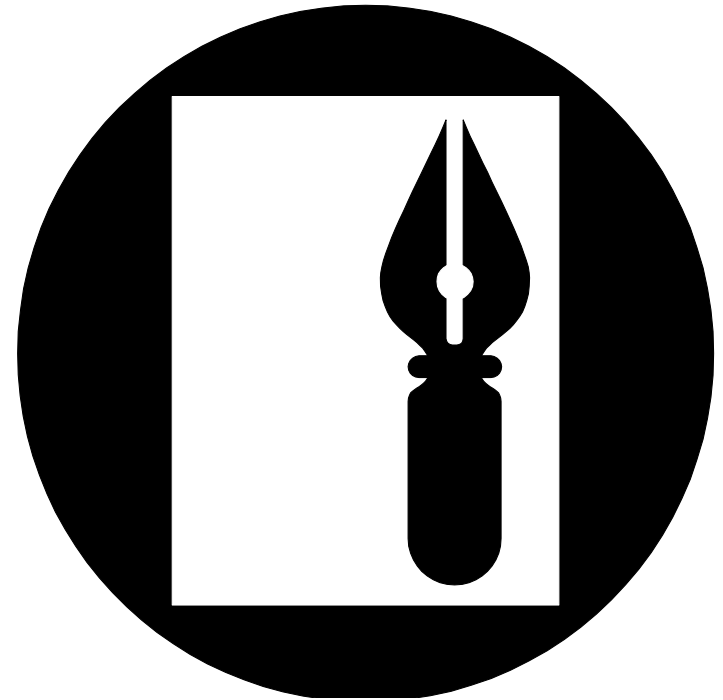
Minasian, Meith, Soares, Sexton & Cooper

Session Goals

1. Acquaint you with laws that govern your service *but more importantly* when to ask questions.
 2. To encourage you to *think beyond legal restrictions* and provide tools for doing so
 3. Meet AB 1234 requirements
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Session Logistics

- **2 hour session**
 - 4 main topics
 - Breadth versus depth
- **Questions**
- **Proof of participation**
 - Certificates



Public Service Ethics

- Laws play a bigger role
 - Perception as important as reality
 - **Key concept:** Actions & decision-making in the public's interest
-

What Is “Ethics” Anyway?

Ethics Versus Ethics Laws

- **Ethics** = what we *ought* to do
- **Laws** = what we *must* do
 - Minimum standards
 - Penalties
 - Legal ≠ ethical



Responsibility Issues

- Making decisions for others
 - Stewards of taxpayers' resources
- Perception matters
- Personal *and* organizational ethics



Why Should You Take the Time?



- **Loss of freedom--6 months to 20 years**
- **Fines (up to \$250,000) + restitution + forfeiture**
- **Attorneys fees (\$3K to \$1M+)**
 - Own and others'
- **Personal costs**

Lesser Offenses

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Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of)	FPPC No. 15/073
)	
ROBERT SMITH,)	STIPULATION, DECISION and
)	ORDER
Respondent.)	
)	
)	
)	
)	
)	
)	

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Robert Smith agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

State Ethics Laws

- 1. Personal financial gain**
 - 2. Personal advantages and perks**
 - 3. Governmental transparency**
 - 4. Fair processes**
-

Group 1:

Personal Financial Gain Issues

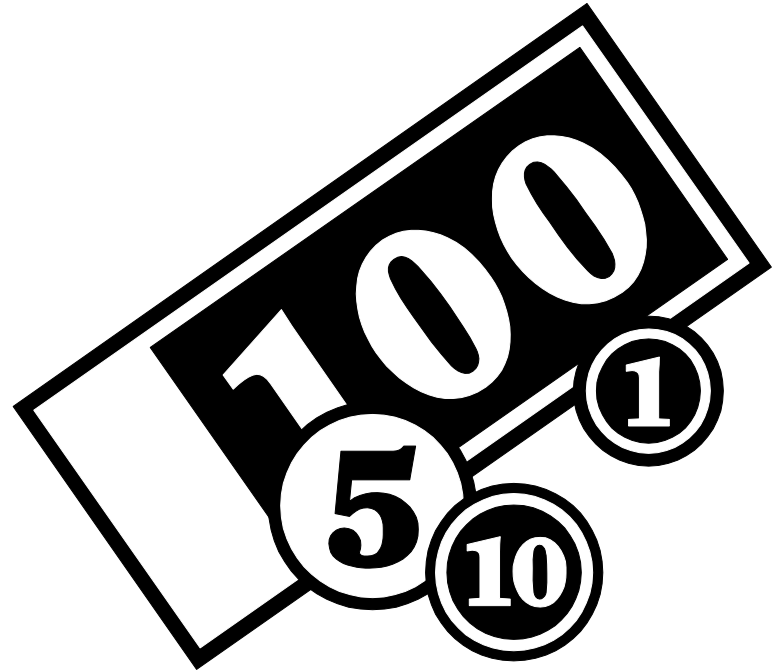
Principles:

- Public's interest should be sole motivation
- Public servants should not benefit financially from their positions



Examples of Financial Gain Laws

- Bribery
- Prohibitions against self-dealing
- Employment-related restrictions



Bribery

Public officials may not:

- Solicit, receive or agree to receive
- A benefit
- In exchange for their official actions

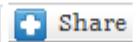


Bribery Does Happen

2 San Diego Officials Guilty in Strip-Club Graft Scandal

The new acting mayor and a councilman were heard offering political aid for campaign funds.

