


AB 1234 Ethics Training

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A Professional Law Corporation

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Why Are We Here?

- California state law (AB 1234) imposes mandatory ethics training requirements on all local elected officials or members of legislative bodies who receive any compensation or reimbursements, and employees designated by the legislative body.
- Officials must receive **2 hours** of training every **2 years**

AB 1234 Training Overview

I. Personal Financial Gain by Public Officials

- Conflicts of Interest Under the Political Reform Act
- Contractual Conflicts of Interest (Gov't Code § 1090)
- Conflicts of Interest and Campaign Contributions
- Conflicts of Interest When Leaving Office
- Bribery

II. Laws Regarding Claiming Perquisites of Office

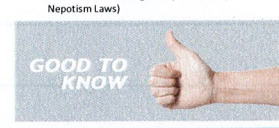
- Limitations on Receipt of Gifts
- Honoraria Ban
- Misuse of Public Funds
- Prohibitions Against Gifts of Public Funds
- Mass Mailing Restrictions
- Prohibitions Against Free or Discounted Transportation by Transportation Companies

III. Government Transparency Laws

- Economic Interest Disclosure under the Political Reform Act
- Brown Act
- Public Records Act

IV. Laws Relating to Fair Processes

- Common Law Bias Prohibitions
- Due Process Requirements
- Doctrine of Incompatible Offices
- Incompatible Activities
- Competitive Bidding Requirements for Public Contracts
- Disqualification from Participating in Decisions Affecting Family Members (Anti-Nepotism Laws)



I. Personal Financial Gain by Public Officials

- A. Conflicts of Interest under the Political Reform Act (PRA)
- B. Contractual Conflicts of Interest (Gov't Code § 1090)
- C. Conflicts of Interest and Campaign Contributions
- D. Conflicts of Interest when Leaving Office
- E. Bribery



I. Personal Financial Gain by Public Officials

A. Conflicts of Interest under PRA

Basic Rule

- Public officials* have a disqualifying conflict of interest under the Political Reform Act of 1974 when a decision has a:

- Reasonably foreseeable material financial effect on an official's economic interest
- Different from the effect on the public generally

* For purposes of this rule, a "Public Official" is every member, officer, employee or consultant of a state or local government agency



I. Personal Financial Gain by Public Officials

What is an "Economic Interest" under the PRA?

- § Business investments of \$2,000 or more
- § Business management positions or employment in for-profit entities
- § Real property interests of \$2,000 or more
- § Sources of income of \$500 or more (within previous 12 months)
- § Sources of gifts of \$470 or more (within previous 12 months)
- § Personal financial effects or finances



I. Personal Financial Gain by Public Officials

How do you determine if the “Economic Interest” qualifies as a Conflicts of Interest under PRA?

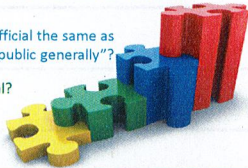
Four-Part Test

4: Is the official “making, participating in the making, or using his or her position to influence” the governmental decision from which the financial effects result?

3: Is the effect on the official the same as on the “public generally”?

2: Is it material?

1: Is the financial effect “reasonably foreseeable”?



I. Personal Financial Gain by Public Officials

Conflicts of Interest under PRA

STEP 1:
Is the
financial effect
“reasonably foreseeable?”

STANDARD:
“Realistic possibility
and more than
hypothetical or
theoretical”

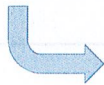
I. Personal Financial Gain by Public Officials

Conflicts of Interest under PRA

STEP
2

Q: Is it material?

A: Determine correct “materiality standard”



- Materiality is a measure of “how important” it is
- Rules vary by type of interest
- In general, materiality is presumed when the public official's financial interest is a party to, or the subject of, the governmental decision.

I. Personal Financial Gain by Public Officials

Conflicts of Interest under PRA

step

3

Is the effect on the official the same as on the "public generally"?

- Effect on official is indistinguishable from its effect on the public generally if:
 - Significant segment of public is affected (i.e. 25% of all businesses, real property or individuals); and
 - Effect on his/her interest is not unique compared to the effect on a significant segment (e.g., Decision would have a disproportionate effect on development potential of official's real property or on an official's business due to its proximity to project that is subject of the decision).

I. Personal Financial Gain by Public Officials

Conflicts of Interest under PRA

4

Is the official "making, participating in the making, or using his or her position to influence" the governmental decision from which the financial effects result?

