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A Professional Law Corporation

Local Public Official AB 1234 Ethics Training

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April 8, 2019

Why Are We Here?

California state law (AB 1234)

Cal. Govt. Code s. 53235.1

- Mandates ethics training within first year of appointment
- All local elected officials or members of legislative bodies who receive any compensation or expense reimbursements
- And employees designated by the legislative body



Must receive
2 hours
of training
every 2 years

AB 1234 Training – Cal. Govt. Code s. 53234(d)

I. Personal Financial Gain by Public Officials

- A. Conflicts of Interest Under the Political Reform Act
- 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

II. Laws Regarding Claiming Perquisites of Office

- A. Limitations on 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 Free or Discounted Transportation by Transportation Companies

III. Government Transparency Laws

- A. Economic Interest Disclosure under the Political Reform Act
- B. Brown Act
- C. Public Records Act

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)

**GOOD TO
KNOW**



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 Conflict of Interest under the PRA?

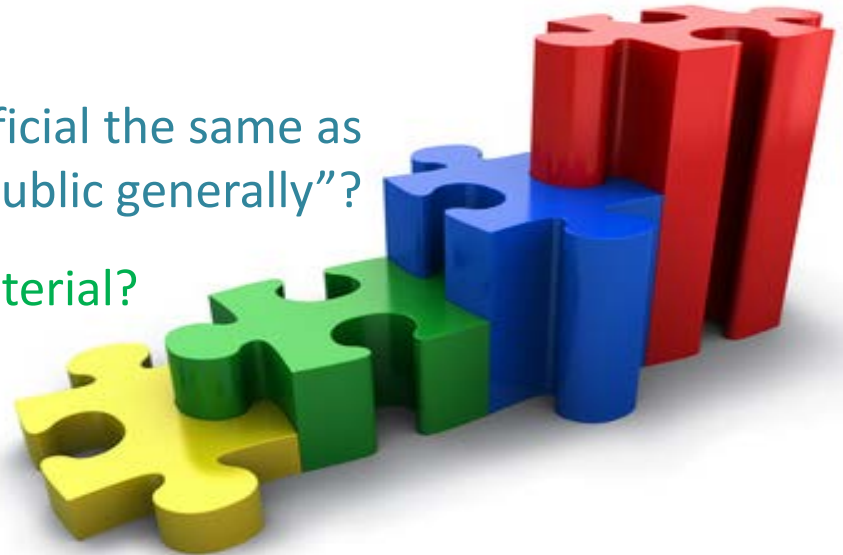
Four-Part Test

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”*

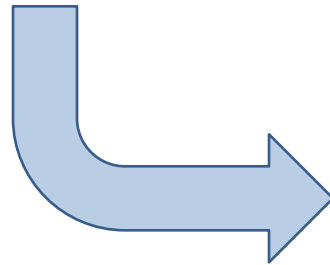
I. Personal Financial Gain by Public Officials

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



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



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 **City** from entering into contract in which a member of the legislative body has a financial interest



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

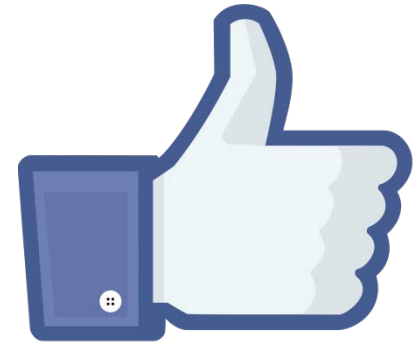
- Employee or officer of non-profit
- Landlord or tenant of contracting party
- Salary or per diem from a directly involved government department
- Engineer, geologist, architect, or planner employed by a consulting engineering or architectural firm
- Owner/partner of a firm who serves as appointed member 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 "on the record"



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 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 Council member owns a business that manufactures decorative pins and offers to provide the pins at a discount.