July 19, 2005 | Tony Perry and Richard Marosi | Times Staff Writers

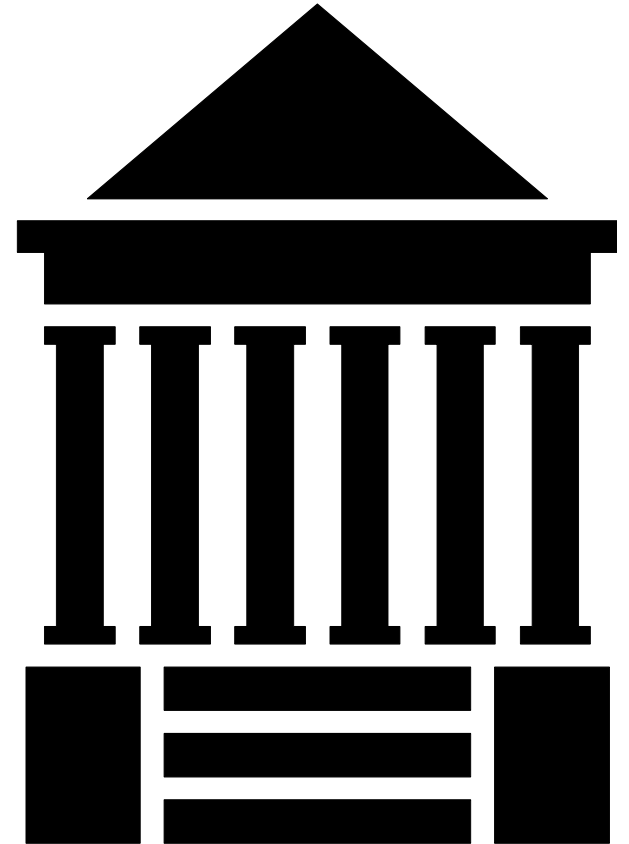


SAN DIEGO — Acting Mayor Michael Zucchet and Councilman Ralph Inzunza were convicted Monday of trading political favors for campaign contributions from a strip-club owner -- adding to the political turmoil gripping the city where the mayor has resigned and the pension system is under federal investigation.

Prosecutors charged that the two men, both 35-year-old Democrats, took \$23,000 from the owner of Cheetahs Totally Nude club and his associates and, in exchange, agreed to work to ease a city law that prohibits nude dancers from touching their customers.

Bribery: Penalties

- Up to four years in state prison
- Loss of office
- Barred from holding office
- Fines/restitution
- Federal prosecutions: stiffer penalties



Personal Financial Gain

No Public Official at any level of state or local government shall make, participate in making or in any way use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Gov't Code § 87100

Disqualification Based on Personal Financial Interests

- **Rule:** You may not participate in a decision if your financial interests are affected by a decision
 - CANNOT participate in discussions
 - CANNOT solicit votes or influence decision
 - CANNOT vote on the decision
-

“Financial Interest”

“Reasonably foreseeable that the decision will have a material financial effect on an economic interest of the Official”

1. A “Public Official”
 2. Make, participate in making, or attempt to use official position to influence governmental decision.
 3. “Economic Interest” affected.
 5. Decision has a material financial effect on interest
 6. Financial Effect reasonably foreseeable at time of decision.
-

Sources of “Economic Interest”

- 1. business entity investment** (direct or indirect) of \$2000 or more
 - 2. real property interest** (direct or indirect) of \$2000 or more and ‘500 ft Rule’
 - 3. income**, except gifts or loans by a commercial lender available to the public, totaling \$500 or more within the last 12 months.
 - 4. business entity** in which the official is a director, officer, partner, trustee, employee or management position
 - 5. donor** (or agent or intermediary of donor) of a gift or gifts totaling \$470 or more in last 12 months
-

“Income”

Means - Payment received – including but not limited to salary, wage, advance, dividend, interest, rent, proceeds from sale, gift including gift of food or beverage forgiveness or payment of indebtedness, reimbursement for expense”

Gov't Code 82030(a)

“Income” Case Study

June 10, 2013

Supervisor Ray Nutting
c/o Rebecca J. Olson
Attorney at Law
Miller & Olson, LLP

REDACTED

Advisory Letter Re: FPPC Case No. 13/290, Ray Nutting

Dear Mr. Nutting:

The Fair Political Practices Commission (the “FPPC”) enforces the provisions of the Political Reform Act (the “Act”),¹ found in Government Code Section 81000, et seq. As you are aware, the Commission was investigating whether, as a Supervisor for the County of El Dorado, you were in violation of both the Statement of Economic Interests disclosure provisions as well as the conflict of interest prohibitions of the Act with regard to payments you received from the California Forest Improvement Program.

