

MINUTES OF THE SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF  
VISTA IRRIGATION DISTRICT

June 21, 2016

A Special Meeting of the Board of Directors of Vista Irrigation District was held on Tuesday, June 21, 2016, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

President Vásquez called the meeting to order at 1:00 p.m.

**2. ROLL CALL**

Directors present: Miller, Vásquez, Dorey, and MacKenzie.

Directors absent: Reznicek.

Staff present: Eldon Boone, General Manager; Marian Schmidt, Assistant Secretary of the Board; Brett Hodgkiss, Assistant General Manager; Brian Smith, Director of Engineering; Marlene Kelleher, Finance Manager. General Counsel Joel Kuperberg was also present.

Other attendees: None.

**3. PLEDGE OF ALLEGIANCE**

Director MacKenzie led the pledge of allegiance.

**4. APPROVAL OF AGENDA**

16-06-57	<i>Upon motion by Director Dorey, seconded by Director MacKenzie and unanimously carried (4 ayes: Miller, Vásquez, Dorey, and MacKenzie), the Board of Directors approved the agenda as presented.</i>
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**5. PUBLIC COMMENT TIME**

No public comments were presented on items not appearing on the agenda.

**6. ETHICS TRAINING**

See staff report attached hereto.

General Counsel Joel D. Kuperberg, from Rutan & Tucker, LLP presented a two hour training session on ethics pursuant to Government Code sections 53234 to 53235.2, and a handout was distributed (attached hereto as Exhibit A).

**7. DIRECTOR COMMENTS**

None were presented.

**8. COMMENTS BY GENERAL MANAGER**

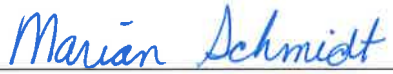
Mr. Boone reminded the Board that the Board of Director's meeting tomorrow is scheduled to begin at 9:00 a.m. and to bring their copies of the Draft Fiscal Year 2017 Budget and Draft 2015 Urban Water Management Plan to the meeting.

**9. ADJOURNMENT**

There being no further business to come before the Board, President Vásquez adjourned the meeting at 3:09 p.m.

  
Richard L. Vásquez, President

ATTEST:

  
Marian Schmidt, Assistant Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT

**Exhibit “A”**

# **Ethics and Public Service Laws and Principles**

## **Vista Irrigation District AB 1234 Training**

**Presented by:  
Joel Kuperberg  
Rutan & Tucker, LLP  
June 21, 2016**

# Session Objectives

1. To familiarize you with laws that govern your service ***and*** when to ask questions
2. To encourage you to ***think beyond legal restrictions*** and provide tools for doing so
3. Satisfy AB 1234 requirements
4. Help you understand and apply general ethical principles to promote public trust in government

# Public Service Ethics is Different

- Laws play a bigger role
- Perception as important as reality
- Public is entitled to honest service from its public officials



# Ethics Laws

- The Law = Minimum standards
  - What we *must* do
- Ethics principles = guidance to what we *ought* to do
  - Avoiding the appearance of impropriety
  - Asking yourself “**How would this look in the newspaper?**”

**Couple Accused Of Stealing Up To \$1 Million From Alameda Co. Agency**  
February 21, 2012 7:25 PM

Share 1 2 19 View Comments



(CBS)

**Related Tags:** ACAP, Alameda County, Associated Community Action Program, Bob Melrose, Charges, Crime, Misuse of Funds, Nanette Dillard, Paul Daniels, Social Service Agency

**HAYWARD (KCBS) –** The husband and wife team who used to run a soon-to-be-defunct Alameda County social services agency have been charged with misuse of public funds and grand theft.

About a year ago, Alameda County officials began investigating the Associated Community Action Program, or ACAP, because of possible financial irregularities.

**KCBS' Bob Melrose Reports:**

Alameda County District Attorney Nancy O'Malley is now charging ACAP's former executive director Nanette Dillard, and her husband, Paul Daniels with making off with as much as a million dollars in cash.

Dillard and Daniels were in charge of obtaining grants for the agency and dealing with the payroll. O'Malley said the alleged criminal activity came to light a year ago.

# Why should I care?

- Press cares
- Public cares
- Legislature cares
- Campaign opponer
- Violations may affe
- Violations may res
- Violations may res

## Former Councilman Gets Prison Time

By Emily Green  
Daily Journal Staff Writer

A San Bernardino County judge adopted Wednesday for prison time in lieu of probation for former Rancho Cucamonga City Councilman Rex Gutierrez, two months after a jury convicted Gutierrez of two felony counts of grand theft, one felony count of conspiracy to commit a crime and one felony count of filing a false claim.

Gutierrez, 51, was the first of five former San Bernardino county assessor's office officials to go on trial for charges relating to widespread government corruption and fraud.

In announcing the sentence of two years and eight months in prison, San Bernardino Judge Duke D. Rouse said that prison time was more appropriate than probation because Gutierrez defrauded taxpayers who depend on officials to represent them.

Prosecutor John Gortiz said he was pleased with the sentence, which is the harshest possible one, given the charges.

"The overall perception of a culture of corruption in San Bernardino County is damaging to the county," Gortiz said.

He added that the sentence "was fitting for both the defendant himself and others who would be contemplating something similar."

Gutierrez' defense attorney, James Reiss of Reiss and Johnson in Rancho Cucamonga, said he was "deeply disappointed," but not surprised by the sentence.

The city of Bell scandal has "totally changed the game" for public corruption trials, Reiss said. That's the case in which Los Angeles County prosecutors charged several Bell city officials this fall with corruption largely related to a cover-up of their exorbitant salaries, including Bell's city administrator, who collected as much as \$1.5 million.

"Since Bell was a small town where the city manager and City Council ran amok, now people equate that to everybody" involved in corruption cases, Reiss said.

"The judge is definitely sending

a message to all politicians and people in political corruption cases that upon conviction, you are going to state prison," he said.

Prosecutors in the case argued that former Board of Supervisors Chairman Bill Postmus hired Gutierrez as an intergovernmental affairs officer as a favor to a politically connected developer who contributed to Postmus' campaigns for county assessor and Gutierrez's campaign for Rancho Cucamonga councilman. They said Gutierrez rarely showed up to work or performed City Council tasks when he did show up.

San Bernardino District Attorney Michael Ramos and California Attorney General Jerry Brown Jr. also filed more than a dozen charges against Postmus, as well as against former Assistant County Assessor Jim Erwin. Those charges include bribery, misappropriation of public funds and extortion.

Postmus and Erwin will have their next hearing on Jan. 28.

[emily\\_green@dailyjournal.com](mailto:emily_green@dailyjournal.com)

duties, and prescribes conflicts of interest.

This bill would require a local agency that provides reimbursement for expenses to members of its legislative body to adopt a written policy on the duties for which legislative body members may receive compensation, other than meetings of the legislative body or an advisory body or attendance at a conference or organized educational activity. The bill would require such a governing body to adopt a written policy concerning what occurrences qualify a member to receive reimbursement of expenses for travel, meals, and lodging and would impose related requirements, including the filing of expense reports, which would be public records.

# Thinking Beyond Ethics Laws

- Ethics laws: The starting point for most ethical analysis in public service
- ***Floor*** for ethical conduct—not the ceiling
- Just because it's legal, doesn't mean it is (or will be perceived as) ethical



# Four Groups of Ethics Laws

1. Personal financial gain



2. Personal advantages and perks



3. Governmental transparency

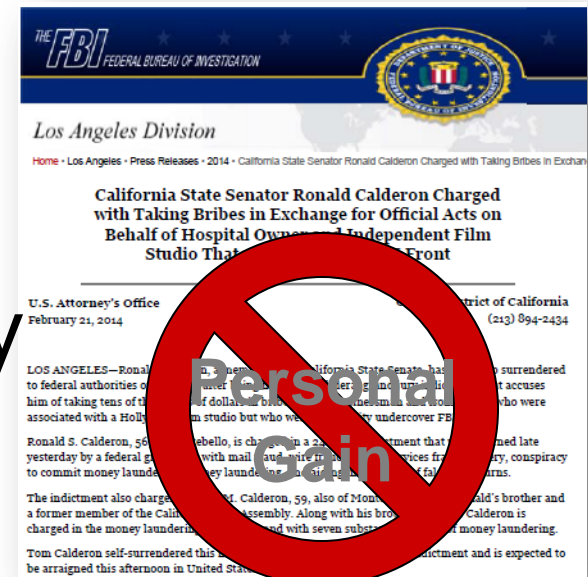


4. Fair processes



# Group 1: Personal Financial Gain Issues

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



# Officials abusing their offices for personal financial gain is a problem nationally ...

- Ted Stevens, Alaska Senator
- Edwin Edwards, former Louisiana Governor
- Rod Blagojevich, ousted Illinois Governor

**The New York Times**

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**10 ACADEMY AWARD NOMINATIONS**

October 28, 2008

## Alaska Senator Is Guilty Over His Failures to Disclose Gifts

By NEIL A. LEWIS

WASHINGTON — Senator Ted Stevens, Alaska's dominant political figure for more than four decades, was found guilty on Monday by a jury of violating federal ethics laws for failing to report tens of thousands of dollars in gifts and services he had received from friends.

