



**ETHICS LAWS AND PRINCIPLES  
FOR  
SPECIAL DISTRICT OFFICIALS  
  
(2019)**

## OVERVIEW OF CALIFORNIA'S ETHICS LAWS: AB 1234

This booklet<sup>1</sup> is a summary of many, but by no means all, of California's numerous laws pertaining to "ethics," which agency officials (including designated employees) are required to familiarize themselves with under AB 1234.<sup>2</sup> Some of these laws are prohibitory in terms of forbidding certain actions. Other laws, such as those requiring transparency, openness, and fairness in government, place affirmative obligations on officials and their agencies. Regardless of how these laws are framed, their central purpose is to protect the public's *trust* in local government institutions and those who serve in them.

### I. Transparency Laws

Two key California laws ensure that local government actions are done openly and that records are accessible so that the public can monitor the "people's business."

#### A. The Brown Act

**General Rule.** The Brown Act requires that public agency meetings are open to the public, and all persons are allowed to attend and participate in the meeting.<sup>3</sup> A "meeting" is any gathering of a majority of the members of a legislative body to hear, discuss or deliberate about any item that is within its subject matter jurisdiction.<sup>4</sup> A meeting is not just a traditional meeting of all members in a room. A meeting can also be any use of direct communications, including technological devices (such as phones or e-mail) or social media platforms (e.g., Facebook, Twitter), that a majority of the members use to discuss, deliberate, or take any action on any item of business within the subject matter jurisdiction of the entity.<sup>5</sup>

Officials should be particularly careful of a *serial meeting*, which may occur when through a series of communications with one or more other members outside of a meeting, a quorum of the members develops a collective concurrence on action the body will take.<sup>6</sup>

**Agendas and Action on Agenda Items.** Agendas for regular meetings must be posted at least 72-hours in advance, including on the agency's website,<sup>7</sup> and must

<sup>1</sup> The information in this booklet is for educational purposes only and does not constitute legal advice. Specific legal questions should be directed to agency legal counsel.

<sup>2</sup> Assembly Bill (AB) 1234 became effective on January 1, 2006, and is codified in Government Code sections 53234 to 53235.2.

<sup>3</sup> Government Code § 54950 and following.

<sup>4</sup> Government Code § 54952.2(a).

<sup>5</sup> Government Code § 54952.2(b).

<sup>6</sup> Government Code § 54952.2(b), 63 Cal. Op. Atty. Gen. 820 (1980).

<sup>7</sup> Government Code §§ 54954.2, 54956.

contain a brief description of all agenda items sufficient to allow the public to understand what business will be discussed.<sup>8</sup> If an item is not on the agenda, members can only make a short report on activities, briefly respond to public statements, ask for clarification, or ask staff to put a matter of business on a future agenda.<sup>9</sup> If a late item is an emergency or a subsequent need item, the body may vote to place the matter on the agenda.<sup>10</sup>

**Public Participation.** A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. The public must be allowed to speak on a specific item of business *before* or *during* the legislative body's consideration of it. The legislative body may adopt reasonable regulations, including decorum and time limits on public comments (e.g., three minutes per speaker plus at least twice the normally allotted time if language translation is needed).<sup>11</sup> The public is also entitled to see copies of all open session documents provided by the agency to the legislative body at the time they are provided to a majority of the legislative body, or promptly after a meeting upon request if prepared and submitted at the meeting by some other person.<sup>12</sup>

**Closed Sessions.** Legislative bodies may meet without the public present in closed session, but only for specific purposes that must be clearly stated on the agenda.<sup>13</sup> The discussion in a closed session must be limited to the specified subject matter.<sup>14</sup> Generally, only authorized attendees, who are *necessary* for the consideration of the closed session item (such as board members, agency counsel, management and support staff, consultants, and other persons with an official role in the closed session item) may attend the closed session.<sup>15</sup> Convenience or an interest in the closed session item, by itself, is not enough.<sup>16</sup>

**Penalties.** It can be a misdemeanor to violate the Brown Act if an official takes action and *intends* to deprive the public of information to which the member knows or has reason to know the public is entitled.<sup>17</sup> Moreover, actions taken in violation of the Brown Act are voidable if the legislative body refuses, after notice is given, to cure the violation.<sup>18</sup>

---

<sup>8</sup> Government Code § 54954.2(a)(1).

<sup>9</sup> Government Code § 54954.2(a)(2).

<sup>10</sup> Government Code §§ 54954.2(b)(1), 54956.5.

<sup>11</sup> Government Code § 54954.3(b).

<sup>12</sup> Government Code § 54954.1, 54957.5(b).

<sup>13</sup> Government Code §§ 54954.2(a), 54954.5.

<sup>14</sup> See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904.

<sup>15</sup> 83 Ops. Cal. Atty. Gen. 221 (2000).

<sup>16</sup> 82 Ops. Cal. Atty. Gen. 29 (1999).

<sup>17</sup> Government Code § 54959.

<sup>18</sup> Government Code § 54960.1; Education Code §72121(b).

## B. The Public Records Act

**General Rule.** Under the Public Records Act,<sup>19</sup> members of the public have the right to inspect and obtain copies of “any *writing* 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.”<sup>20</sup> This right of access extends to electronic data regarding agency business (e.g., emails, texts, etc.), maintained in personal accounts or on personal devices.<sup>21</sup> This right is enshrined in the California Constitution<sup>22</sup> and is broadly construed by the courts to further the public’s right of access to public records.