“Property” Case Study

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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of

Christopher Drop,
Respondent.

) FPPC No. 13/106

) STIPULATION, DECISION and
) ORDER

Complainant, the Fair Political Practices Commission, and respondent Christopher Drop (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

“Investments” Case Study

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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of:

GREGORY COX,

Respondent.

FPPC Case No. 16/292

STIPULATION, DECISION AND ORDER

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Gregory Cox hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

“Gifts”

A public official may not participate in a decision that involves someone who has given the official gifts that are worth \$ 470 (2018-2019) or more during the previous 12 months



“Business Position”

Director, Partner, Trustee, Employee,
Management Position?

- Disqualification

If You are Disqualified:

You cannot attempt to influence the Decision in any way

- Do not talk to Colleagues or Staff
 - At the meeting, leave the room
 - Explain why you are leaving.
 - You have not done anything wrong if you are disqualified.
-

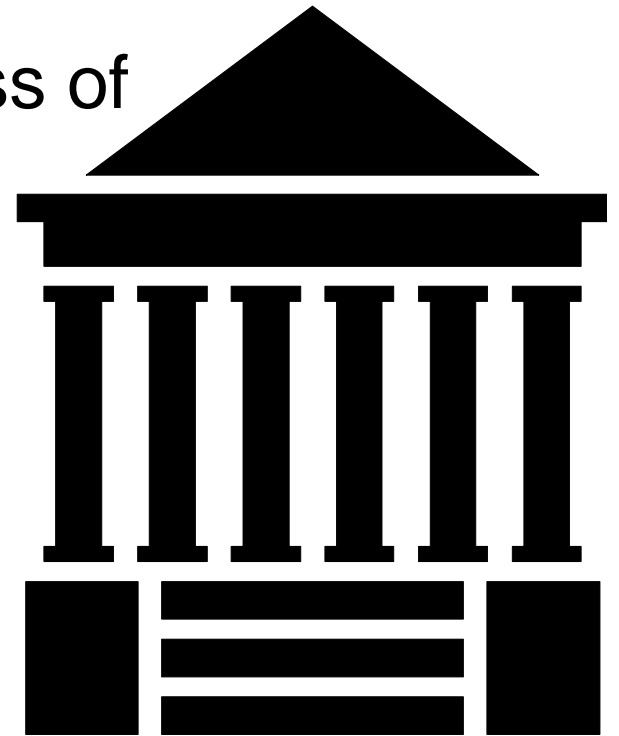
Getting Advice on Conflict Issues

- Our Law Firm
 - No immunity though
- **The FPPC**
 - In writing
 - Allow plenty of time



Failure to Step Aside: Penalties

- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees
- Embarrassment



Warning!

Special Rules for Contracts

- **Interests in contracts are *forbidden* (1090 Problem)**
- **Disqualification likely not be enough**
- **Penalties:** Refund money received, fines, imprisonment, and loss of office (felony)



Monterey County Water Resources Agency

- Monterey Board Member Steven Collins
 - Also a paid consultant of RMC Water and Environment
 - Was a member of Board when it Approved Desal Contracts in which RMC was interested
 - Result?
-

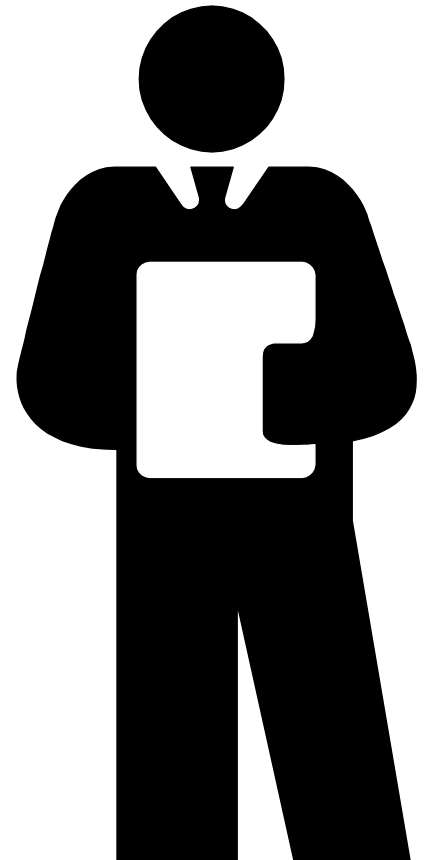
But No Application to Remote Interests

Section 1090 Does not apply to “Remote Interests” IF:

1. Remote Interest is disclosed and noted;
and
 2. Authorization or approval does not count
vote of remotely interested member.
-

