

Ethics and Public Service
Laws and Principles

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Ethics Laws

- Law = Minimum standards
- What we *must* do
- Ethics is what we *ought* to do
 - Above and beyond law's minimum requirements

Transparency Laws

Principles:

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



Brown Act

(Gov't Code §54950)

- Requires that public agency actions “be taken openly and that their deliberations be conducted openly.”
- all “meetings” of a “legislative body” must be open and public.

Who is Subject to the Brown Act?

“Legislative Body” includes:

- Governing body of a local agency -City Council
- Governing bodies of other entities created by state or federal statute – RDA Successor Agencies, or JPAs
- Any Commissions, Committee or Boards Created by formal action of the Governing Body
Planning commission, personnel board, access appeals board
- A private corporation if either:
 - Created by local agency to exercise authority of local agency; or
 - Receives funds from City and has city council member on board

What constitutes a “Meeting?”

- A Meeting Is: Any congregation of a majority of the members of the legislative body in the same time and place to hear, discuss or deliberate upon any item within their jurisdiction.



- Watch out for:
 - Informal discussions
 - Telephone conversations for purpose of discussing decisions in advance
 - Serial Meetings
 - E-mails, texts, blogs, social networking sites

A Meeting is NOT:

- Individual contacts or conversations
- Attendance by majority at certain conferences or social events, so long as majority does not discuss issues within their jurisdiction
- Attendance at meeting of other legislative bodies, so long as majority does not discuss issues within their jurisdiction

E-mails

- It is easy to violate the Brown Act by simply hitting the "Reply All" button.
- Caution is needed.
- Potential Public Records Act Problems:
 - Using your own email/device to discuss City business will subject personal emails/texts to disclosure. *City of San Jose v. Superior Court* (Recent Cal. Supreme Court ruling)
 - Recommend use of City email address.

Texting

- Similar problems as with e-mail.
- Can be easily used to hold a serial meeting before or during a meeting (cell phones).
- Avoid Sending or Receiving Texts/Emails:
 - 1 To/From the public during a meeting
 - 2 To/From members of the body during a meeting.
 - 3 If you have declared conflict.

Blogging

- Short for “Web-Log”. A “frequently updated website, normally with dated entries, commonly used to post opinions.”
- Very popular with public officials.
- Includes sites such as Facebook and Twitter.
- Has not yet been formally addressed by FPPC.
- Potential serial meeting if a majority gets involved

Posting Requirements

- Post agenda at least 72 hours before a “regular” meeting
 - 24 hours for “special meetings.”
- Special Meeting not permitted for discussion on Agency Executive compensation or perks
- Specify time/location
- Include brief general description of each item
 - Includes closed session items

Posting Requirements (cont'd)

- No action on any item not appearing on the posted agenda
- Limited Exceptions:
 - Statutorily defined “Emergency”
 - Need for Immediate Action – requires a 2/3 vote that there is an immediate need, and need arose after the agenda was posted
 - Brief responses to questions comments from public
 - Brief reports by board members and staff
 - Request to agendize an item for a future meeting



Best Practices

- Assume all information is public or will become public
- Don't discuss agency business with fellow decision-makers outside public meetings



Group 1: Laws Relating to Personal Financial Gain

- Principle:** Public servants should not benefit personally from their positions



B. Political Reform Act Conflicts

- General Rule**
No public official may make, participate in making, or attempt to use her official position to influence a governmental decision when she knows or has reason to know she has a disqualifying financial interest.
- includes financial interests of spouses and dependents
- impact can be either positive or negative



If You Are Disqualified

- Don't discuss or influence
- Identify nature of conflict in writing to City Administration
- Leave room if issue arises at meeting
 - Exception: matter on consent calendar and no one requests removal
- Limited exception for personal financial interests



Penalties

- Invalidate decision
- Misdemeanor
 - Fines (up to \$1,000 per violation); or 3 times the amount not reported; or the amount received in excess of the allowable amount (whichever is greater)
 - Imprisonment (of not more than 6 months)
- Attorneys fees
- Embarrassment (personal/political)



C. Special Rule for Contracts (Government Code §1090)

- General Rule: City officers and employees prohibited from having financial interests in *contracts* made by them or by any body/board of which they are a member.
 - Applies to both direct and indirect interests
- Abstention generally not enough
 - If official's body needs to approve contract, city **prohibited from executing contract altogether**
 - Otherwise just can't "participate" in the decision





Best Practices

- Avoid temptation to look at public service as an opportunity for financial gain
- Look at every decision and ask yourself whether it involves some kind of financial interest for you

Group 2: Perks

Principle:



- Public servants should not receive special benefits by virtue of their positions

Six Common Areas

- A. Gift Limitations
- B. Honoraria Ban
- C. Misuse of Public Funds
- D. Gifts of Public Funds Prohibited
- E. Mass Mailings
- F. Prohibition On Free Or Discounted Travel



Best Practice

- Avoid perks *and* the temptation to rationalize about them
 - Legally risky
 - Public relations headache

Key Lessons

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

Questions?
