



Principles of Ethics Training

Presented to the San Francisco
County Transportation Authority
Citizens Advisory Committee

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Why Are You Here?

- Not a “public official” under the Political Reform Act (no AB 1234 required & no Form 700 disclosure), but;
- Steward of public trust (i.e. subject to ethics principles and legal ethics in public contracts) *and*
- Could become a public official.

Goals

- Spot issues/Know when to ask questions
- Avoid actual or the appearance of conflicts
- Process for voting or not voting

Overview of Ethics Principles

Ethics vs. Laws



- *Ethics* – What we ought to do
- *Law* – What we must do

Law is a floor for behavior

Big Picture – Responsibility to the Public

Responsibility – Fairness – Trustworthiness - Respect

- Decision-making criteria should focus only on what's in the public's best interest
- The public needs to trust that its interests are indeed being placed first and foremost in governmental decision-making
- Public officials are expected to be careful stewards of taxpayer resources
- Level playing field – no taking political or personal advantage of public resources

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Big Picture – Responsibility to the Public (Continued)

Responsibility – Fairness – Trustworthiness - Respect

- Public trusts a process it can observe
- All perspectives have a right to be heard and considered in public decision-making process
- Government decisions must be made based on merits, not personal biases or loyalties
- Decision-makers are stewards of the public's perception of the fairness of the process

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Big Picture – Responsibility to Each Other

- Roberts Rules of Order - The application of parliamentary law is the best method yet devised to enable assemblies of any size, with due regard for every member's opinion, to arrive at the general will on the maximum number of questions of varying complexity in a minimum amount of time and under all kinds of internal climate ranging from total harmony to hardened or impassioned division of opinion."

[Robert's Rules of Order Newly Revised [RONR (11th ed.), Introduction, p. liii]

Parliamentary Procedure Allows for All Viewpoints

- The majority
- The minority (especially a large minority greater than one-third)
- Individual members
- All of these groups taken together

Managing Conflicts in Voting

- Identify financial interests and appearance of conflicts
- Process for abstaining
- Conflicts in public contracts

What is a Conflict of Interest?



Personal interests vs. public interests

- Financial
- Personal
- Prejudicial

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Some Conflicts are Obvious...

Former Upland Mayor John Pomierski pleaded guilty to a federal bribery charge, admitting to accepting a \$5,000 bribe in return for helping a business obtain a conditional use permit from the city.

Texted to the business: “Where’s the beef?”

THE SUN 4/25/2012

Financial Interests

- Source of income
- Real property
- Spouse/domestic partner's source of income

- No Form 700 = no required disclosure and abstention, **but**
- Appearance of conflict can negatively effect TA's image for fairness

Scenario #1

Committee member Jones routinely works as a consultant to transportation consulting firms for specific projects.

- If Jones' recommended firm is selected by the TA, Jones knows it is likely that he will be hired to assist with the project.
- One firm has offered to pay Jones a "finder's fee" if the TA selects it.

Now that you've identified a potential conflict....

Recommended Procedure:

- ✓ Notify Cynthia Fong at least 24 hours prior to relevant vote
- ✓ If you will recuse yourself from participating in the vote, state “abstain” when the vote is called

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Trap for the Unwary – CAC Members May Become Public Officials

“Public official” – Salaried or unsalaried members of boards with “decision-making authority.”

- Makes final government decisions
- May compel a government decision
- ✓ Makes substantive recommendations that, over time, are regularly approved without significant amendment or modification by another public official or government agency

Fair Political Practices Commission Guidance



“You are cautioned that if, over time, recommendations by the advisory committee are essentially rubberstamped by the government agency (i.e., regularly approved without significant amendment or modification), a new analysis should be constructed to determine whether the members have become public officials.”

Source: FPPC Kenny Advice Letter (1993) A-93-087.



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Conflicts of Interest in Public Contracts - Gov. Code § 1090

- Government Code § 1090 provides that a public official or employee may not “make” a contract in which he or she is financially interested
- Applies to virtually all state and local officers, employees, & multi-member bodies, whether elected or appointed
- Applies to members of advisory committees
- “The prohibition of section 1090 is not restricted to the specific officer or board that “makes” the contract. The prohibition covers consultants and advisers who are involved in the preliminary planning for the contract, including discussions, negotiations, reasoning, or the drawing of plans and specifications for the contract.” 82 Ops.Cal.Atty.Gen. 126, 129 (1999)

Making A Contract

The prohibition against “making” a contract in which an official has an economic interest applies to:

- Preliminary discussions;
- Negotiations;
- Reasoning;
- Planning and solicitation of bids;
- Voting on the contract itself.