Determine if the official is:

- Making a decision
- Participating in a decision
- Using official position to attempt to influence a decision

Official may still participate if an exemption applies

I. Personal Financial Gain by Public Officials

A. Conflicts of Interest under PRA: Recusal

- Public official with a disqualifying interest must:
 - Publicly identify interest in sufficient detail
 - Recuse self from discussions or acting on matter
 - Leave room, unless matter on consent agenda

Exception

May speak during public comment on certain personal interests.

I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Basic Rule (Gov. Gov. Code section 1090)

- Prohibits public officials and employees from having financial interests...
- In contracts...
- Made by them in their official capacities

Applies Broadly

- Applies to renewals, extensions, and oral contracts
- Financial interests in contracts are broadly construed

I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Legislative body deemed to make all agency contracts

- Legislative body members are deemed to have participated in making all contracts of the agency, except where an exception applies
 - Prevents the **agency** from entering into contract in which a member of the agency's council, board or commission has a financial interest

Note

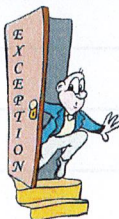
Employees can avoid prohibition by not participating in the making of the contract

I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Remote Interest Exceptions

- Public official does not have an interest in a contract if the interest is "remote," the interest is disclosed to the legislative body and noted in official records, and the official does not vote (applies only to multi-member bodies.).



I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Remote Interest Exceptions - Examples

- Employee or officer of non-profit
- Landlord or tenant of contracting party
- Salary or per diem from a directly involved government department
- Engineer, geologist, architect, or planner employed by a consulting engineering or architectural firm
- Owner/partner of a firm who serves as appointed member of unelected board or commission
- Supplier of same goods and services for 5 years prior to election/appointment
- Employee of private party if:
 - 10 or more employees, and
 - Employed more than 3 years

I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Non-Interest Exceptions

- Public official is deemed not interested and may participate in making of the contract.
- Examples:
 - Ownership of less than 3% of stock, constituting less than 5% of income
 - Spouse of officer/employee of public agency, if the office holding or employment has existed at least one year prior to the spouse's election/appointment
 - Salary or per diem from a non-directly involved government department
 - Non-salaried member of non-profit, with disclosure and noting records



I. Personal Financial Gain by Public Officials

B. Conflicts of Interest in Contracts

Consequences of Violations

- Contract is void and unenforceable
 - Payments made to the contracting party must be returned to the public agency
 - Public agency may keep benefit of the contract
- Willful violations are **criminal**
 - Permanently disqualified from holding office
- FPPC now has jurisdiction and can issue administrative fines
 - Offering section 1090 advice



I. Personal Financial Gain by Public Officials

C. Conflicts of Interest in Campaign Contributions

Basic Rule

- Public officials are disqualified from making a decision involving a license, permit, or entitlement for use if official has accepted a campaign contribution exceeding \$250 in the preceding 12 months.
 - Exception for "directly elected" officials
 - Official may not accept a campaign contribution exceeding \$250 while an application is pending, and for three months after the decision is made.



I. Personal Financial Gain by Public Officials

D. Conflicts of Interest When Leaving Office

Lobbying Former Agency

- One year ban on lobbying former agency
- Applies to elected officials, executives, and general managers
- Applies only if compensated and representing another person

Decisions Involving Prospective Employers

- Public officials and employees are prohibited from being involved in governmental decisions directly relating to a prospective employer

I. Personal Financial Gain by Public Officials

E. Bribery

Basic Rule

- Elements of the crime
 - A governmental official (elected, appointed, employed);
 - Requests, takes, or agrees to take a bribe; and
 - Represents that the bribe would unlawfully influence vote decision, or opinion. Representation can be *express* or *implied*.
- Must have corrupt intent that official duty would be unlawfully influenced*



"anything of value or advantage, present or prospective"

Quiz

Question #1

- The City Council and City Manager will be attending a conference and they want to contract with a vendor to make City pins that they can all wear to the meeting.
- A City Councilmember owns a business manufacturing decorative pins and offers to provide the pins at a discount.

Can the City enter into an agreement with the City Councilmember?

Answer to Question #1

- No, the City cannot enter into an agreement with the City Councilmember's business even though the pins will be provided at a discount.

Question #2

- The City and Chevron are negotiating on energy efficiency contract for construction of solar panels on the City's property
- Two City Council members hold Chevron stock

Can the City contract with Chevron to install the panels?