*Can the
City enter into an
agreement
with the Council
member?*

Answer to Question #1

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

Question #2

- The City and SolarCity (owned by Tesla) are negotiating an energy efficiency contract to construct solar panels on City property
- Two Council members hold Tesla stock

***Can the City
contract with
SolarCity to
install the
panels?***

Answer to Question #2

- **It depends on the amount and value of the stock each held in Tesla.** The City most likely can enter the agreement with SolarCity. The Council members' stock interests in Tesla are most likely “non-interests” for purposes of Section 1090.
 - To be a “non-interest,” the Council members must own less than 3% of Tesla's shares and earn no more than 5% of their annual income from the corporation.

Question #3

Can the Council member participate in the consideration of the contract?

A Consultant seeks a contract for services from the City Council.

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



Answer to Question #3

- **Yes**, Council members 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 \$500.

CAUTION

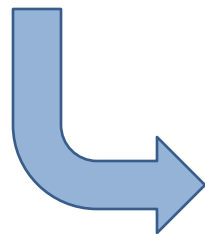
- Gifts received in excess of \$50 from a single source in a calendar year must be reported
- Public Officials may not accept a gift in excess of \$500 from a single source in a calendar year.

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

- 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 less than \$250
- Bona fide 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 Manager, and the City Attorney, 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

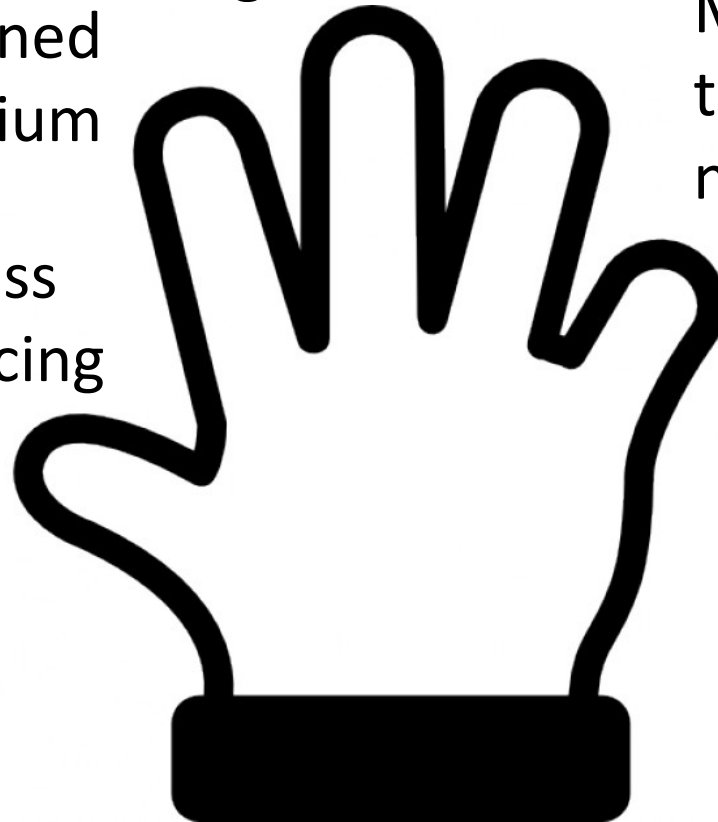
Donated to agency
general fund

Made directly
to a bona fide
non-profit

Returned
honorarium

Bona fide business
(teaching, practicing
law, banking,
medicine)

Campaign
contributions
(but must be
reported)

