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Service you can trust.

Ethics and Public Service

The following Document is the Alameda Alliance for Health Board of Governors Ethics and Public Service presentation. The presentation defines laws and principles of the Boards roles and responsibilities.

Ethics and Public Service Laws and Principles: Board Roles and Responsibilities

Alameda Alliance for Health
Presented by:
Rutan & Tucker, LLP
July 28, 2015



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Overview of the Role of a Board Member

- To make informed decisions
- Obligation to request information, ultimately held accountable
- Requesting information
 - Ask, and ask early
 - During briefings with CEO
 - CEO obtains information from staff
- Ethics plays a large role



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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. Required to terminate the conservatorship
4. Help you understand and apply general ethical principles to promote public trust in government



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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



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.



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



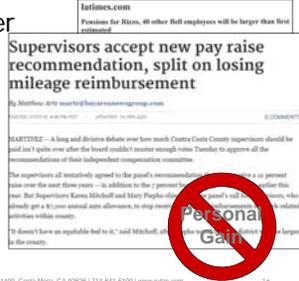
Similar Cases

- 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



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.



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



Who is Subject to the Law?

- All public officials and employees involved in making governmental decision
 - Elected officials
 - Appointed officials
 - Employees
- Some consultants



Who is Subject to the Law: Test

- 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 Kinds of Interests?

- Sources of Income, Loans or Gifts
- Real Property Interests
- Business Interests
- Stocks
- Financial effect on the official or the official's immediate family



What Kinds of Interests?

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



What Kinds of Interests?

- Gifts: \$460/calendar year (2015-2016)
 - Tangible items
 - Services
 - Meals, drinks, entertainment
 - Transportation and Lodging
- Excluded
 - Exchanging gifts of equal value
 - Personalized plaques
 - Trophies less than \$250
 - Gifts from extended family
 - Gifts returned within 30 days



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



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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



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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



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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



What Kinds of Interests?

- Real Property Interests: \$2,000 or more
 - Within 500': Presumed conflict
 - Not measured from HOA-owned land
 - Outside 500': Conflict of 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



What Kinds of Interests?

- Real Property Interests (Cont'd)
 - Construction of public facilities trigger 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



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Determining Whether Financial Effect is Foreseeable

- New Test for Foreseeable Impact
 - Explicit Involvement
 - Implicit Involvement
- Economic Interest Explicitly Involved
 - If the economic interest is a named party in, or subject of governmental decision
 - Permits, entitlements, licenses, contracts



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Determining Whether Financial Effect is Foreseeable (Cont'd)

- Economic Interest Not Explicitly Involved in Decision
 - Test: If financial effect is "realistic possibility," and more than hypothetical or theoretical
 - Need not be likely to be foreseeable
- Examples of factors to consider
 - Whether occurrence of financial effect contingent on other intervening events
 - Whether official should anticipate effect or his/her economic interest as potential outcome
 - Whether decision would equally affect similarly situated persons or businesses



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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



FORMER STADIUM OFFICIAL PLEADS GUILTY

- 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)



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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



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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

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Reporting Invitation-Only Events

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



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Appointee Campaign Contributions – Restrictions (G.C. 84308)

- Special rules covering receipt of campaign contributions
 - Limits on contributions
 - Disqualification
- Not applicable to elected officials if:
 - Acting as elected official; and
 - All members of governing board are elected



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Appointee Campaign Contributions – Restrictions (G.C. 84308)

Who is covered:

- Appointed Officials
 - Commissioners
 - Elected officials in appointive capacity
- Parties to applications for license, permit, entitlement to use, contract
- Participants interested in approval or denial of the application



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Appointee Campaign Contributions – Restrictions (G.C. 84308)

What is covered:

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



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Appointee Campaign Contributions – Restrictions (G.C. 84308)

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



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Appointee Campaign Contributions – Restrictions (G.C. 84308)

- **Disqualification Rule:** Appointee receiving contributions aggregating more than \$250 within past 12 months must *disclose receipt* and *disqualify* if the source of contribution is a *direct* or *interested party* to an application pending before the appointed body.



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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



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§ 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



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§ 1090 Exception

- AAH governing board not interested in contract in violation of § 1090 if:
 - Member appointed to represent physicians, health care practitioners, hospitals, pharmacies, or other health care organizations
 - For services to beneficiaries or administrative services under AAH's programs
 - Terms substantially same as other similar AAH contracts
 - Board member *refrains from influencing*
 - Disclosure, abstain from voting, noted in records



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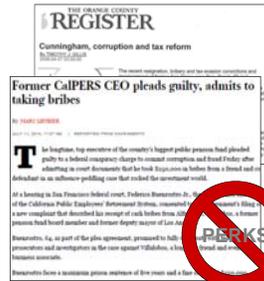
Group 2: Perks

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



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



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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

By James Linn
 San Antonio Mayor Antonio Villaraigosa has admitted he took a \$400 ticket for a free event. The mayor's office said he was not aware of the rules at the time. The mayor's office said he was not aware of the rules at the time. The mayor's office said he was not aware of the rules at the time.



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Beware of Stakeholders, Consultants Bearing Gifts

- If gift exceeds \$460 from a single source, must be disclosed
- But gift over \$460 from a single source is illegal
 - Disclosure
 - Disqualification

Local 12 | Saturday, Feb. 14, 2009

ORANGE COUNTY

Does Alvarado councilwoman face \$300 fine for accepting gift

By James Linn
 Orange County Register
 Commission will consider whether to accept \$460 gift from a single source. The councilwoman received a \$460 gift from a single source. The councilwoman received a \$460 gift from a single source.



Illegal:
 The councilwoman received a \$460 gift from a single source. The councilwoman received a \$460 gift from a single source. The councilwoman received a \$460 gift from a single source.