Future Employment Issues

- **Revolving door prohibition**
 - Electeds and top managers
 - Cannot represent people for pay for a year after leaving their agency
- **No participation in decisions involving future employers**

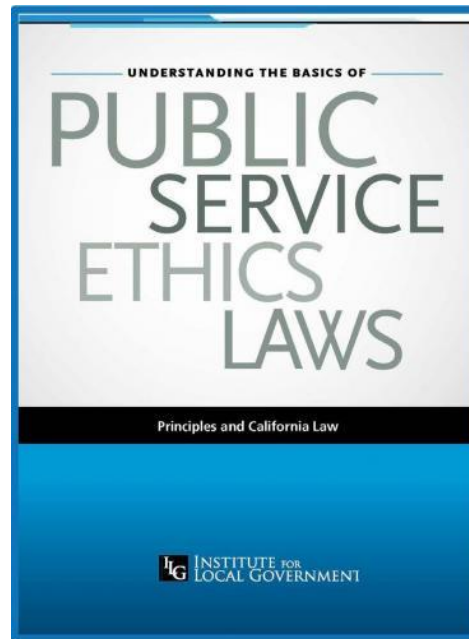




Key Things to Remember

- **It's about the public's interest**
 - **Not about the money**
-

For More Information on Personal Financial Gain Laws



www.ca-ilg.org/FinancialGain

Group 2: Perks

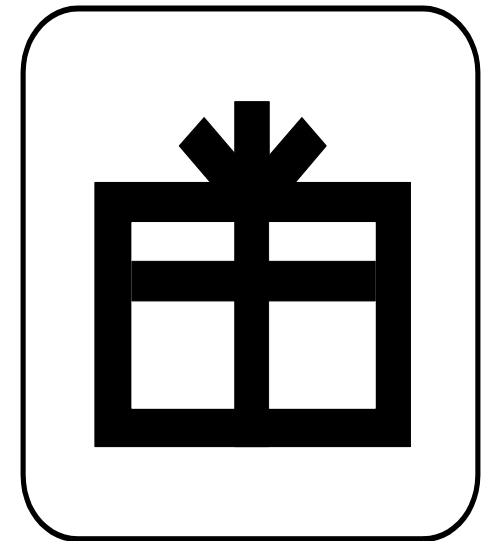


Two Categories of Perks:

- Perks that others offer you
 - Perks that you give yourself because of your access to and decision – making discretion over the use of public resources.
-

Perks Others Offer You

1. **Gifts – including meals, tickets, and traditional**
2. **Compensation – to speak, write, or attend functions**
3. **Loans**
4. **Free or discounted transportation**



General “Gifts”

- *Anything* you receive that you did not pay for or provide equal value or greater value for.
- Special Rules for Travel



Travel Benefit Ban

- No Free, upgraded, or discounted travel from a Transportation Company



“Gift” Limits, Responsibilities, Exceptions

- Report Gifts of \$50 or more on Statement of Economic Interests
 - \$470 dollar Calendar Year limit on Gifts Received Jan.1, 2018 – December 31, 2019.
 - Value: Fair market Value
 - Exceptions.
-

Failure to Report a “Gift”

FAIR POLITICAL PRACTICES COMMISSION STIPULATION, DECISION AND ORDER Gift Reporting Violations (Streamlined Program)

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent(s) hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC CASE NO. 14/666

RESPONDENT: Jeffrey Baarstad, Superintendent, Conejo Valley Unified School District

GOVERNMENT CODE SECTION(S) VIOLATED: 87207

DESCRIPTION OF VIOLATION(S): Failure to report total amount of gift(s) aggregating \$50 or more as income (see Exhibit I attached)



Unwanted Gift?

1. Decline All Gifts; or
 2. Within 30 days of receipt:
 - A. Return the gift unused
 - B. Deliver and Donate the unused gift to a gov't agency or nonprofit (that you do not hold a position in)
 - C. Reimburse the gift giver the fair market value
-

Example: Duck Hunt

- County Supervisor and Guests allowed to hunt ducks on a ranch located within the county.
 - Ranch is Owned by owner of landfill that is currently involved in negotiations with the County.
 - What does the Supervisor need to Consider?
-

“Honoraria Ban”

- General Rule is that Public Officials Cannot accept payments for making speeches, publishing articles, attending private conferences, events, meals, etc...



Loans

- No Loans of more than \$250 from Agency Contractors or Employees
- Documentation and disclosure of loans over \$500.