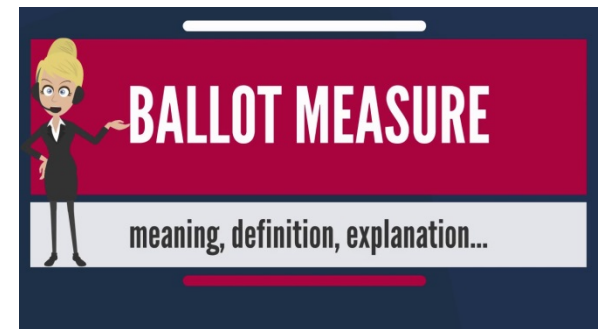


II. Laws Relating to Claiming Perquisites of Office

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



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graph TD; A[Public agencies may not make gifts of public funds] --> B[• An expenditure is not a gift if it serves a public purpose, even if it benefits a private party]; A --> C[• Legislative body's determination of a public purpose is given great deference]
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- 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 official by:
 - Including the photograph or signature, or
 - Singling out the official 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
- Acceptance automatically 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 a Warriors playoff 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 \$500.
 - **Assuming** your neighbor has not given you any other gifts such that you have received more than \$500 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

- A Planning Commissioner has campaign t-shirts made by a screen printing business that is located 5 minutes from the City Hall.
- A Planning Department staff person offers to pick up the t-shirts and return them to the Planning Commissioner during regular business hours.



*May staff
retrieve the
t-shirts?*

Answer to Question #5

- **No**, utilizing 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*
 - The people have a right to know public officials' economic interests that may affect their official decisions
- *Right to access/information*
 - The 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 public business, and for legislative body deliberations and actions to be conducted openly (unless an exception applies).

III. Government Transparency Laws

A. Economic Interest Disclosure *Under the Political Reform Act*

- A Form 700 must be filed by 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

Statement of
Economic Interests



Form 700
A Public Document

Also available on the FPPC website:

- **Form 700 in Excel format**
- *Reference Pamphlet for Form 700*

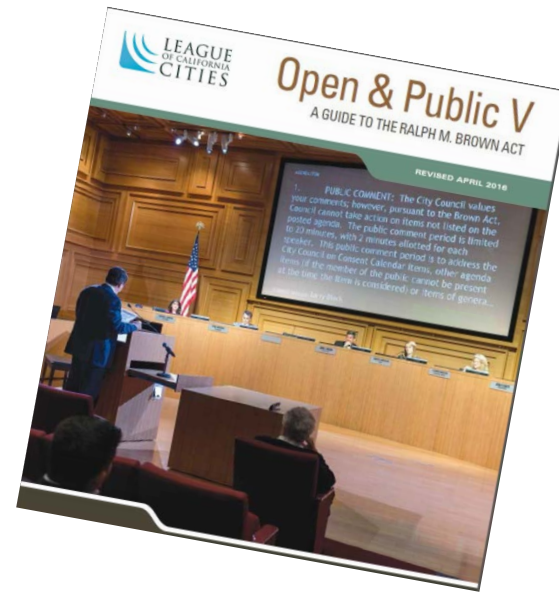
California Fair Political Practices Commission
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Email Advice: advice@fppc.ca.gov
Toll-free advice line: 1 (866) ASK-FPPC • 1 (866) 275-3772
Telephone: (916) 322-5660 • Website: www.fppc.ca.gov

December 2014

III. Government Transparency Laws

Ralph M. Brown Act

Government Code sections 54950 et seq.