The jury of District of Columbia residents convicted Mr. Stevens, 84, on all seven felony counts he faced in connection with charges that he knowingly failed to list on Senate disclosure forms the receipt of some \$250,000 in gifts and services used to renovate his home in Girdwood, Alaska.

Mr. Stevens, a consistently grim-faced figure, frowned more deeply as the verdict was delivered by the jury foreman, a worker at a drug counseling center. Mr. Stevens's wife and one of his daughters sat glumly behind him in the courtroom.

In a statement issued after he had left the courthouse, Mr. Stevens was defiant, urging Alaskans to re-elect him to a seventh full term next week.

He blamed what he called repeated misconduct by federal prosecutors for the verdict. "I will fight this unjust verdict with every ounce of energy I have," he said.

Under state law, Mr. Stevens's conviction would have led to his removal from office immediately upon Mr. Blagojevich's conviction. To a boisterous ovation, Mr. Quinn took the oath of office about an hour afterward in the House chamber across the hall, where he gave a short speech.

# ... And closer to home...

- Former State Senators Roderick Wright, Leeland Yee
- Ex-State Schools Superintendent Bill Honig

## HUFFPOST POLITICS

### Former California State Senator To Begin Jail Term For Fraud, Perjury

LOCAL / L.A. Now

Ex-state Sen. Leland Yee gets 5 years in prison in corruption case

Published: February 10, 1993

### Political Maneuvering Begins in California After Honig is Convicted

By Lonnie Harp

Stunned by the swift conviction of Superintendent of Public Instruction Bill Honig on four felony conflict-of-interest charges, California educators last week were pausing to consider the end of an era while politicians began maneuvering to lay claim to the vacant post.

After a trial that lasted the entire month of January, a Sacramento Superior Court jury deliberated for just three hours before returning guilty verdicts on all four counts. Mr. Honig was found guilty of criminal conflict of interest in approving four state contracts worth \$337,000 for work through his wife's nonprofit parental-involvement program. He intends to appeal the verdict.

Many school officials said last week that, despite the lengthy legal dispute over the program and daily news from Mr. Honig's trial, they found it difficult to realize that the energetic and outspoken spokesman for school reforms and higher funding had been banished from the job he commanded...

to raise money for his campaign.

That is when Yee, 67, got into trouble.

# Bribery

- Public officials may not solicit, receive or agree to receive a benefit in exchange for their official actions
- Penalties: Loss of office, prison time, fines, restitution, attorneys' fees and public embarrassment

**SFGATE** <http://www.sfgate.com/news/article/SF-supervisor-Ed-Jew-indicted-in-bribery-case-3301398.php>  
**SF supervisor Ed Jew indicted in bribery case**

By Bob Egelko Published 4:00 am, Wednesday, November 7, 2007



IMAGE 1 OF 3

Ed Jew appeared in Federal court today, having been indicted by a grand jury on charges stemming from his alleged extortion scheme involving a city street. Jew, 47, pleaded not guilty to the charges but side the court house this morning. EDJEW

Federal prosecutors today indicted San Francisco Supervisor Ed Jew on charges of soliciting bribes. Jew is accused of soliciting \$80,000 in bribes from city contractors by threatening to revoke their city permits.

# Similar Cases

- 1. Influencing Official Action:** Asking, receiving or agreeing to receive any bribe upon any agreement or understanding that the official's vote or action shall be influenced thereby is punishable by up to four years in prison. Penal Code §68.

## County Officials Accuse Ex-Employee Of Accepting Bribes

By Laura Ernde  
Daily Journal Staff Writer

Marin County officials claim to have uncovered evidence that suggests a former employee accepted bribes in exchange for approving a flawed computer system for handling payroll, financial management and human resources.

A new lawsuit filed Thursday in Marin County Superior Court followed up on allegations of fraud made in a June lawsuit against Deloitte Consulting, which spent five years and \$15 million designing a system that still doesn't work properly.

The new suit includes civil racketeering and conspiracy charges and names software provider SAP America Inc., SAP Public Services Inc. and former county project director Ernest W. Culver.

Deloitte allegedly wined and dined Culver to get him a job in the private sector, at the same time signing off on key pieces of the project and payments to the company.

Deloitte and SAP allegedly covered up the system's problems from county officials, the lawsuit says. An SAP employee who brought the problems to county employees was allegedly intimidated.

The lawsuit claims \$30 million in damages.

Culver, who now works for SAP, did not respond to an e-mail request for comment Friday.

SAP declined to comment until attorneys had a chance to review the suit, spokeswoman Kendzie said.

See Page 3 — MARIN



# Similar Cases

- **2. Appointment to Public Office:**  
Offering or accepting a gratuity or reward in consideration of appointment to a public office is a misdemeanor. Penal Code § 73

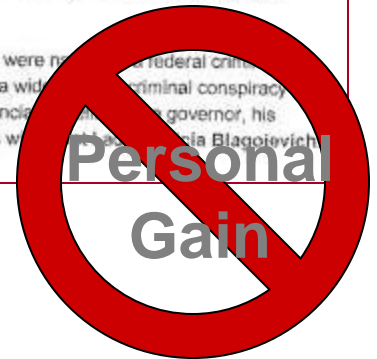
Chicago Tribune | Chicagoland

**Blagojevich arrested; Fitzgerald calls it a 'political corruption crime spree'**



Gov. Rod Blagojevich and his chief of staff, John Harris, were arrested Tuesday for what U.S. Atty. Patrick Fitzgerald called a "political corruption crime spree" that included attempts to sell the U.S. Senate seat vacated by President-elect Barack Obama.

Blagojevich and Harris were named in a federal criminal complaint that alleged a wide-ranging criminal conspiracy aimed at providing financial support to the governor, his political fund and to his wife, Elizabeth Blagojevich.



## E-MAILS TALK OF FAT PAY FOR BELL LEADERS

'You can take your share of the pie,' city official Angela Spaccia tells a police chief candidate.

JACK LEONARD,  
ANDREW BLANKSTEIN  
AND JEFF GOTTLIEB

As Bell prepared to hire a police chief in 2009, the top candidate for the post exchanged e-mails with the city's No. 2 official: "I am looking forward to seeing you and taking all of Bell's money?!" Randy Adams wrote shortly before starting the job. "Okay ... just a share of it!"

"LOL ... well you can take your share of the pie ... just like us!!" responded Angela Spaccia, the city's assistant administrator. "We will all get fat together ... Bob has an expression he likes to use on occasion," she continued, referring to her boss and chief administrative officer, Robert Rizzo. "Pigs get Fat ... Hoes get slaughtered!!!! So

# Similar Cases

## 3. Embezzlement:

Appropriation of Public Funds or Property for One's Own or Another's Use or for a Purpose not Authorized by Law.

Penal Code §§ 424, 504





# Embezzlement

- Padding Salary/Per Diem/Pension
- Improper Reimbursement
- Unauthorized Travel

**L.A. NOW**  
SOUTHERN CALIFORNIA — THIS JUST IN  
Crime | Government | Medical marijuana | Education | Prop 8 | Traffic | Westside

How much does your city council make?  
August 15, 2010 | 11:49 am

**latimes.com**


**Pensions for Rizzo, 40 other Bell employees will be larger than first estimated**

The former city administrator, who is facing corruption charges, will receive a pension of nearly \$1 million a year from a plan he designed for himself and the workers. The plan circumvents retirement limits set by California.

By Jeff Gottlieb, Los Angeles Times  
September 30, 2010

Then-City Administrator Robert Rizzo designed a supplemental pension plan for himself and 40 other Bell city officials that will provide them far larger taxpayer-financed retirement packages than previously estimated, according to interviews and documents reviewed by The Times.

The supplemental plan was paid for entirely by Bell tax funds. It allowed Rizzo, who was charged last week with public corruption, and other city employees and all City Council members to circumvent retirement limits set by California. Over the last seven years, the City Council approved increases in the retirement pay for those 41 officials that could raise pensions about 85%.



Personal Gain

# Disqualification Based on Financial Interests

- **Political Reform Act of 1974 (G.C. §81000)**
- **Appointee Campaign Contribution (G.C. § 84308)**
- **Contractual Conflicts of Interest (G.C. § 1090)**



# Political Reform Act of 1974

- **Principle** – “Public officials, whether elected or appointed, should perform their duties in an impartial manner, *free from bias caused by their own financial interests* or the financial interests of those persons who have supported them.”
- **Actual Bias Irrelevant** – Quantitative thresholds.

Los Angeles Times | latimes.com

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Editorial

## Stevens' 'gifts'

The Alaska senator's trial reveals a shaky grasp of ethics.