Perks you give yourself: Use of “Public Resources”

- **Personal** use of public resources (including staff time and agency equipment) prohibited
- **Political** use of public resources also prohibited



“Public Resources”

**Money or anything paid
for with public money:**

- Staff time
- Office space
- Equipment
- Supplies



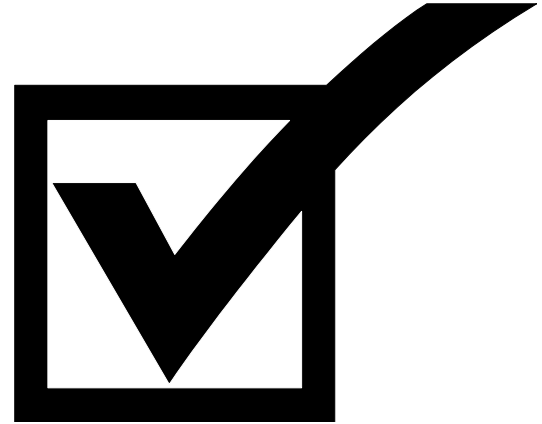
Expense Reimbursement Issues: It's the Public's Money



- **AB 1234 expense reimbursement policies**

Political Use of Public Resources

- **By individuals or agency itself (support of ballot measures)**
- **Mass mailing restrictions**
 - Goal: restrict incumbents' advantages



MASS MAILING

- Delivered by any means to residence, place of employment, PO Box
 - Features an elected officer affiliated with the Agency that sends the mailing
 - Costs of design, exceeding \$50 paid for by agency
 - More than 200 items sent in single month
-

Mass Mailing that: “Features an elected officer”

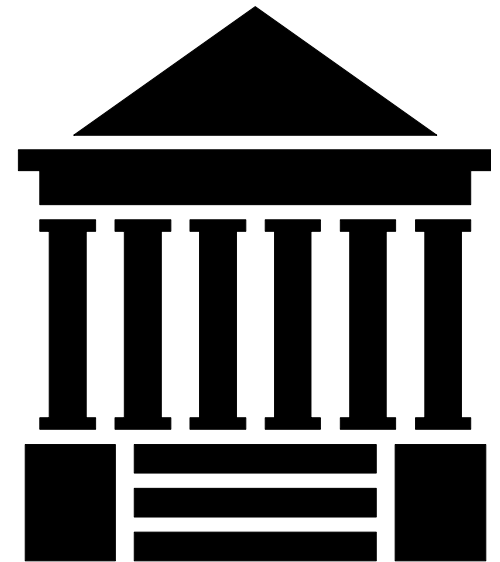
For the purposes of this stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: Respondent El Dorado Irrigation District produced and sent over 200 January-February 2013 newsletters, “The Waterfront,” at public expense, which included a photo featuring all of the elected El Dorado Irrigation District Board Members on the front page, in violation of Section 89001.



Consequences of Violations of Public Resource Rules

- **Civil penalties:** \$1,000/day fine + 3X value of resource used
- **Criminal penalties:** 2-4 year prison term + disqualification from office
- Can also have **income tax** implications



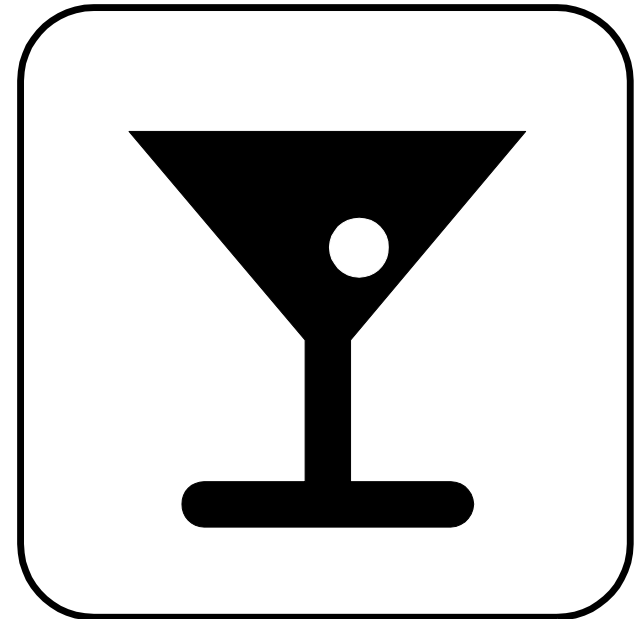
Takeaways

- Perks / Gifts/ Public Resources



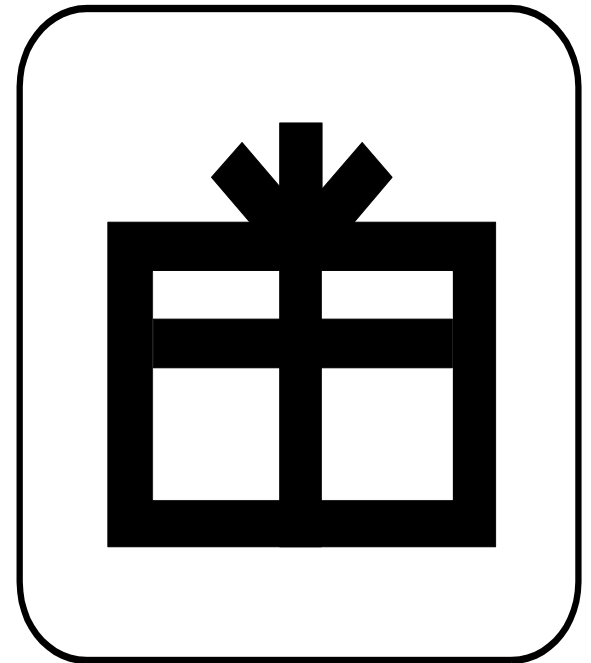
Gifts Don't Always Have Bows

- Meals, food and drink
- Entertainment
(concerts & sporting events)
- Certain kinds of travel