Answer to Question #2

- Yes, the City most likely can enter the agreement with Chevron. The Councilmembers' stock interest is most likely a "non-interest" for purposes of Section 1090. To be a "non-interest," the Councilmembers must own less than 3% of Chevron's shares and earn no more than 5% of their annual income from the corporation.
- However, depending on the value of the stock, Councilmembers may have personal conflicts of interest under the PRA and would be required to recuse themselves even if the City was able to enter into the agreement.

Question #3

Consultant is seeking a contract for services from the City Council.

A Councilmember received a \$300 campaign contribution from the consultant 3 years ago.

Can the Councilmember participate in consideration of the contract?



Answer to Question #3

- Yes, Councilmembers are directly elected by the voters and so the prohibition against receiving campaign contributions does not apply.

II. Laws Relating to Claiming Perquisites of Office

- A. Limitations on the receipt of gifts
- B. Honoraria ban
- C. Misuse of public funds
- D. Prohibitions against gifts of public funds
- E. Mass mailing restrictions
- F. Prohibitions against acceptance of free or discounted transportation by transportation companies



II. Laws Relating to Claiming Perquisites of Office

A. Gifts

Basic Rule

- Gift Limit Prohibition:

- ✓ Public officials and employees...
- ✓ May not accept...
- ✓ Gifts...
- ✓ From a single source...
- ✓ During a calendar year...
- ✓ In excess of \$470.

CAUTION

- Gifts received in excess of \$50 from a single source in a calendar year must be reported
- Public Officials may not accept a gift in excess of \$470 from a single source in a calendar year.

II. Laws Relating to Claiming Perquisites of Office

A. Gifts

What is a Gift?

- Anything of value that provides a personal benefit for which the donor does not receive equivalent consideration



Includes rebates or discounts
unless given in the regular course
of business to members of the public

II. Laws Relating to Claiming Perquisites of Office

A. Gifts

When is a Gift received?

- The public official has actual possession of the gift; or
- When the official takes any action exercising direction or control over the gift, including discarding the gift or turning it over to another person.



*Give it back
or donate it
to charity*

II. Laws Relating to Claiming Perquisites of Office

A. Gifts

Numerous Exceptions to Gift Rule

- Gifts Returned
- Gifts donated to charity (without claiming a deduction)
- Gifts from family members
- Informational material
- Inheritance
- Leave credits
- Disaster relief provisions
- Travel and subsistence as part of campaign activities
- Entrance to an event while performing a ceremonial role (includes one guest)
- Prizes received in a bona fide competition

II. Laws Relating to Claiming Perquisites of Office

A. Gifts

Numerous Exceptions to Gift Rule

- Benefits received as a guest attending a wedding
- Bereavement offerings
- Acts of neighborliness
- Reciprocal exchanges in a social relationship
- Personalized plaques or trophies valued at less than \$250
- Bona fide date or dating relationship
- Acts of human compassion
- Gifts from long-term, close personal friends



II. Laws Relating to Claiming Perquisites of Office

A. Gifts

Limitations on Receipt of Gifts

- Special Exceptions for Travel Payments
 - Some payments are not subject to limits and not reportable
 - Payments by government agency or non-profit
 - Others are not subject to limits but are reportable
 - Travel rules are very specific; check with legal counsel if your travel will be paid for by a third party

II. Laws Relating to Claiming Perquisites of Office

B. Honoraria Ban

Basic Rule

Elected officials, city managers, and the city attorneys, may not accept any payment for:

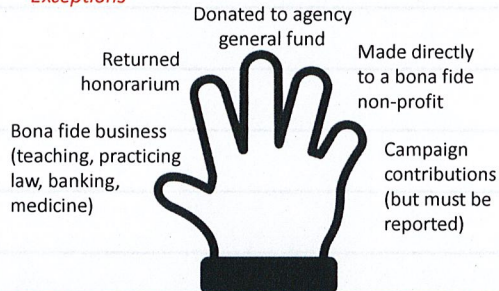
- Giving a speech,
- Publishing an article, or
- Attending a public or private conference, convention, meeting, social event, meal, or similar gathering.