III. Government Transparency Laws

B. Brown Act

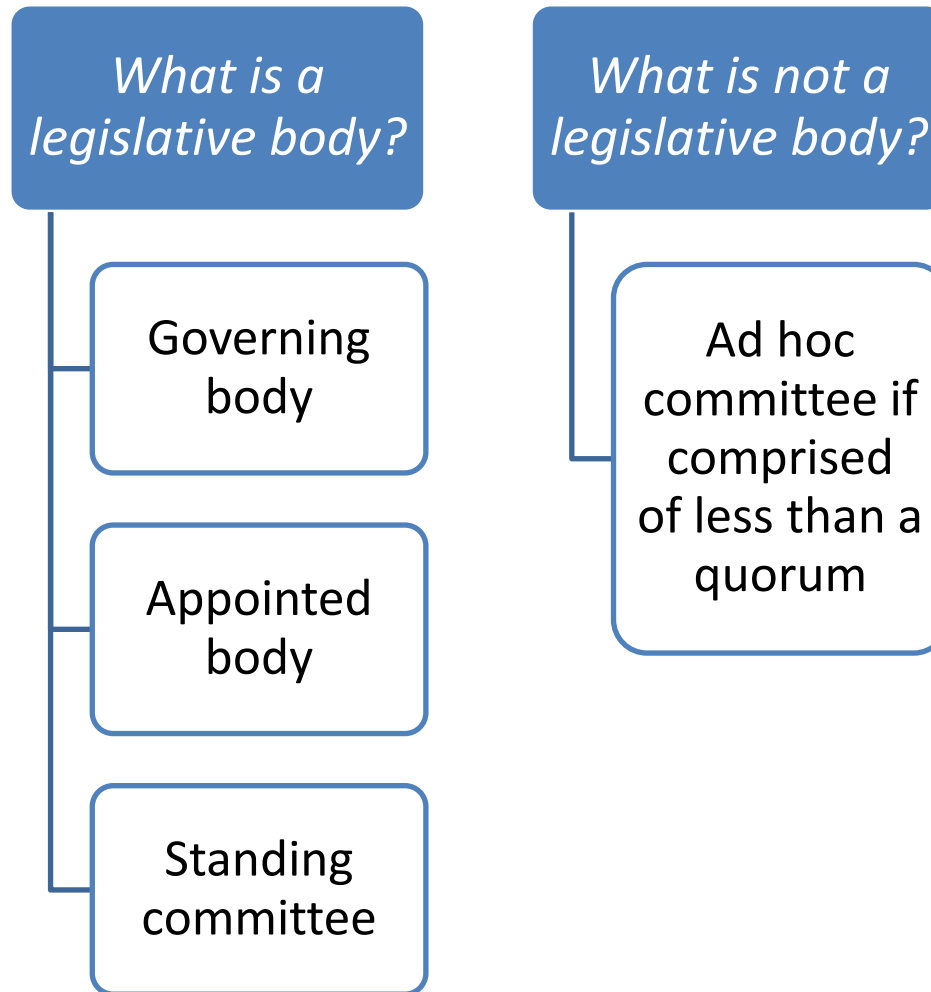
Open Meeting Requirements

- 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”

- A majority may not, outside of 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 the other officials 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.



III. Government Transparency Laws

B. Brown Act—Avoiding “Serial Meetings”

Examples

Daisy Chain

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.