October 22, 2008

Of all the testimony offered during the four-week corruption trial of Sen. Ted Stevens (R-Alaska), perhaps the most revealing came from Stevens himself when he took the stand in his own defense Monday. Justice Department attorney Brenda Morris was grilling him about a costly massage chair that had been in Stevens' Washington home for seven years, a chair given to him by a friend but never listed as a gift on the senator's financial disclosure forms.

"He bought that chair as a gift, but I refused it," Stevens said. "He put it there and said it was my chair. I would not accept it as a gift. We have lots of things in our house that don't belong to us."

The commission's enforcement officers obtained records from Stevens' home.

20 hrs ago | Posted by: NewsStar

## FPPC Investigates La Habra Heights City Manager Shauna Clark!

Full story: [www.whittierdailynews.com](http://www.whittierdailynews.com)  
Mutual gift-giving between City Manager Shauna Clark and a college friend may have gotten her in trouble with the state's Fair Political Practices Commission.

Weekly Ad

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**Personal Gain**

# Political Reform Act of 1974

- **General Rule** — You may not make, participate in, or influence a decision if it may have a ***reasonably foreseeable material financial impact*** on you, your immediate family.
- “Material impact” can be positive or negative, actual or potential.
- **Timing** – Rolling 12 months.



# Political Reform Act of 1974

- **Disqualification**

- Abstain from participation
- Leave room

- **Disclosure**

- Assuming Office
- Annual (by April 1)
- Leaving office



# Three-Part Conflict Test:

1. ***Reasonably foreseeable*** that ***governmental decision*** will have ***financial effect*** on ***public official's financial interests?***
2. Financial effect ***material?***
3. Financial interest indistinguishable from the ***public generally?***

# Who is a “Public Official” Subject to the Law?

- All public officials and employees involved in making governmental decision:
  - Elected officials
  - Appointed officials
  - Employees
- Some consultants
  - Make final decisions
  - Contract mgmt staff



# What Governmental Actions are Subject to the Law?

- Make a final governmental decision
- Compel or prevent the making of a governmental decision by action or inaction
- Make recommendations that are regularly followed





# What “Financial Interests” are Subject to the Law?

- Income, Loans: \$500
- Real Property Interests: \$2,000
- Interest in Business: \$2,000
- Stocks: \$2,000
- Gifts: \$460
- Financial effect on the official or the official’s immediate family: \$250



# Financial Interests--Income

- Sources of Income: \$500 or more
  - Your own income
  - Promised income
  - Spouse/child's income
  - Loans/guarantors
- Exclusions
  - Government salary
  - Campaign contributions



# Financial Interests--Gifts

- Gifts: \$460/calendar year (2015-2016)
  - Tangible items
  - Services
  - Meals, drinks, entertainment
  - Transportation and Lodging



# 2014 Changes to Gift Rules

- § 18942
- Many new exceptions
- Some new restrictions



# Gift Exception – Home Hospitality

- Exemption now not applicable unless host's relationship *unrelated* to official's position
- Exemption expanded
  - Vacation home
  - RV, boat



# Gift Exception – Reciprocal Exchanges

- Taking turns to pay for
  - Meals
  - Movies
  - Sports events



# Gift Exception – Guest at a Wedding

- Gifts given to attendees
- Meals and entertainment
  - Unless exceed benefit to other guests



# Gift Exception – Bereavement, Neighborliness

- Bereavement Offerings
  - Flowers, etc.
- Acts of neighborliness
  - Normal acts of
    - Kindly neighbor
    - Good Samaritan





# Gift Exception – Bona Fide Dating Relationship

- Not reportable
- But official has economic interest in dating partner
  - No participation in decisions affecting partner's financial interests



# Gift Exception – Acts of Human Compassion

- Compassionate offerings to help official cope with misfortune
  - Medical expenses – injury, illness
  - Loss of employment, housing
- Restriction: Donor may not:
  - Lobby agency
  - Do business with agency
  - Be regulated by agency



# Gift Exception – Long-Time Friends

- Long term personal friendship unrelated to official's position
- Restrictions: Donor may not:
  - Lobby agency
  - Do business with agency
  - Be regulated by agency



# Gift Exception – Gifts Unrelated to Official's Position

- Gifts based on personal, business or other relationship
- No evidence that official may take any official action that may financially benefit donor
- Does not apply to gifts for lobbyist



# Gift Exception – Gifts to Family Member

- Presumption that gift to family member is gift to official if:
  - No established relationship between donor and family member; or
  - Gift made by donor who is:
    - Lobbyist
    - Involved in action in which official will foreseeably participate
    - Regularly seeks contracts or comes before agency



# Materiality: Financial Interest in Real Property

- Real Property Interests: \$2,000 or more
  - **Within 500'**: Presumed conflict
    - Not measured from HOA-owned land
  - **Outside 500'**: Conflict if decision would:
    - Change development or income producing potential of property
    - Change character of the property that would affect market value
      - Increased density, traffic, parking, noise



# Materiality: Financial Interest in Real Property (cont'd)

Construction of public facilities triggers conflict if:

- Facilities result in new or improved public services; and
- Either:
  - Services distinguishable from that provided to similarly situated properties; or
  - Cause disproportionate benefit or detriment to official



# Materiality: Financial Interest in Business Decisions

1. Financial effect is material if business:

- Applies for permit or entitlement, or seeks decision re application, appeal, claim.
- Offers to sell service or product.
- Subject to agency action whose effect directed solely at this business.

2. Financial effect is material if agency decision would contribute to change in value of business or its stock





# Materiality: Financial Interest in Source of Income

- Income is material if source:
  - Is applicant, claimant, respondent, contracting party
  - Will be financially affected by decision affecting source's business or real property
- Exception: Where public official owns retail business:
  - Income from retail customer exempt if business open to public and serves broad base of persons



# “Public Generally” Exception

Governmental decision’s effect on official’s financial interest is indistinguishable from effect on public generally if:

- ***Significant segment*** of the public is affected; and
- Effect on official is ***not unique*** compared to effect on the significant segment of the public.



# Disqualification versus Abstention

- Abstention = voluntary
- Disqualification = Legally required
  - Public statement of reason
  - Does not imply wrongdoing
- Non-compliance may result in fines and penalties may invalidate decision



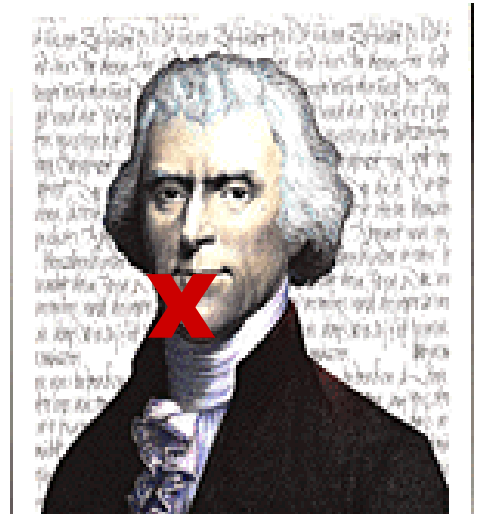
# When in doubt, disqualify yourself!

- You are responsible for your own compliance
- Agency counsel may help
  - Full disclosure of facts
  - Not confidential
  - Get advice in writing
- FPPC may help



# If You Are Disqualified

- Steps to take (on or in the record):
  - *Identify* nature of conflict
  - *Leave* room (unless matter on consent)
  - Don't discuss or influence
  - *Limited exceptions* to speak at a public meeting regarding an effect of decision on personal interest (owned property or owned/controlled business)



# Penalties

## Los Angeles Times

8.00 DESIGNATED AREAS HIGHER 62 PAGES © 2012 EST THURSDAY, MARCH 29, 2012 latimes.com

### FORMER STADIUM OFFICIAL PLEADS GUILTY

By RONG-GONG LIN II,  
PAUL PRINGLE AND  
ANDREW BLANKSTEIN

Days after his arrest on multiple corruption charges, the former general manager of the Los Angeles Memorial Coliseum pleaded guilty to a single criminal count of conflict of interest, avoiding a trial and possible lengthy prison sentence.

Patrick T. Lynch will do no prison time as part of Wednesday's plea deal and must repay \$385,000 that he allegedly received from a Coliseum contractor as part of a kickback scheme. He also will be placed on three years' probation.

Lynch, who faced up to 15½ years behind bars, is one of six men who were charged last week in a sweeping, 29-count indictment alleging bribery, embezzlement, conspiracy and conflict of interest at the historic, taxpayer-owned stadium.

Looking haggard and dressed in a blue jail jumpsuit, the 55-year-old Lynch, who once rubbed shoulders with local powerbrokers and hobnobbed with NFL owners, spoke in clipped sentences as his plea was entered before Los Angeles County Superior Court Judge George Lomell.