II. Laws Relating to Claiming Perquisites of Office

B. Honoraria Ban

Exceptions



II. Laws Relating to Claiming Perquisites of Office

C. Misuse of Public Funds

Basic Rule

- Public officials and employees may not use public resources for any private gain
 - Whether financial or political
- Government cannot expend resources to promote a partisan position in an election campaign
 - But it can educate about ballot measures

II. Laws Relating to Claiming Perquisites of Office

D. Gifts of Public Funds

Constitutional Prohibition

Public agencies may not make gifts of public funds

- An expenditure is not a gift if it serves a public purpose, even if it benefits a private party
- Legislative body's determination of a public purpose is given great deference

II. Laws Relating to Claiming Perquisites of Office

E. Mass Mailing Prohibition

Basic Rule

- A "mass mailing" is:
 - A tangible item sent or delivered
 - To 200 or more people within a calendar month
 - That "features" an elected officer by:
 - Including the photograph or signature, or
 - Singling out the officer by the manner of display of name or office in the layout, such as headlines, captions, type size, or type color
 - For which the costs of design, production, and printing exceed \$50 and are paid with public monies



II. Laws Relating to Claiming Perquisites of Office

F. Acceptance of Free or Discounted Travel

From Travel Companies

- California Constitution prohibits public officers (not all employees) from accepting free passes or discounts from a transportation company
- One who accepts forfeits his/her office
- Prohibition does not apply to discounts offered to the general public



Quiz

Question #4

- Your neighbor is going on vacation and gives you two tickets to the Warriors game. Face value on each ticket is \$200.



Can you accept the tickets?

Answer to Question #4

- Yes, the combined value of the tickets is less than \$470. Assuming your neighbor has not given you any other gifts such that you have received more than \$470 from him in the calendar year, you can accept the tickets. However, as the gift is in excess of \$50, you will need to disclose the gift.

Question #5

- Councilmember has made campaign t-shirts made 10 minutes from City Hall.
- City staff offers to pick up the t-shirts and return them to the Councilmember during regular business hours.



May City staff retrieve the t-shirts?

Answer to Question #5

- No, utilizing City staff time to obtain campaign t-shirts would constitute a misuse of public resources.
- Public officials are prohibited from using public resources for private political gain.

III. Government Transparency Laws

- A. Economic interest disclosure under the Political Reform Act
- B. Brown Act
- C. Public Records Act



III. Government Transparency Laws

Public Policy Considerations

- *Economic Interest Disclosure*
 - Public has right to know public officials' economic interests that may affect their official decisions
- *Right to access/information*
 - People have a right to access information that enables them to monitor the functioning of government.
- *Brown Act*
 - The people have a right to be informed about the conduct of their business, and for deliberations to be conducted and actions to be taken openly.

III. Government Transparency Laws

A. Economic Interest Disclosure

Under the Political Reform Act

- A Form 700 must be filed by enumerated public officials including those listed in an agency's Conflict of Interest Code
- Filed upon taking office, leaving office, and on an annual basis
- Requires disclosure of personal financial interests



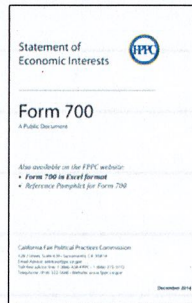
It's a public document!

III. Government Transparency Laws

Form 700

Key Points

- Not required to list primary home
- Remember to list spouse/domestic partner income



III. Government Transparency Laws

Ralph M. Brown Act

Government Code sections 54950 et seq.



III. Government Transparency Laws

B. Brown Act

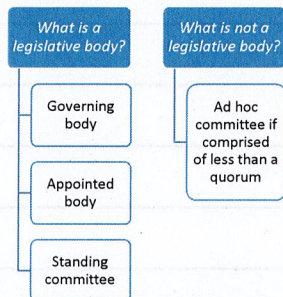
Open Meeting Requirements

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



III. Government Transparency Laws

Legislative Bodies



III. Government Transparency Laws

B. Brown Act Definition of "Meetings"

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business within the agency's subject matter jurisdiction
- Exceptions:
 - Conferences
 - Community meetings
 - Social or ceremonial occasions
 - Individual contacts
 - Standing committees
 - Meetings of other legislative bodies

III. Government Transparency Laws

B. Brown Act— Avoiding “Serial Meetings”

- Majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business
- Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated

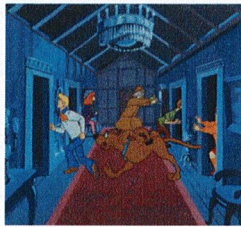


III. Government Transparency Laws

B. Brown Act—Avoiding “Serial Meetings”

Examples

- Hub and spoke
 - A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members' positions to other members in advance of the meeting.
- Daisy chain
 - In the daisy-chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body's subject matter jurisdiction.
- Emails
 - Informal nature of email communication is ripe for inadvertent Brown Act violations



III. Government Transparency Laws

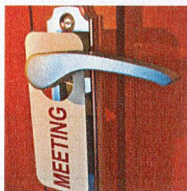
B. Brown Act

Closed Sessions

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

Permissible Closed Session Topics:

- Real estate negotiations
- Pending or threatened litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security



III. Government Transparency Laws

B. Brown Act

May take action only on items on posted agenda

- Posting requirements:
 - Regular meetings** must be posted **72** hours before meeting
 - Special meetings** must be posted **24** hours before meeting
- Exceptions**
 - Emergency
 - Urgency → need for immediate action came to agency's attention after posting the agenda

SPECIAL MEETING NOTICE

!