Gift Rules

- Report \$50 and up (over a year)
- Limit \$470 per Calendar year (2018 – 2019)
- May also be a disqualifying interest (over \$470 in prior 12 months)



Gift Limits: State Law Penalties

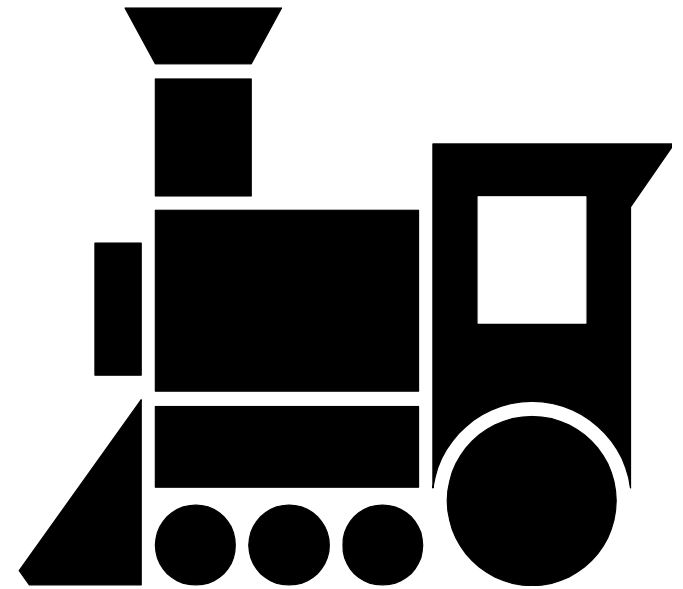


- Up to \$5,000 per violation
- Own attorneys fees (\$3,000 - \$30,000)



Special Rule

- No free transportation from transportation carriers
- **Penalty:** Loss of office



True or False

- A meal provided free of charge to an official cannot be a gift if government business is discussed at the meal.
 - Officials can use public resources for personal or political purposes as long as the use occurs after hours and does not interfere with the government's business
-

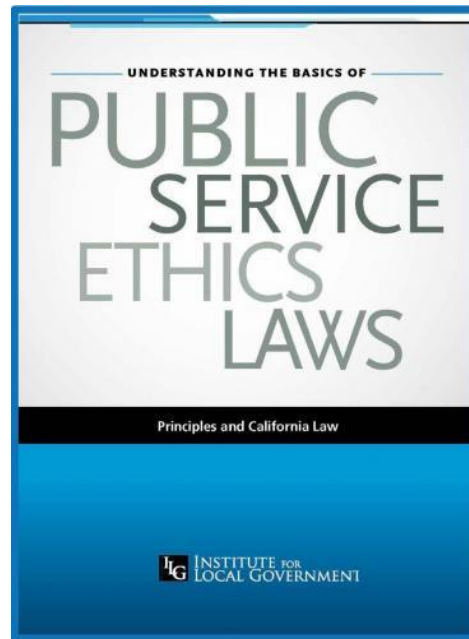


Key Things to Remember

- **Avoid rationalization traps**
- **Beware of people's nice gestures**



For More Information on Perk Issues



www.ca-ilg.org/Perks

Group 3: Transparency Laws

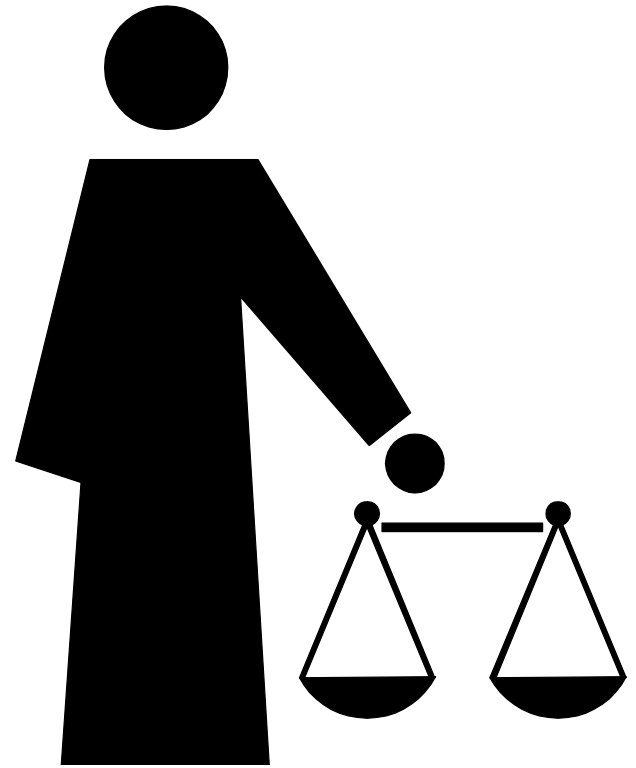
Principles:

- It's the public's business
- The public trusts a process it can see



Types of Laws

- Financial Disclosures
- Charitable Fundraising
- Brown Act
- Public Records Act



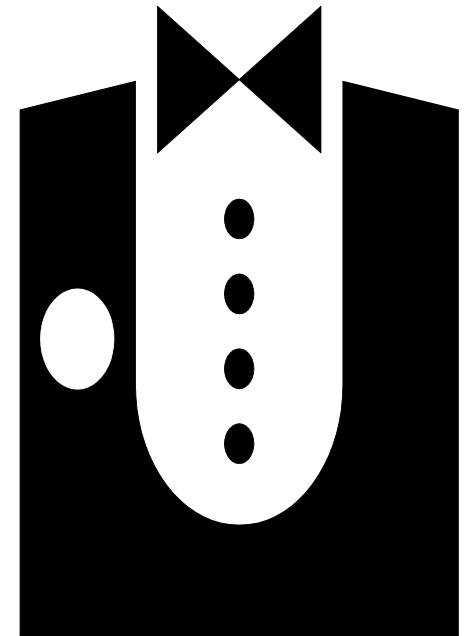
Financial Interest Disclosure



- Transparency includes obligation for high level public servants to disclose financial interests
 - Assuming office
 - Annually while in office
 - Upon leaving office

Charitable Fundraising

- Rule applies to elected officials
- Disclose \$5,000 or more from single source
- Charitable, legislative or governmental purpose



BROWN ACT – The People's Business

- Conduct Business at Open *Meetings*
 - Majority of Governing Body
 - Subject matter of legislative body
- Posting Agendas
- Public Participation
- Closed Session



Serial Meeting

- A series of communications that result in a majority of governing Board Members having conferred on an issue.
 - Spoke and Hub
 - Daisy Chain
 - Email Forwards/ Reply All



Permissible Contacts

- Individual Contacts
 - Conferences
 - Community Gatherings held by *another* organization
 - Ad Hoc Committees
 - Social Events
-

Closed Session

- Proper Purpose
 - Litigation
 - Real Property
 - Public Employment
 - Labor Negotiations
 - Properly noticed and agendized
 - Meeting is either “Open” or “Closed”
 - Report of Action Taken in Closed Session
-

Closed Session 'Leaks'

- Brown Act forbids disclosing information acquired in closed session
- Ethical Considerations
- Penalties
- Limited Exceptions Exist



Public's Right to Participate

- Public's ability to address the governing body
- Posting and following the agenda
- Public's right to be heard.
- Reasonable Limits



Scope of Public Comment

- District cannot require speakers to identify themselves
- Cannot prohibit criticism of agency or employees



Public Records



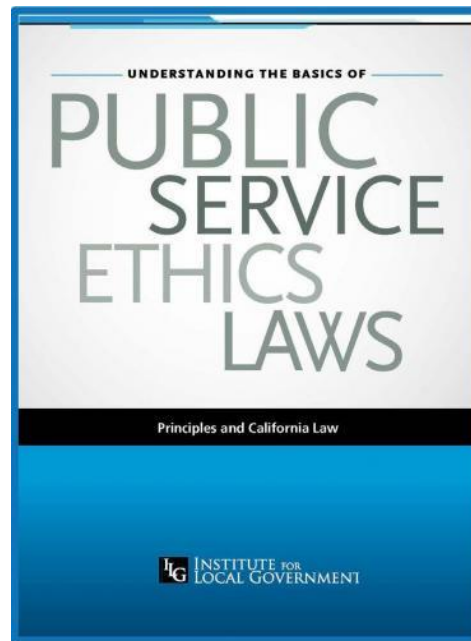
- Agendas + writings prepared, owned, used or retained by agency (including electronic)
- Includes Emails and Texts about District Business sent from Personal Accounts



Key Things to Remember

- “Who’s going to know?” is a *very* risky line of thinking
- Nothing to hide may be a good goal

For More Information on Transparency



www.ca-ilg.org/TransparencyLaws

Group 4: Fair Process Laws

- **Principle: Under certain circumstances, public officials are stewards of fair processes**
 - Decision-making
 - Contracting
 - Employment



Fair Process Laws

- **Due process requirements and rules against bias**
 - Expressions of views prior to hearing
 - Personal, but non-financial interests



Case Study

- Room with a View

Campaign Contribution Issues

- **State law campaign contribution Disclosure Requirements**
 - **Demands for contributions** in exchange for favorable action = Bribery/ federal fraud and extortion
 - **Soliciting campaign contributions** from fellow officials and employees prohibited
-

Fair Process Laws, *continued*

- Incompatible office prohibitions
 - **Issues:** Conflicting loyalties & overlapping jurisdictions
 - **Result:** forfeit first position