In exchange for his plea, which some observers said

[See Lynch, A12]

- Invalidates decision
- Misdemeanor (could result in loss of local office)
- Fines (\$5,000-\$10,000 per violation)
- Attorneys fees (yours and others)
- Embarrassment (personal/political)



# Reporting Requirements

- Political Reform Act requires Annual Reporting of Economic Interests.
  - Investments in Business Entities
  - Real Property
  - Sources of Income
  - Management Positions in Businesses
  - Sources of Gifts Aggregating \$50 per year.



Government Code § 87103

# Reporting Group Gifts

- Report gifts over \$50
- If group gift, only report individuals contributing \$50+ to purchase gift



# Reporting Wedding Gifts

- Value at half (1/2) the received gift value for each spouse



# Reporting Invitation-Only Events

- Pro-rata share of food, catering and entertainment
- Drop-in Rule
  - Value of minimal appetizers consumed by official not reportable
    - But must report drinks, gifts
  - Lobbyist hosts must report expenses on pro-rata basis



# Water District Director and Appointee Campaign Contribution Restrictions (G.C. 84308)

- Special rules covering receipt of campaign contributions
  - Limits on contributions
  - Disqualification
- Applicable to most elected water agency directors—AB 1728 (2014)
- Not applicable to non-water agency elected officials if:
  - Acting as elected official; and



# WD Director & Appointee Campaign Contribution Restrictions (G.C. 84308)

## What Gov't'al Officials are covered:

- Elected directors of agencies formed under Water Code
  - County WDs, Irrigation Dists, Muni WDs
  - But not Special Act agencies
- Appointed Officials
  - Commissioners
  - Elected officials in appointive capacity




# WD Director & Appointee Campaign Contribution Restrictions (G.C. 84308)

## What Non- Govt'al Officials are covered:

- Parties to applications for license, permit, entitlement to use, contract.
- Participants interested in approval or denial of the application.

# WD Director & Appointee Campaign Contribution Restrictions (G.C. 84308)

## What is covered:

- Campaign contributions of more than \$250
  - Received by WD Director or appointee
  - Solicited by WD Director or appointee
  - Directed by WD Director or appointee to third party  Personal Gain
- Contribution need not directly benefit WD Director or appointee
- Contribution need not relate to WD Director or appointee's agency

# WD Director & Appointee Campaign Contribution Restrictions (G.C. 84308)

## Contribution Restriction:

- **WD Director or appointee may not:**
  - *accept* contribution of more than \$250; or
  - *solicit* or *direct* a contribution of more than \$250
- from any *direct party* or *interested party* to an application before the governmental body,
- while application *pending* or for *3 months following* the date of decision.

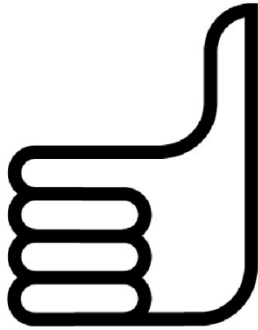


# WD Director & Appointee Campaign Contribution Restrictions (G.C. 84308)

## Disqualification Rule:

- WD Director or appointee receiving contributions aggregating ***more than \$250*** within ***prior 12 months*** must:
  - ***disclose receipt*** and
  - ***disqualify***
- if the source of contribution is a ***direct*** or ***interested party*** to an application pending before the governmental body.





# Best Practice

- Avoid temptation to view public service as opportunity for personal gain
- Look at every decision and ask yourself whether it involves a financial interest for you
- Consult counsel and, when in doubt, disqualify yourself



## Official faces penalty over donations

State says water board member failed to disclose contributions, including \$1,500 from a former Bell mayor.

PATRICK MCGREEVY  
REPORTING FROM  
SACRAMENTO

A water board member was charged by the L.A. County district attorney with misappropriating more than \$5.5 million from the small working-class city.

The report on Chacon said contributions that he failed to disclose properly included \$1,000 from Del Terra Real Estate Services, which has a construction management contract with the water district, and \$250 from a law firm that provides legal services for Orange County, which has a public works contract to deal with the water district.

Chacon reported donations of \$1,000 from the law firm of Arizona City Atty. Aronson-Glasman, \$999 from Commerce City to Olivia DeVans DeVans has had an agreement with the Community Development Commission to assist in the development of a new city.

Contributors included family members, according to the state political practices commission, the commission's report said, was an unreported contribution and expenditures





# § 1090 Warning!

## Special Rules for Contracts

- Virtually all elected officials, employees covered – consultants may also be covered
  - Direct or indirect interest
  - Agency barred if elected official has an interest that is not remote
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment, loss of office
- Contract is void

College official faces conflict-of-interest

GALE HOLLAND  
MAYOR OF LOS ANGELES

The Los Angeles County district attorney's office has opened an investigation into an alleged conflict of interest on the part of a former community college official whose family business was paid more than \$500,000 for work on a public construction project at the college's campus.

ferred further questions to the district, which said in a statement that although she did not directly oversee her company's work on the campus, the "mere fact that Ms. Hoefel benefited financially was enough to create a conflict of interest."

The statement, posted on the district's website, said Hoefel was in a choice between resigning or having

M. Delvin & Associates removed from the construction program. The statement also acknowledged that district officials "could have acted more quickly to resolve this conflict of interest."

Michael Delvin, 57, could not be reached for comment. M. Delvin & Associates' main business at Mission College was to examine newly constructed buildings

as a subcontractor for Group Inc. The firm of \$522,000 in profit for its role while Delvin was president, resigned. M. Delvin & Associates was a student of two other companies working on the college: Gateways Engineering and Contracting Corp.



# Leaving Office

- Prohibition against lobbying “old” agency.
- Rule: Elected officials and CEO prohibited from representing 3Ps before their former agency for one year after leaving government.



# Group 2: Perks

- **Principle:** Public servants should not receive special benefits by virtue of their positions
- **Principle:** Democratic equality

NEWS

## Felony Charges Filed Against Retired School Official

By Jennifer Wadsworth @jennwadsworth / September 11, 2014



SHARE ON FACEBOOK SHARE ON TWITTER EMAIL

Authorities have charged a retired Santa Clara Unified School District official with two conflict-of-interest felonies.

Prosecutors say Jinfa "Jim" Luyau, 59, as the district's Assistant Superintendent of Business Services, approved contracts that put the money into his own pocket. The money was supposed to

It's against the law for a public official to negotiate any government contracts he negotiates as part of the job.



# Types of Rules

1. Perks that others offer you (gifts)
2. Perks that you give yourself/misuse of public resources



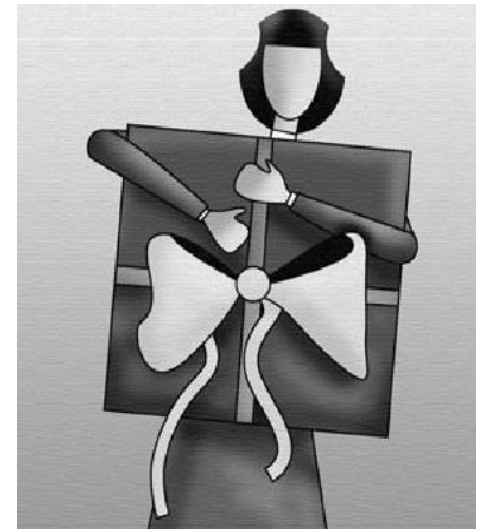
# Gifts Do Not Always Have Bows

1. Meals, food and drink (including receptions)
2. Entertainment (concerts, sporting events)
3. Certain travel and lodging



# Perks Others Offer

- Report \$50 and up (cumulative over a year)
- Exceptions for some kinds of travel, informational materials
- Limits are subject to change



# Beware of Stakeholders, Consultants Bearing Gifts

- Gift Limitation: Government Code § 89503
  - Maximum \$460 from any single source (set by regulation bi-annually)
  - Exceptions for weddings and holidays gifts of similar value.
- Honoraria & Travel Reimbursement
  - Honoraria prohibited
  - Travel reimbursement subject to gift limit

Villaraigosa to pay fines for taking free tickets

DAVID ZAHNISER

Los Angeles Mayor Antonio Villaraigosa has agreed to pay nearly \$42,000 in fines to resolve state and city investigations into his practice of accepting tickets to sports events, concerts and other pricey entertainment activities without reporting them as gifts.

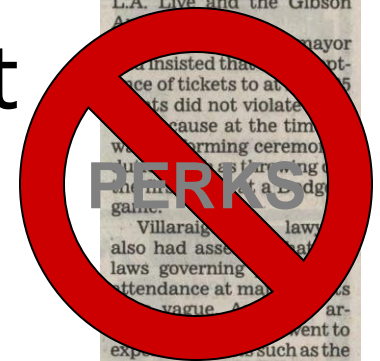
The penalty would be the largest of its kind under California's ethics law if approved by the state Fair Political Practices Commission and the city Ethics Commission.

In a pact drafted by officials at both agencies Villaraigosa conceded he failed to report free tickets to 34 events in his first five years in office, including Lakers games and concerts at such venues as Staples Center, L.A. Live and the Gibson Amphitheatre.