III. Government Transparency Laws

B. Brown Act

- AB 2257
- By 2019, agenda must be available through a prominent, direct link on agency's homepage.
- Alternatively, agency can provide a link to an integrated agenda management platform, with the current agenda at the top.

III. Government Transparency Laws

B. Brown Act

Public Participation Rights

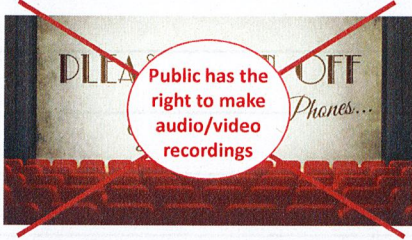
- Regular meetings must provide an opportunity for the public to speak regarding any matter within the body's jurisdiction
 - Legislative body may briefly discuss these items and refer matters to staff, **but cannot take action**
- Public can address the legislative body on matters on the agenda before or during consideration of the item



III. Government Transparency Laws

B. Brown Act

Public Participation Rights



III. Government Transparency Laws

B. Brown Act

- SB 1436
- Requires an oral report in open session summarizing the recommendation to adjust the compensation of any “local agency executive” before action is taken.

Quiz

Question #6

- The City Council establishes a standing committee of three of its seven members, which meets monthly.
- A fourth Councilmember wants to attend these meetings and participate.



- 1. May she attend?
- 2. Is this a Brown Act violation?

Answer to Question #6

- 1. Yes, she may attend an open and noticed meeting of a standing committee of the District provided that she attends only as an observer and **does not participate in the deliberations.**
- 2. Attending the standing committee is not a violation of the Brown Act. However, if she participated in the discussions then it would be a violation.

Question #7

- A Councilmember e-mails a newspaper article pertaining to an upcoming item listed on the agenda next week to the other 6 Councilmembers.
- The Councilmember indicates that she supports the item based on the article and three members respond back to the email group and indicate that they also support the item and that the information was very helpful.



Was this a Brown Act violation?

Answer to Question #7

- Yes, the Councilmembers have participated in a discussion of an item within the jurisdiction of the body that was not noticed, open or public.

Question #8

- During public comment for items not listed on the agenda, a speaker requested that the City Council write a letter of support on behalf of his cause.
- The City Council proceeded to vote on writing the letter and it passed unanimously.



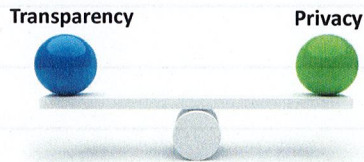
Is this a Brown Act violation?

Answer to Question #8

- Yes, the City Council has taken action on an item that was not noticed on the agenda. Before taking action, the City Council should have directed staff to put the item on the agenda for a future City Council meeting for consideration/action.

III. Government Transparency Laws

C. Public Records Act



III. Government Transparency Laws

C. Public Records Act

Basic Rule

- All non-exempt, state and local government agency records in any form or medium are subject to public inspection during office hours or copying upon payment of duplication costs

Record defined broadly

- Any tangible thing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

III. Government Transparency Laws

C. Public Records Act

Duty to Assist Requestors

- Agencies are required to
 - **Assist** requestors with identifying records and information that are responsive to requests or to the purpose of the requests
 - **Describe** the information technology and physical location in which the records exist
 - **Provide** suggestions for overcoming any practical basis for denying access to the records or information sought.



III. Government Transparency Laws

C. Public Records Act

Exemptions

- Drafts
- Pending litigation
- Personnel records
- Medical, dental, and other insurance records
- Closed session minutes and legal memoranda and other materials distributed in a closed session
- Records protected by the attorney-client privilege



III. Government Transparency Laws

C. Public Records Act

HOT Issues

- **Emails and text messages** about public business on personal phones, devices, or accounts
 - » On March 2, CA Supreme Court held that these records *are subject to disclosure* in response to a Public Records Act request.
(*City of San Jose et al. v. Superior Court*)
- **Accidental release** of privileged documents does not waive the privilege
 - » Recent decision by the CA Supreme Court
(*Ardon v. City of Los Angeles*)



Quiz

Question #9

- Over the course of several years, two Councilmembers exchanged emails about a properties in the City with numerous code enforcement issues. They exchanged no other emails.
- All the emails were sent to and from their private email accounts, which the Councilmembers use for City business.
- A member of the public asks the City for all emails between the two Councilmembers.