Fair Process Laws, *continued*

- Competitive bidding requirements
 - Everyone has a right to compete for agency's business
 - Competition produces the best price for taxpayers
 - Prevents graft
- Kickbacks prosecutable under federal fraud and extortion laws





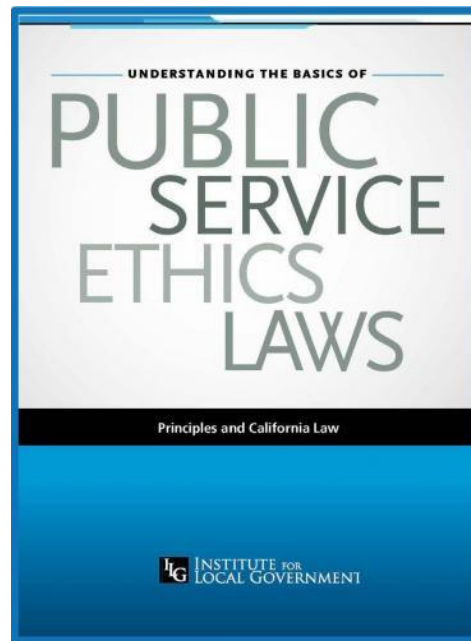
Key Things to Remember

Focus on

- The *merits* of decisions
- Providing *fair* decision-making processes



For More Information on Fair Process Laws



www.ca-ilg.org/FairProcess

Resources

- Cross Reference
 - Attorney General
 - FPPC
 - www.ca-ilg.org
- Also www.ca-ilg.org/everydayethics



Beyond the Law: Public Service Ethics Principles

TRUE/FALSE QUIZ QUESTIONS

Government transparency laws may be bypassed when compliance would impose a substantial inconvenience to the accomplishment of a legitimate government action.



FALSE

- A "whatever it takes" approach to pursuing agency objectives can lead to violations of the law and undermine an agency's commitment to having a culture of ethics. This is especially true when governmental transparency laws are involved.
-

TRUE/ FALSE

- The act of forwarding an email by an elected official can be a violation of open meeting laws.



True!

A meeting is any situation involving a majority of the governing body in which business is transacted or discussed. In other words, a majority of the governing body cannot talk privately about an issue before the body no matter how the conversation occurs. This includes through email.

TRUE/ FALSE

When conducting government business, you should consider the possibility that every document you prepare eventually may be disclosed to the public.



TRUE!

- The disclosure requirements for public records are very broad. There are limited exceptions to the requirements that public records be disclosed. This is why it is wise for public officials to consider the possibility that anything they write may eventually be disclosed to the public.
-

Organizational Culture

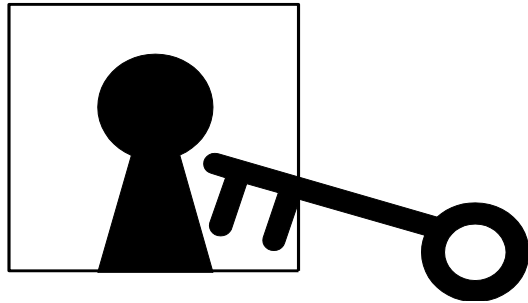
✓ What's the message?

- “Doing it right” versus “whatever it takes”
- Are staff clear they are expected to use ethical behaviors to get results?
- “How it looks” -- Awareness of public perception



Is it a Job to Do, or a Job to Have?

- **Determine your boundaries *before* you are in a difficult situation**
 - **Is it worth compromising your values to keep your position?**
 - **Think long term: People will ask “what did you know and what did you do about it?”**
-



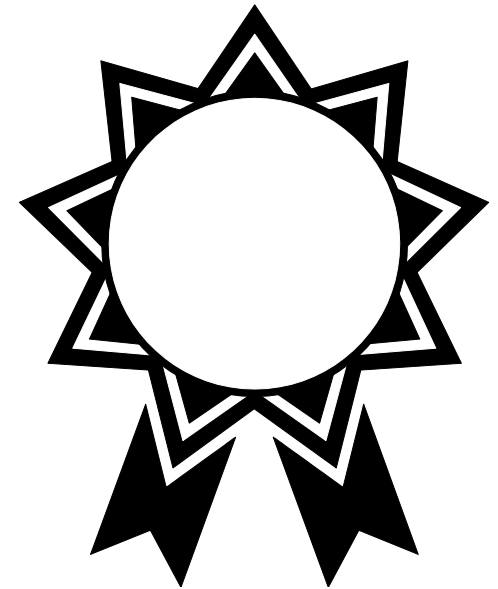
Key Lessons

- It's your choice how high you want to set your sights above the minimum requirements of the law
- The law sets minimum—sometimes quite high-- standards for ethical behavior
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early



AB 1234 Compliance

- Proof of participation certificate
- Provide to custodian of records as public record
- Consider going beyond the minimum in terms of education



Questions?