Mayor Villaraigosa insisted that he had accepted a large number of tickets to all kinds of events but that he did not violate the law because at the time he was performing ceremonial duties as a member of the city's board of directors at a Lodge game.

Villaraigosa's lawyer also had asserted that the laws governing the city's attendance at major events such as the Academy Awards, the American Idol Finale and concerts by Shakira and the Spice Girls as the city's official guests.

[See Penalty, A12]



# Beware of Stakeholders, Consultants Bearing Gifts

Local 12 | Saturday, Feb. 14, 2009

ORANGE COUNTY

- If gift exceeds \$460/yr/source, must disqualify

- But gift over \$460/yr/source even with:
  - Disclosure
  - Disqualification

**Los Alamitos councilwoman faces \$300 fine for accepting gift**

Commission will consider whether to accept Marilyn Poe's payment for exceeding gift limit in 2004.

By JAIMEE LYNN FLETCHER  
THE ORANGE COUNTY REGISTER

**LOS ALAMITOS** • Councilwoman Marilyn Poe may have to pay a \$300 fine for exceeding the single-source gift limit for elected officials. The San Juan Capistrano Planning Commission on Thursday will consider approving the fine for Poe for a gift she received in 2004. The FPPC did not state what the gift

was on the agenda. Poe reported her gift on her statement of economic interest but it was \$50 over the allowed amount, FPPC officials said. "I received the letter, I realized I was in violation and I paid it," Poe said. The board could either choose to refund Poe's money or accept the payment, said FPPC Executive Director Roman Porter. The FPPC in 2004 allowed council members to



FILE PHOTO  
Marilyn Poe

accept \$340 in gifts per year from a single source. Poe accepted a gift worth \$390, according to the FPPC. Council members this year are allowed to accept \$420 in gifts from a single

source, Porter said. Porter added that Poe's payment was "illegal" because she did not disclose it. The FPPC is trying to catch up on backlogged incidents. The FPPC in 2007 named a new executive director who is trying to expedite all past claims, he said. "That's been one of the efforts; to reduce that so there's a more timely response," he said. "This just shows that we're being efficient."

**CONTACT THE WRITER:**  
714-445-6692 or  
jfletcher@cregister.com



# Penalties

- Up to \$10,000 criminal fine per violation / \$5,000 civil penalty per violation
- Disqualification from holding elective office or lobbying
- In private enforcement action, violator liable for enforcer's attorneys' fees



# New Rule:

- **Non-Profit Fundraising Event Tickets**

- Issue: How to value ticket to non-profit entity fundraising event
- Usually: Report meal (non-deductible) portion of ticket
- New rule for non-profit fundraising event tickets



# FPPC §18946.4: Special Rule for 501(c)(3) and Political Fundraisers:

- Tix to fundraisers by tax-exempt non-profits and political committees have ***no value*** if:
  - Non-profit or political entity ***itself*** provides the ticket to the official
  - The official receives ***only two tickets*** from the non-profit or political entity



# Misuse of Public Resources



- Personal use of public resources prohibited (Government Code § 8314)
  - Public resources include staff time and agency property
  - Personal use includes political campaigns

# Case Study

- County Supervisor running for re-election
- Supervisor uses County employees' phones and copiers in re-election effort
- Supervisor convicted of misuse (theft) of public resources
- Fine and jail time

[Crim. No. 9051. Fourth Dist., Div. Two. Jan. 18, 1978.]

THE PEOPLE, Plaintiff and Respondent, v.  
ROBERT WILLIAM BATTIN, Defendant and Appellant.

## SUMMARY

A county supervisor was charged by indictment with theft (Pen. Code, §§ 484-487), misuse of public funds (Pen. Code, § 424, subd. 2), and presentation of fraudulent claims to the county (Pen. Code, § 72). The charges arose out of defendant's alleged utilization of his supervisory staff in his campaign for the nomination for Lieutenant Governor. The jury returned verdicts of guilty on the misuse of public funds count, which prohibits the use of public funds for any purpose not authorized by law, not guilty on the fraudulent claims count, and was hung on the theft count. The trial court later dismissed the theft count pursuant to the People's motion. Imposition of sentence was suspended and defendant was given three years' informal probation on certain conditions. (Superior Court of Orange County, No. C 34528, Kenneth E. Lae, Judge.)

The Court of Appeal affirmed. The court held the evidence showed defendant's county staff members were compensated with county funds for county and campaign work, that defendant authorized and approved the payment of salaries to the staff, and that defendant's diversion of county employees to the performance of tasks in aid of defendant's personal political campaign amounted to a use of public moneys for a purpose not authorized by law." The court rejected defendant's contention that the statute was an ex post facto law, that it was vague and overbroad, and that it violated the separation of powers doctrine. The court also held defendant's conviction was supported by substantial evidence, and that the statute did not require proof of specific intent. The court rejected contentions by defendant that his conviction should be overturned because his volunteer campaign force was not



# Consequences of Violations

- Civil penalties: \$1,000/day fine plus 3X value of resource used
  - (Government Code § 8314)
- Criminal penalties: 2-4 year prison term and disqualification from office
  - (Penal Code § 424)
- Can also have income tax implications



# Agency Expense Reimbursement

- Be familiar with your agency's policies/limits
  - What kind of expenses
  - What rates for food, lodging, transportation
  - The importance of documentation
- **Note:** Spouse expenses *not* reimbursable

**Santa Clara County Supervisor George Shirakawa racks up lavish expenses on public's dime**

*By Karen de Sá and Tracy Seipel | Mercury News*

POSTED: 11/18/2012 08:50:16 AM PST | UPDATED: 2 YEARS AGO 0 COMMENTS

Living the high life, Santa Clara County Board of Supervisors President George Shirakawa Jr. teed off at the Revere Golf Club last fall -- just minutes from the Las Vegas strip -- and charged the \$583 bill.

When the burly, red-cheeked public official flew to the East Coast last year for a violence prevention forum, he upgraded to first class -- quadrupling his airfare to \$2,605.

Shirakawa enjoyed these perks even though he didn't have a penny to his name, according to bankruptcy court filings. The veteran county leader declared personal bankruptcy in March 2011, despite his \$143,031 salary. And the lavish expenses? County taxpayers picked up the cost.

Click photo to enlarge



George Shirakawa, 2002 (Patrick Tehan/staff)

RELATED STORIES

Shirakawa accepted... from Silicon Valley... center of scandal



# Rules for Reimbursement

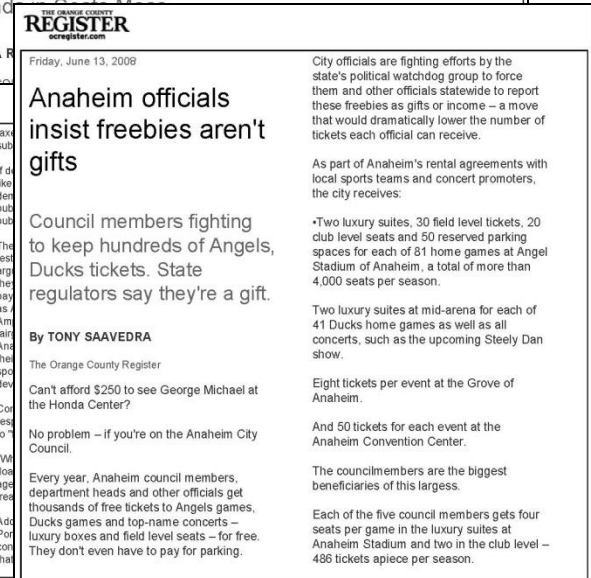
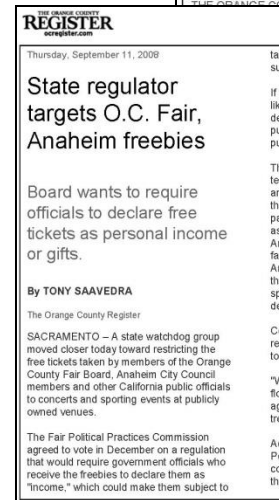
- Expenses must be “Actual and Necessary”
- No 1<sup>st</sup> class flights or “deluxe” hotels
- Must be authorized by written Agency Policy
- Signed Expense Report with receipts
- No reimbursement for spouse’s expenses.





# FPPC §18944.1: Rules re Tickets and Passes that Agency Gives to its Officials

- Issue: Agencies accused of abusing tickets to own events:
  - Anaheim Stadium
  - Orange County Fairgrounds and Amphitheatre



# Event Ticket Rule #1: Source Other Than Agency Gives Ticket to Official



- Ticket is not a gift to official if:
  - Official “performs” a ceremonial role or function on behalf of his or her agency
- Examples:
  - Baseball ticket to Mayor to sing National Anthem
  - Dinner ticket to District President to present award to local resident

# Event Ticket Rule #2: Third Party Gives Ticket to Agency; Agency Gives to Official

- Examples:
  - Seaworld provides agency with 10 free passes
  - UCSD gives agency 5 seats at annual economic forecast luncheon.
- Rules:
  - Ticket cannot be earmarked for any particular official
  - Agency determines in its sole discretion who may use the ticket
- Distribution must comply with ticket distribution policy adopted by agency.