How should the City respond?

Answer to Question #9

- The Supreme Court has decided that emails about **public business** exchanged between **private email addresses on private devices are public records**.
- *City of San Jose v. Superior Court* (March 2, 2017, S218066).

IV. Laws Relating to Fair Processes

- A. Common law bias prohibitions
- B. Due process requirements
- C. Doctrine of Incompatible Offices
- D. Incompatible Activities
- E. Competitive bidding requirements for public contracts
- F. Disqualification from participating in decisions affecting family members (anti-nepotism laws)



IV. Laws Relating to Fair Processes

A. Common Law Bias Prohibition

- **Elements:**

- A public officer...
- Must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence, and primarily for the benefit of the public

- ❖ *One cannot be tempted by personal or pecuniary interests*

- ❖ *Applies to non-financial interests*

- ❖ *Disqualifies one from participating*

IV. Laws Relating to Fair Processes

B. Due Process Requirements

- Applies only to “quasi-judicial” matters (i.e. those involving the application of existing rules to a specific set of facts)



- “Procedural due process” gives those with a property interest a right to:
 - Notice and opportunity to be heard by
 - A fair and impartial decision maker

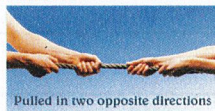
IV. Laws Relating to Fair Processes

C. Doctrine of Incompatible Offices

- Government Code § 1099

- **Elements**

- A person may not hold two public offices simultaneously
- If the potential for conflict or overlap in the functions or responsibilities in the office exist



- *Forfeiture of first office*
- *Often requires individual analysis of specific offices*
- *Common law rule often overridden by statute*

IV. Laws Relating to Fair Processes

D. Anti-Nepotism Laws and Policies

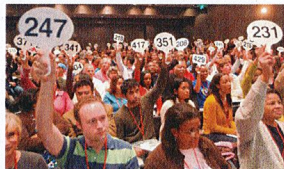
- Disqualification from participating in decisions affecting family members (anti-nepotism laws)
 - Political Reform Act requires recusal when decisions have a material impact on one's spouse or dependent children.
 - Common law bias will require recusal in many cases.



IV. Laws Relating to Fair Processes

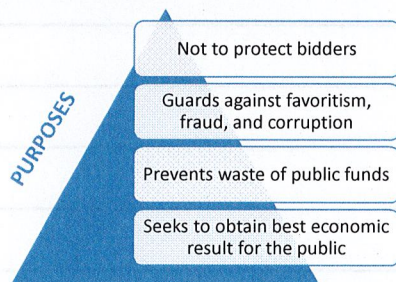
E. Competitive Bidding Requirements

- Public works projects above a certain amount must be awarded to lowest responsible bidder
 - *Generally, applies only to construction projects*



IV. Laws Relating to Fair Processes

Competitive Bidding Requirements



Quiz

Question #10

- A Councilmember's best friend is applying for a City grant program.
- There are limited funds and the City has received dozens of applications.
- The Councilmember knows that his best friend will be very upset if he does not vote for his application and it could affect their relationship



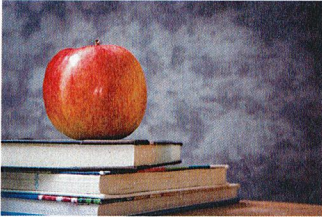
Can the Councilmember participate in the decision to award the grant?

Answer to Question #10

- It depends. If, despite his personal relationship, the Councilmember can exercise his powers with disinterested skill, zeal, and diligence, and primarily for the benefit of the public, then he may participate in the decision. If the Councilmember believes that his personal relationship would affect his ability to exercise his duties impartially, then he may have a common law conflict of interest and should recuse himself.

Question #11

- A member of the City Council is elected to the Board of Supervisors.



May the Councilmember serve in both roles?

Answer to Question #11

- No, these are incompatible offices. There is a possibility of a significant clash of duties between the two offices. Upon being sworn into the Board of Supervisors, the Councilmember will be deemed to have forfeited his position on the City Council.

Questions?

1. **Contact your City staff liaison**
2. **If an issue concerns your staff liaison or you are unable to contact him or her, please contact the City Manager's Office and/or the City Attorney.**