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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



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New Rule:

- **Non-Profit Fundraising Event Tickets**
 - Issue: How to value ticket to non-profit entity fundraising event
 - Usually: Report meal (non-fundraising) portion of ticket
 - New rule for non-profit fundraising event tickets



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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



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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



People v. Batten
17 Cal.App.5th 104 (Cal.App. 5th) 65

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

SUMMARY

A county supervisor was charged by indictment with theft (Pen. Code, §§ 484(a)(2), misuse of public funds (Pen. Code, § 424), and prosecution of fraudulent claims to the county (Pen. Code, § 72). The charges arose out of defendant's alleged utilization of his governmental 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. Judgment of sentence was suspended and defendant was given three years' informal probation on certain conditions. (Superior Court of Orange County, No. C-34230, Kenneth E. Liu, Judge.)

The Court of Appeal affirmed. The court held the evidence showed county staff members were compensated with county funds for campaign and campaign work, that defendant authorized and directed county employees to the performance of tasks in aid of defendant's personal political campaign, and that defendant's political campaign was not authorized by law. The court rejected defendant's contention that the statute was an ex post facto law, that it was unconstitutional, and that it violated the separation of powers or other basic constitutional provisions. Defendant's conviction was supported by the evidence, and that the state did not require proof of specific intent to deprive the county of its property. Defendant's informal probation was warranted because his volunteer campaign there 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



Rules for Reimbursement

- Expenses must be "Actual and Necessary"; more than merely beneficial
- Must be authorized by written Agency Policy
- Written Expense Report with receipts
- No reimbursement for spouse's expenses.
- Third party hosting may be problematic
- Reimbursement of agency for personal use of funds will not avoid trouble



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 Board of Supervisor member to sing National Anthem
 - Dinner ticket to District Chair to present award to local resident

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



- Examples:
 - Great America provides agency with 10 free passes
 - UCB 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.

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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 comply with ticket distribution policy adopted by agency.

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



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- 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 (FPPC §18944.1(d))



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- FPPC Form 802
- Include:
 - 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

Gifts From Agency to Agency's Own Officials



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- 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)

- 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



Group 3: Transparency Laws

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





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Transparency Rules

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





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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





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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*..."
- **Serial Meeting Prohibitions:** Use of *direct communications, personal intermediaries, or technological devices* employed by a *majority* of the members to *develop a collective concurrence* is prohibited.
- **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 a legislative body member on the board.



Open Meetings: Basic rules

- **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 "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:
 - negotiation
 - personnel
 - contracts or negotiations
 - real estate deals
- Attendance by staff on “need to know” basis
- Closed Sessions are confidential

Probe: Alameda official secretly aided

by a lobbyist

ALABAMA



Special Closed Session Authority for AAH

- AAH may meet in closed session to consider:
 - Action on contracts and contract negotiations related to rates of payment
 - Health plan trade secrets
 - Health plan member complaints
 - Reports of hospital medical audit



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 entitledIs guilty of a misdemeanor.



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

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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



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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



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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



Case Example

FPPC to Fine Former CalOptima Exec



Dr. Charles Chen accepting a "Vitality Leadership Award" from the 43rd National Council Medical Health and Addiction Conference in Chicago in 2012 (Source: YouTube).

By TET VO AND TRACY WOOD - November 10, 2014 at 7:57 PM

Former CalOptima executive Dr. Charles Chen has agreed to pay a \$2,000 fine levied by the state's Fair Political Practices Commission for failing to disclose his earnings in drug company speaking fees, according to a filing posted Monday on the FPPC's website (<http://www.fppc.ca.gov/records/2014/04/charleschen/charleschenfppc.pdf>).

Chen, who was head of behavioral health at CalOptima from December 2008 through September 2013, failed to list Sanofi-Santel pharmaceutical firm's contributions as a source of income on his annual conflict of interest form, known as a Form 700, despite receiving \$2,000 in payments from the company in the year leading up to his filing, according to the FPPC.



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



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Examples

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



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Examples, continued

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



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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



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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



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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



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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


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Incompatible Offices

- **Exception:** For AAH governing board, officers, and staff where potential incompatibility is solely as a result of employment or affiliation with the county, private hospital, clinic, pharmacy, other provider group, employee organization, or citizen's group


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Other Topics:

- Parliamentary Procedure
- Public Contracting


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Parliamentary Procedure

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

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Parliamentary Procedure

- **Robert's Rules of Order**
 - Not required by statute
 - Referenced in AAH Bylaws (conduct meeting according to essential provisions if adopted by Board)
 - Formal v. informal adherence
- **Rosenberg's Rules of Procedure**
 - simplified

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Parliamentary Procedure

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

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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 CEO
 - By Chair
 - By individual or a specified number of board members



AGENDA
Alameda Alliance for Health
Board of Governors Meeting
Monday, July 16, 2012
8:00 am-10:00 am



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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



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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)





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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

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Parliamentary Procedure

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

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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

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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)

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Government Contracting

- AAH is expressly *exempt* from contracting requirements, including bidding requirements for:
 - Contracts with the state
 - Contracts with providers of health care, goods, or services not subject to bid requirements

(Welfare & Ins. Code § 14087.35(v))

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Beyond the Law: Public Service Ethics Principles

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Ethics = Values

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

Source: Institute for Global Ethics

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Applying Values to Public Service

Trustworthiness:

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



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Analysis by Ethical Dilemmas

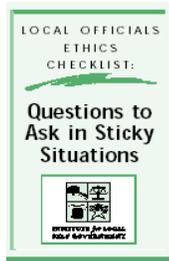
1. Legal issue v. Ethical issue
2. Two competing "right values"
3. Doing the right thing costs more than one wants to pay

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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)



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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.)



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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.)



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Questions?

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