# Event Ticket Rule #3: Agency Owns Ticket Given to its Own Official

- Circumstances:
  - Agency purchases tickets
  - Agency receives tickets because event on agency grounds
  - Agency receives ticket because it controls the event
- Rule: Distribution must:
  - Serve a public purpose
  - Comply with agency's adopted ticket distribution policy.
  - "Personal use" distribution—***not*** to governing board members



# Agency's Required Event Ticket Distribution Policy (FPPC §18944.1(c)):

- Policy must contain:
  - Statement of public purposes to be accomplished by distribution of event tickets.
  - Requirement that distribution shall accomplish the stated public policy
  - Prohibition against official transferring an agency-distributed ticket to anyone other than immediate family member for personal use.
- Policy to be posted on agency website “in a prominent fashion.”



# Distribution of Event Tickets to Agency Officials Must be Listed on FPPC Form 802

- Include in Form 802:
  - Date and description of event
  - Number of tickets distributed to each official, and face value of ticket
  - Description of the public purpose under which the distribution made
- Post on internet and send link to FPPC



# Gifts From Agency to Agency's Own Officials

- FPPC §18944.3; "...payment by a government agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys."



# Gifts from Agency to Agency's Own Officials (cont'd)

CBS NEWS / October 2, 2013, 8:14 PM

## LA. agency uses taxpayer money on lavish parties, alcohol



Los Angeles health care agency used taxpayer funds to pay for swanky dinners and lunches.

Share / Tweets / Stumble / Email

PERKS

public agency that provides health care for Los Angeles' poorest has been using taxpayer money on lavish parties and alcohol, reports CBS

The investigative reporter David Goldstein reviewed L.A. Care Health Plan's board statements and salary information for 2012.

Agency's executives spent more than \$8,100 for a 59-person dinner at Roy's Hawaiian Fusion in downtown Los Angeles. To wash down the meal, they bought 29 bottles of wine worth more than \$1,100.

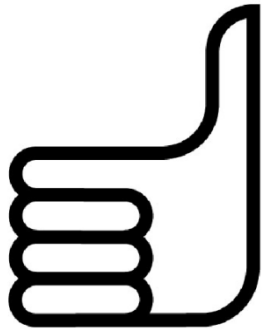
- Circumstance:
  - Agencies providing retiring officials expensive gifts
  - Agencies pay for expensive dinners for board members
- Agency provided meals, snacks **not a gift** if a "lawful expenditure of public moneys."
- Agency can adopt policy establishing public purpose for:
  - Meals, snacks at meetings held during mealtimes
  - Provision of shirts, jackets with agency logo



# Other Perk Rules

- Personal Perk Bans
  - Free or discounted transportation from transportation companies (Cal. Const. Art. 12, § 7)
  - Honoraria (Government Code § 89502)
- Agency Perk Bans
  - Mass mailings  
(Government Code Sec. 89001)
  - Gifts of public funds  
(Cal. Const. Art. 16, § 6)





# Best Practice

- Avoid perks *and* the temptation to rationalize about them
  - Legally risky
  - Public relations headache
  - Possible loss of office
  - Public embarrassment

The screenshot shows a news article from the Orange County Register dated August 10, 2010. The article is titled "CalOptima Rocked by Allegations" and is dated April 5, 2012. The text discusses allegations against CalOptima board members, including Chairman Ed Kacic, regarding conflicts of interest and open meeting laws. A large red "PERKS" stamp with a diagonal slash is overlaid on the right side of the article, indicating that the article's content is a negative example of best practice.

# Group 3: Transparency Laws

- **Principles:**

- It's the public's business
- The public will not trust what it cannot see



# Transparency Rules

- Conduct business in open and publicized meetings
- Encourage public to attend and participate in meetings
- Allow public inspection of records

**INSTITUTE for LOCAL GOVERNMENT**  
*Celebrating 50 years of service to local officials*  
[www.ilsg.org](http://www.ilsg.org)

## The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government. Conducting government openly and transparently is an opportunity to include the public in decision-making processes and demonstrate that the agency has nothing to hide.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution.

**CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:**

- A.** Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.
- B.** Allow the public to participate in meetings.
- C.** Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.

This pamphlet summarizes these three requirements for local officials in broad terms. For information about how these requirements apply in any given situation or more information about this area of the law in general, local officials are encouraged to consult with their agency attorneys.

The law also requires certain local officials to be transparent about their personal financial interests and relationships. For more information about these requirements, please see the Institute's bookmark entitled "Key Ethics Law Principles for Local Officials" and *A Local Official's Reference on Ethics Laws*. Both are available at [www.ilsg.org/trust](http://www.ilsg.org/trust).

# Transparency Rules – Ralph M. Brown Act

- **Open Meeting Requirement:** Public has the right to attend and observe government in action.
- **Agenda Posting Requirement:** Public has the right to advance notice of what business government will consider.
- **Public Comment Required:** Public has the right to address government on:
  - Any item to be considered by government
  - Any item within subject matter jurisdiction of government



# Brown Act: “Meetings” of Legislative Bodies Must be Open to the Public

- **Meeting:**

- “Any congregation of a ***majority*** of the members of a legislative body...
- ***at the same time and place ...***
- to ***hear, discuss, or deliberate upon***...
- any item within the ***subject matter jurisdiction of the legislative body...***



# Brown Act: “Meetings” of Legislative Bodies Must be Open to the Public (cont’d)

- **Serial Meeting Prohibitions:**
  - Use of *direct communications, personal intermediaries, or technological devices*
  - employed by a *majority* of the members
  - to *develop a collective concurrence.*



# Brown Act: “Meetings” of Legislative Bodies Must be Open to the Public (cont’d)

- **Exceptions to Meeting:**
  - Individual contacts
  - Conferences open to the public
  - Community meetings
  - Other open and noticed meetings
  - Social events





# Brown Act: Meetings of “Legislative Bodies” Must be Open to the Public

## Legislative Body:

- The ***governing body*** of a local agency
- Commission, board or other body of a local agency ***created by the legislative body***
  - Except: Ad hoc advisory committees comprised wholly of legislative body members
- Boards of ***Private corporations or entities*** if:
  - Created by elected legislative body; or
  - Receives funds for local agency and includes legislative body member on the board.



# Open Meetings: Basic rules

Open meeting laws were violated, D.A. says

■ **Meetings open:** Except as allowed by statute, all meetings of legislative body must be open and public, and all persons must be allowed to attend any meeting. **Decisions only at meeting:** Majority of legislative body may not

L.A. supervisors met behind closed doors with Brown last fall

JASON SONG AND GARRETT THEROLF

■ Los Angeles County supervisors violated the law last fall when they held a closed-door meeting with Gov. Jerry Brown to discuss

a controversial plan to give local government responsibility for nonviolent prisoners and probationers, according to the district attorney's office.

Under the new mandate, dubbed "realignment," prisoners convicted of nonviolent and non-sex-related crimes, such as low-level drug offenders or thieves, are to be kept in county jails instead of state prison. When released, those pris-

oners, who would have been on state parole in the past, will have to be monitored by county probation officials.

Before the law went into effect, supervisors met behind closed doors with Brown Sept. 2 to discuss the plan. At the time, Brown aides said he was responding to a request from supervisors and had not asked that the meeting be closed to the public.

A Times editorial writer

filed a complaint with the city district attorney after the meeting, saying the supervisors had violated the state's open-meeting laws.

Attorneys for the supervisors said state officials had not adequately disclosed the scope and details of the realignment plan, which could encourage the public's access to services and facilities.

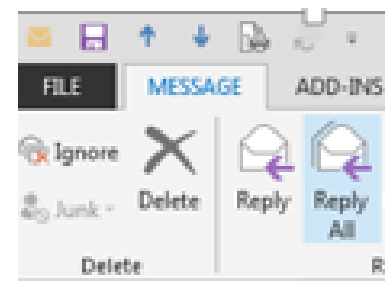
But in a letter dated Jan. 24, Jennifer Lentz Snyder, [See Meeting, AA5]

“meet” outside an open and noticed meeting.