III. Government Transparency Laws

B. Brown Act—Avoiding “Serial Meetings”

Examples

Emails

Informal nature of email communication is ripe for inadvertent Brown Act violations

```
>>>> Sent: Monday, June 06, 2016 12:40 PM
>>>> To: Donald Trump Jr.
>>>> Subject: Re: Russia - Clinton - private and confidential
>>>>
>>>> Hi Don
>>>> Let me know when you are free to talk with Emin by phone about this
>>>> Hillary info - you had mentioned early this week so wanted to try
>>>> to schedule a time and day Best to you and family Rob Goldstone
>>>>
>>>> This iPhone speaks many languages
>>>>
>>>> On Jun 3, 2016, at 10:53, Donald Trump Jr. wrote:
>>>>
>>>> Thanks Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we
>>>> have some time and if it's what you say I love it especially later in the summer. Could we do a call first thing next week
>>>> when I am back?
>>>> Best,
>>>> Don
>>>>
>>>>
>>>> Sent from my iPhone
>>>>
>>>>>> On Jun 3, 2016, at 10:36 AM, Rob Goldstone wrote:
>>>>>>
>>>>>> Good morning
>>>>>> Emin just called and asked me to contact you with something very interesting.
>>>>>> The Crown prosecutor of Russia met with his father Aras this morning and in their meeting offered to provide the
>>>>>> Trump campaign with some official documents and information that would incriminate Hillary and her dealings with
>>>>>> Russia and would be very useful to your father.
>>>>>> This is obviously very high level and sensitive information but is part of Russia and its government's support for
>>>>>> Mr. Trump - helped along by Aras and Emin.
>>>>>> What do you think is the best way to handle this information and would you be able to speak to Emin about it
>>>>>> directly?
>>>>>> I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.
>>>>>> Best
>>>>>> Rob Goldstone
>>>>>>
>>>>>> This iPhone speaks many languages
>>>>>>
>>>>>> This e-mail message, and any attachments to it, are for the sole use of the intended recipients, and may contain
>>>>>> confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email message
>>>>>> or its attachments is prohibited. If you are not the intended recipient, please contact the sender by reply email and
>>>>>> destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those
>>>>>> of the author and do not necessarily represent those of the company. Finally, while the company uses virus protection,
>>>>>> the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability
>>>>>> for any damage caused by any virus transmitted by this email.
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4

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

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



1. May she attend?

2. Is this a Brown Act violation?

Answer to Question #6

Yes, she may attend an open and noticed meeting of a standing committee **IF**:

- ✓ She attends only as an observer
- ✓ And *does not participate in the deliberations*

How does it become a violation?

- Attending the standing committee meeting is not a violation of the Brown Act.
- **However**, if she participates in the discussions then it would be a violation.

Question #7

- A Human Services Commissioner e-mails a newspaper article pertaining to an upcoming agenda item to the other members.
- The Commissioner indicates that she supports the agenda item based on the article and four members respond back to the email 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 Commissioners 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 requests that the Arts Commission write a letter of support on behalf of his project.
- The Commission proceeds to vote on writing the letter and it passes unanimously.



Is this a Brown Act violation?

Answer to Question #8

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

III. Government Transparency Laws

C. Public Records Act

Transparency



Privacy



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
 - » Cal. 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 Council members exchanged emails and text messages about properties in the City with numerous delinquent payment issues. They exchanged no other emails or texts.
- All the emails and texts were sent to and from private email and phone accounts.
- A member of the public asks the City for all communications between the two Council members.



How should the City respond?

Answer to Question #9

- The California Supreme Court has decided that emails and text messages about **public business** exchanged between **private email addresses or on private communications 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. Disqualification from participating in decisions affecting family members (anti-nepotism laws)
- F. Competitive bidding requirements for public contracts



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

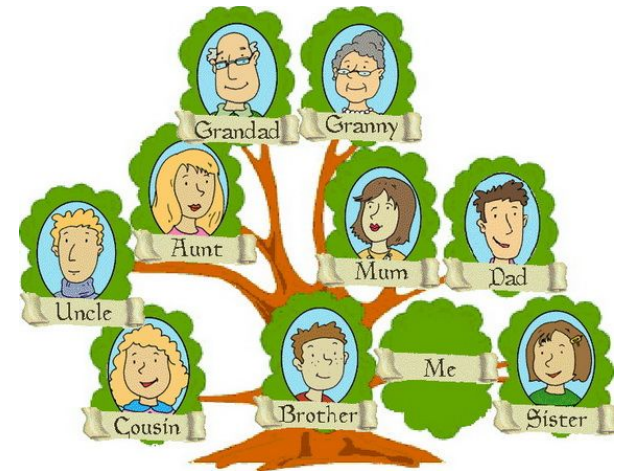
- Government Code § 1099
- *Elements*
 - A person may not hold two public offices simultaneously
 - If the potential for conflict or overlap in the functions or responsibilities in the office exist
- *Forfeiture of first office*
- *Often requires individual analysis of specific offices*
- *Common law 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 Council member's best friend is applying for a City grant program.
- There are limited funds and the City received dozens of applications.
- The Council member 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 Council member participate in the decision to award the grant?

Answer to Question #10

It depends.

- If, despite his personal relationship, the Council member 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 Council member 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 SLUSD Board of Education is appointed to the City's BZA/Planning Commission.



May the Board Member 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 BZA/Planning Commission, the Board member will be deemed to have forfeited his position on the District's Board (an elected position!!!).

Questions?

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