Note: Does not apply to approving permits, licenses or regulations.

Trap for the unwary! Applies to written *and* oral contracts.

Financial interest

Financial Interests

- Direct/Indirect financial interests
- Remote interest
- Non-interest



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Effect of a Gov. Code § 1090 conflict

Generally:

- Entire body is disqualified – disclosure can't save it
- If contract entered into, it is void
- Official must disgorge any profit gained from contract
- Criminal and civil consequences: felony and fines
- *Trap for the unwary!* An official may not recuse him or herself to avoid violating 1090. **Unless**....

Members of Public Agency Advisory Committees are Treated Differently

- If a member of an advisory committee with a financial interest plays no role whatsoever in the contracting process, the public agency may enter into the contract.
- No involvement and abstention required.



Disclosure and Abstention

- Disclose financial interest in the contract to the public agency;
- Such interest is noted in the body's official records; and
- The advisory committee member completely abstains from any participation in the making of the contract.

Scenario #2

Committee member Jaurez voted to recommend that the TA enter into a contract with Cost Effective Contractors, Inc., for engineering services. Jaurez's wife owns Cost Effective Contractors. Jaurez did not publicly disclose his wife's position with the firm before or during the vote.

Fair Political Practices Commission (FPPC) and Government Code § 1090

- FPPC authorized to give advice on Gov. Code § 1090
- Immunity from prosecution by FPPC
- Evidence in proceeding by other prosecuting entity

Enforcement Consequences



- Civil Remedies
- Criminal Penalties
- Contract Deemed Void
- Disgorgement of Contract Benefits

Trap for the unwary! No immunity for acting on advice of FPPC, city attorney or counsel

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Gifts - Best Practices

- Not expressly prohibited
- Avoid gifts from persons or entities seeking business/contracts with TA
- Pay own cost for lavish meals with persons or entities seeking business/contracts with TA
- Gifts unrelated to position on TA may be ok (long term personal friendship, private business relationship)

Brown Act Overview

- Basic rule: Meetings of the public body and of any of its standing subcommittees are subject to the Brown Act
- A “meeting” covers more territory than you might think
 - Regular public meetings
 - An informal gathering of a majority of members
 - Conference call of a majority of members to discuss public business
 - Email exchanges between a majority on a matter of public business
- What is NOT a meeting: individual meetings between two members; attending an educational conference on general issues; purely social or ceremonial gatherings (do not discuss public business)
 - Ad hoc committees of less than a majority: not subject to the Brown Act

Trap for the unwary! “Serial meetings”



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“The St. Helena City Council violated state law by drafting a memo to a subcommittee outside of a public meeting, according to an attorney specializing in California’s open meeting law.”

“The council violated the Ralph M. Brown Act by conducting a “serial meeting” when city councilmembers commented via email on a memo containing instructions for its Housing Subcommittee...”

“...serial meetings are hard to prove because they usually involve verbal communications. But the emails released by the city are clear proof that the council committed “a very flagrant violation of state law...”

Open Meeting Requirements

- Can only discuss items on the agenda at meetings
- Can only take action if the item is phrased as an action item
 - Exception: emergency as determined by body (subject to strict interpretation, not common)
- Have to notice meetings
 - Regular meetings: 72 hour notice
 - Special meetings: 24 hour notice
- Meetings must be open to the public, and the public must be given opportunity to speak
- Meeting must generally be held within jurisdiction of agency

Closed Meetings

- Limited grounds for closed meetings: courts strictly construe
 - Litigation, real estate negotiations (price/terms only); hardship applications; employment negotiations
- Need to notice closed session on the agenda
- Don't reveal what is discussed in closed session

Sanctions for Non-compliance

- Criminal
- Civil
 - Injunction by public or District Attorney against future violations
 - Invalidation of action taken in violation of Brown Act
 - Attorneys fees to prevailing plaintiff

Public Records Act

- Important public policy: public has right to see records relating to the public's business
- "Record": "...any writing containing information relating to the conduct of the public's business prepared, retained, or owned by any state or local agency, regardless of the physical form or characteristics."
 - ❖ Examples: photos, meeting tapes, drawings, staff reports, maps, emails (if retained), investment manager reports, agency officials' Form 700
- Exemptions: personnel, medical or similar files; preliminary notes, drafts and memoranda; documents related to ongoing litigation.
- 10 days to respond.