# Conducting Business at Open Meetings

- Majority may not “meet” outside an agency-convened meeting
  - Meeting includes emails, serial discussions
  - Legislative Body includes committees, commissions and boards (except ad hoc committees of less than a quorum)
- Exceptions: Social events, conferences, etc.
  - So long as majority does not discuss agency business



# Closed Sessions

- Must be agendaized and announced
- Only those subjects allowed by statute:
  - Litigation
  - Personnel
  - Real estate negotiations
  - Real estate deals
- Attendance by staff on "need to know" basis
- Closed Sessions are confidential

**Probe: Alameda official secretly aided**  
by **Chronicle**  
ALAMEDA  
By **Lena Tam**, **San Francisco Chronicle**, **Published 10:11 a.m., Thursday, Jan. 8, 2014**  
[Social media icons]

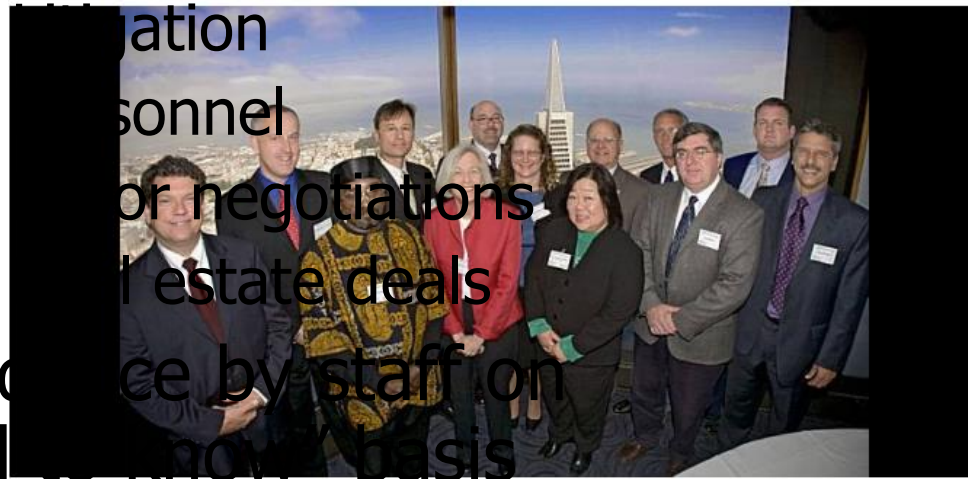


Photo: Special To The Chronicle

Alameda City Council member leaked confidential information to a firm...

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Help us show you better ads by updating your [ads settings](#).

An Alameda City Council member leaked confidential information to a firm hoping to develop the former Alameda Naval Air Station site, according to investigative findings that the council has referred to local prosecutors.

Lena Tam, a councilwoman since 2006, handed over privileged information in e-mails to officials of SunCal Cos. of Irvine, the investigation found. SunCal is negotiating with the city to develop the site of the former air station, now known as Alameda Point, at a cost of hundreds of millions of dollars.



# Public Participation

- No governing body action on items not listed on posted agenda
  - Limited exceptions
- Public's right to be heard before or during body's consideration of an issue
- Public comment
  - Grandstanding, negative feedback and gadflies must be accepted as part of public service



# Public Participation

- Public Access and Disability-related accommodation.
- Meetings within jurisdiction of agency
  - Limited Exceptions



# Consequences of Violations

- Injunction/Recording of Closed Sessions
- Nullification of decision
  - Cure Provisions
  - Fix violations ASAP!
- Criminal sanctions: misdemeanor
- Costs and attorneys' fees
- Intense adverse media attention

THE ORANGE COUNTY REGISTER  
ocregister.com

Friday, December 22, 2006

Canistrano Unified

THE ORANGE COUNTY REGISTER  
ocregister.com

At one such meeting, trustees discussed limiting Lackey's opportunity to speak at meetings, according to district documents,

Friday, October 3, 2008

## Court rulings against districts involving attorney Spencer Covert

By SCOTT MARTINDALE

The Orange County Register

Local judges have upheld at least four legal challenges filed by open-government advocates against attorney Spencer Covert and his clients. The Tustin-based attorney specializes in representing school districts and community college districts.

**1993** : A Riverside County judge orders the Corona-Norco Unified School District to prevent further destruction of copies of a district report on school personnel making repairs to the home of the superintendent and another official. Covert defends the superintendent's decision to shred copies of the report, saying it was not a public record, according to news reports. Covert later tells the Register his role in the case was mischaracterized.

**1997** : A San Bernardino County judge rules that the Chino Valley Unified School District board illegally met in closed session to fire its superintendent and buy out his contract without giving adequate public notice. The judge chides the school board for refusing to take public comment at special meetings. "Mr. Covert was the chief architect of the termination of a superintendent that ultimately cost Chino taxpayers tens of thousands of dollars in addition to legal fees," former Chino trustee Brian Chilstrom says.

**1999** : Orange County Superior Court Judge Tully Seymour orders trustees of the South Orange County Community College District to tape-record their closed sessions for two years because of what he calls "persistent and defiant misconduct" of state openness laws. Covert says the case was subsequently settled on different terms.

**2003** : Orange County Superior Court Judge Andrew S. S. orders the Orange Unified School District to tape-record the school board's special meetings for three years after filing a lawsuit to force the school board to open up behind closed doors in 2001, according to news reports. During four closed-session meetings, trustees were acquiring 100 acres of land from the county which to build a bypass road, and Covert considered filing a lawsuit with the county to protest a proposed road that would



# Intentional Violation

- Each Member of a Legislative Body who
  - Attends a meeting which does not comply
  - Where action is taken
  - With the intent to deprive the public of information to which he has reason to know the public is entitled

Is guilty of a misdemeanor.

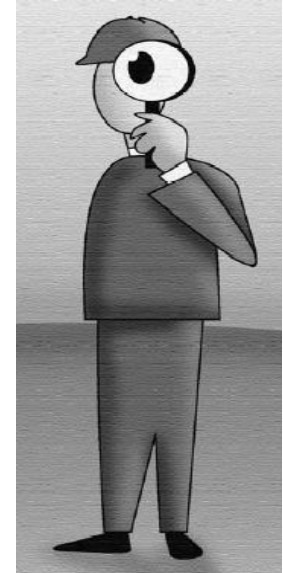
- Criminal sanctions (up to 6 months in jail; \$1,000 fine)





# Public's Right to Records

- Right is express in State Constitution
  - Cal. Const. Art. 1 § 3
- Agenda and meeting materials
  - Government Code §54954.1
- Other writings prepared, owned, used or retained by the agency (including emails and other electronic documents)
  - Government Code § 6252
- Enforcement: Person seeking records entitled to costs and fees
  - Government Code § 6259



# Exceptions to Records Disclosure

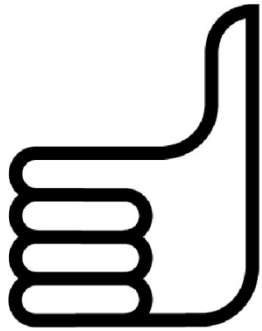
- Statutory exemptions from disclosure
- Strictly construed
- *E.g.*, personnel files, medical records, rates of payment, records that reveal trade secrets (for 2 years), peer review records
- Catchall exemption: Public interest in non-disclosure outweighs interest in disclosure
- Agency may disclose anyway unless disclosure is expressly prohibited by law



# Financial Interest Disclosure (Political Reform Act of 1974)

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





# Best Practices

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



# Group 4:

## Fair Process Laws

- **Principle:** Public expects governmental decision-makers to be impartial and avoid favoritism



# Examples

- Due process requirements
  - Notice and fair hearing opportunity
- Rules against bias
- Competitive procurement requirements
- Incompatible office prohibitions



# Examples, continued

- Disqualification requirements if decision involves family members
- Campaign contributions (appointed bodies)



# Common law conflict - BIAS

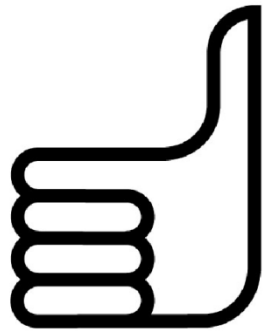
- Personal interest in an outcome
- Personal animosity against an applicant
- Pre-existing opposition to specific project
  - Political Reform Act covers financial conflicts; common law covers non-financial interests as well.

*Clark v. Hermosa Beach (1996)*

48 Cal. App. 4th 1152







# Best Practices

- Avoid making public statements of positions on issues that may become before you
- Think fairness and merit-based decision-making in contracting decisions (not personal relationships)
- Listen during public meetings



# More considerations

- Seeking election or appointment to office is a private activity
- Soliciting political contributions from agency officers and employees generally prohibited
- Giving or promising favors may be prohibited
- Using agency time or identity for nongovernmental purpose is inappropriate



# Incompatible Offices

- Rule: a public officer is prohibited from simultaneously holding two public offices that are incompatible
- Offices incompatible generally where:
  - Either office audits, overrules, removes members, dismisses employees, or supervises the other body
  - Possibility of significant clashes of loyalty based on powers and jurisdiction
  - Improper to hold both offices due to public policy

# Other Topics:

- Parliamentary Procedure
- Public Contracting

# Parliamentary Procedure

- **Purpose:** balance of allowing business to be conducted efficiently and protecting individual rights of expression

# Parliamentary Procedure

- **Robert's Rules of Order**
  - Not required by statute
  - Referenced in some agency policies
  - Formal v. informal adherence
- **Rosenberg's Rules of Procedure**
  - simplified

# Parliamentary Procedure

- Quorum
  - Necessary to legally conduct business
  - Majority of members of the body
  - Can lose quorum if a member leaves

# Parliamentary Procedure

- Rules for Placing Items on an Agenda
  - No procedure mandated by statute
  - Practice v. Policy
- Common practices and policies for placing items on an agenda
  - By GM
  - By President
  - By individual or a specified number of board members



# Parliamentary Procedure

- Role of the Chair
  - Enforces rules of conduct for the meeting
  - Decides order of speakers
  - Enforces decorum
  - Participates in discussion, but generally last to speak during debates

# Parliamentary Procedure

- Agenda Item Discussion
  - Chair announces agenda item and format to follow (including opening the public hearing, if applicable)
  - Report on item (usually staff)
  - Technical or clarification questions from board
  - Public meeting/public input (specified time limit per speaker)



# Parliamentary Procedure

- Agenda Item Discussion (cont'd)
  - Invite a motion (announce name of member making motion)
  - Ask if there is a second
  - If motion seconded, obtain clarification of motion (from maker, chair, or secretary)
  - Discussion from board
  - Vote
  - Secretary announces votes

# Parliamentary Procedure

- Agenda Item Discussion (cont'd)
  - 3 basic types of motions
    - Basic motion
    - Motion to amend
    - Substitution motion
  - Last proposed, first resolved

# Parliamentary Procedure

- Items Not Subject to Debate
  - Motion to adjourn
  - Motion to recess
  - Motion to fix time to adjourn
  - Motion to table
  - Motion to limit the debate (“Call the question”)
    - Requires 2/3 vote of those present

# Parliamentary Procedure

- Rule Governing Public Comment
  - “The legislative body ... may adopt reasonable rules and regulations ..., including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. ”

Gov't Code § 54954.3(b)

# **Beyond the Law: Public Service Ethics Principles**

# Ethics = Values

- Six universal ethical values:
  - Trustworthiness
  - Loyalty
  - Responsibility
    - Community interest
  - Respect
  - Fairness
  - Compassion

***Source: Institute for Global Ethics***



# Applying Values to Public Service

Trustworthiness:

- I am truthful with my fellow officials, the public and others.

**PUBLIC SERVICE VALUES**

*When we talk about the values that ought to guide one's public service, what kinds of values do we mean? The following provides some ideas on values that can inform one's public service and suggests examples of what those values mean in practice.*

**Trustworthiness**

- I do not use information that I acquire in my public capacity for personal advantage.
- I do not promise that which I have reason to believe is unrealistic.
- I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political advantage.
- I do not disclose confidential information without proper legal authorization.
- I am proactive and innovative when setting goals and considering policies.
- I consider the broader regional and statewide implications of the agency's decisions and issues.
- I promote intelligent innovation to move forward the agency's policies and services.

**Fairness**

- I make decisions based on the merits of the issues.
- I honor the law's and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.

**Responsibility**

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I take responsibility for my own actions, even when it is uncomfortable to do so.

**Compassion**

- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to, and care about, the needs and concerns of the public, officials, and staff.
- I recognize my responsibility to society's less fortunate.
- I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

**Respect**

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded, and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I involve all appropriate stakeholders in meetings affecting agency decisions.

**Loyalty**

- I safeguard confidential information.
- I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.
- I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.
- I don't oppose final decisions once they have been made by the decision makers, except through internal lines of communication.
- I put loyalty to the public's interests above personal and political loyalties.

**The Importance of Public Perception**

The interesting -- and somewhat unique -- aspect of public service ethics is that it is not exclusively an introspective process. A public official can be absolutely confident that he or she is able to put personal interests or relationships aside, but the public may still question whether indeed that is so.

Public perception, therefore, matters a great deal in one's analysis of what the "right thing to do" is in public service. This is because, as public servants, public officials are stewards of the public's trust in the public's governing institutions.

In short, public service ethics is not only about doing the right thing, but also about doing the public's confidence that indeed the right thing has been done. But not doing the right thing just because the public's perception may be negative can have its own pitfalls. To step, or at times tiptoe, along the trail toward good government, here is a simple (but not necessarily easy) process:

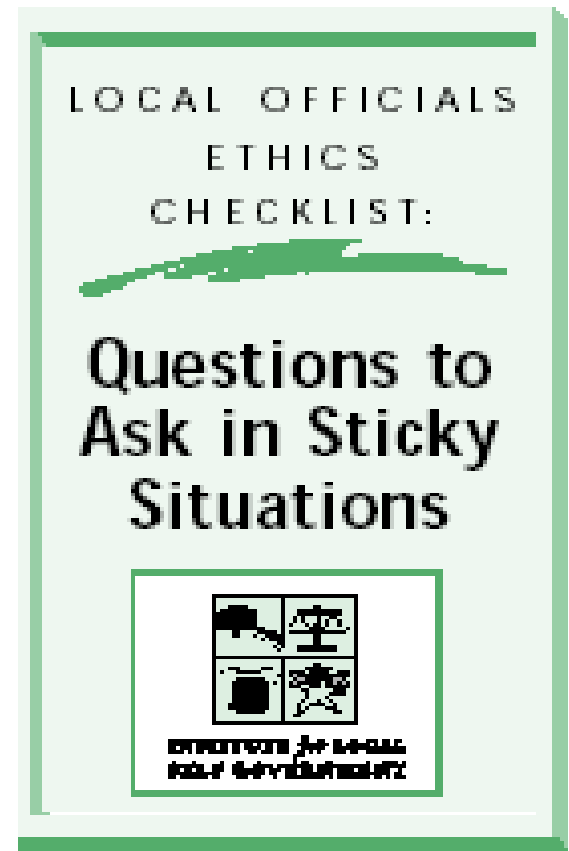
- **First Step:** Figure out what "the right thing" to do is.
- **Second Step:** Figure out what the public's perception of "the right thing to do" would be.
- **Third Step:** When needed, balance the first two steps and follow the path which best supports public service values.

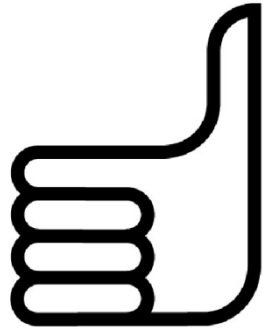
# Analysis by Ethical Dilemmas

1. Legal issue v. Ethical issue
2. Two competing “right values”
3. Doing the right thing costs more than one wants to pay

# Questions to Ask

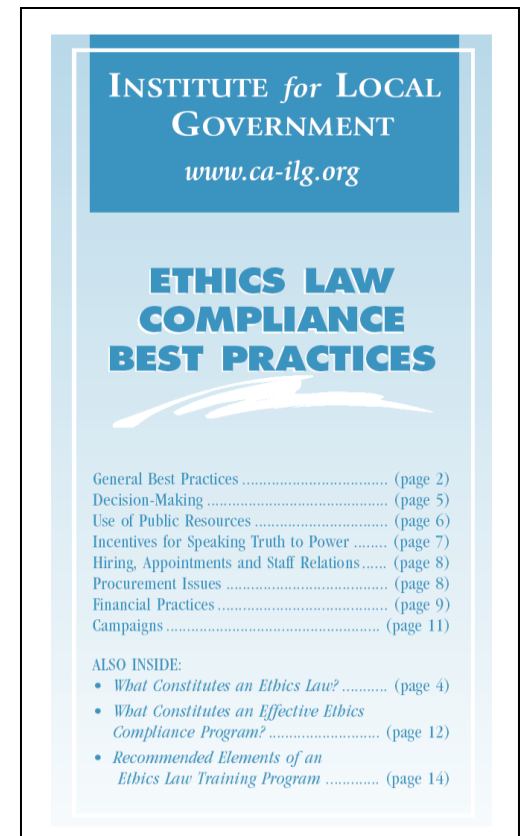
- What would make the public feel best/inspire public confidence?
- What would you want to read about on the front page?
- What would you be proud to tell your mother about?





# Best Practices

- Be clear on your own values/how they apply to public service
- Promote a culture of ethics at your agency



# Key Lessons

- The law sets minimum standards for ethical behavior
- Violations of ethics laws carry stiff penalties
- When in doubt, ask and ask early

# Resources for Further Reading: Conflicts of Interest

- *Conflicts of Interest* (Cal. Atty. Gen.)
- *Can I Vote?* (FPPC)
- *Your Duty to File* (FPPC)

# Resources for Further Reading: Transparency

- *The Brown Act* (Cal. Atty Gen.)
- *Public Records Summary* (Cal. Atty Gen.)
- *ABCs of Open Government Laws* (I.L.G.)

# Resources for Further Reading: Transparency

- *Ethics Law Compliance: Best Practices (I.L.G.)*
- *Walking the Line: What To Do When You Suspect an Ethics Problem (I.L.G.)*
- *Questions to Ask in Sticky Situations (I.L.G.)*



# Questions?