**Agency Obligations.** The Public Records Act requires public agencies to assist members of the public in making focused records requests and establishes time frames in which to respond to such requests.<sup>23</sup>

**Official’s Access to Records.** Except for records within an official’s scope of duties, public officials generally have no greater rights of access to public records than members of the public.<sup>24</sup>

**Exceptions.** Similar to closed session meetings under the Brown Act, the Public Records Act recognizes that in some instances a public agency should be able to withhold certain records, particularly where records may contain privileged or confidential information, or where the disclosure may violate a personal privacy interest. These exceptions are enumerated in the Act or established by case law and are narrowly construed.<sup>25</sup>

For example, attorney-client privileged communications, containing information such as advice, legal research, or strategy, are exempt from disclosure.<sup>26</sup> Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, are exempt from disclosure.<sup>27</sup> Information that may jeopardize law enforcement activities, or endanger the safety of witnesses, is also exempt from disclosure.<sup>28</sup> In some cases, the agency may withhold a record if the agency can demonstrate that the public interest in withholding the record “clearly

<sup>19</sup> Government Code § 6250 and following.

<sup>20</sup> Government Code § 6252(e).

<sup>21</sup> *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.

<sup>22</sup> Cal. Constitution, art. I, § 3.

<sup>23</sup> Government Code §§ 6253, 6253.1.

<sup>24</sup> Government Code § 6252(b).

<sup>25</sup> See Government Code §§ 6254 - 6255.

<sup>26</sup> Government Code §6254(k); Evidence Code §954; Business & Professions Code § 6149.

<sup>27</sup> Government Code §6254(c).

<sup>28</sup> Government Code §6254(f).

outweighs” the public interest in disclosing the record.<sup>29</sup> This includes information related to the “deliberative process” of an agency officials where the courts have recognized that the public interest is furthered by candid internal discussion, such as access to a broad range of opinions that may assist in policymaking, and in certain situations, the exposure of such decisionmaking processes may discourage such candid discussions.<sup>30</sup>

**Penalties.** If an agency unreasonably denies access to public records, it is liable for a mandatory award of court costs and reasonable attorney’s fees.<sup>31</sup>

## II. Personal Advantages and Perks

California law prohibits acceptance of certain personal advantages and perks associated with public office and service. The general principle underlying the “no perks” laws is that one’s status as a public servant and one’s access to public resources should not afford that person special privileges. There are two categories of “no perks” laws. One relates to perks that others provide public officials (e.g., gifts). The other involves advantages that officeholders provide themselves (e.g., use of public resources).

The laws in this area are designed to promote the general ethical values of fairness, responsibility, and trustworthiness. For example, receipt of perks from others undermines the public’s trust that decision-makers are treating everyone who comes before them fairly and making decisions based on the general public interest.

When officeholders give themselves perks or misuse resources, the public’s trust that these officeholders are being careful and public-minded stewards of taxpayer resources is undermined. To the extent that some of these perks involve political advantages, they undermine the fairness of campaigns and elections. The applicable laws address the following issues:

### **Compensation:**

Governing bodies are limited in both the amount of compensation they may receive and the ability to adjust compensation. Compensation for members of special district governing boards are generally set by statute and are typically tied to the number of meetings attended or days performing district-related work.<sup>32</sup>

<sup>29</sup> Government Code § 6255(a); see *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.

<sup>30</sup> See *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325.

<sup>31</sup> Government Code § 6259.

<sup>32</sup> See for example Government Code § 61047 (limiting compensation of CSD board members to \$100/day of service not to exceed 6 days in any month).

### **Expense Reimbursement:**

As a general rule, agencies may only reimburse officials for **actual** and **necessary** expenses.<sup>33</sup> AB 1234 further requires that an agency adopt a written policy specifying reimbursable activities and rates.<sup>34</sup> Officials must timely report reimbursable expenses using report forms and must provide receipts documenting the expenses.<sup>35</sup> AB 1234 also requires officials to report on “meetings” of other bodies subject to the Brown Act attended at public expense at the next meeting of the official’s legislative body.<sup>36</sup>

If an official does not comply with the local policy and procedures, the official risks the loss of the reimbursement privilege, having to pay restitution and civil penalties (including penalties of triple the value of the resources) and could be banned from holding public office.<sup>37</sup>

### **Gifts:**

A gift is anything of value an official receives for which the official does not provide monetary or other consideration of equal or greater value.<sup>38</sup> Rebates and discounts provided to officials may also constitute “gifts” unless made in the regular course of business and without regard to the official’s status.<sup>39</sup> A meal is considered a gift, unless it is provided at a person’s home as part of an individual’s “home hospitality,” provided as part of a “reciprocal exchange” between an official and a non-lobbyist,<sup>40</sup> friend, or a governmental agency pays for it.<sup>41</sup> Gifts to family members of public officials are treated as gifts to the official unless the donor and the family member have an established social or work relationship, and the donor does not have business before the official.<sup>42</sup>

**Gift reporting.** Certain officials must report gifts on their Statements of Economic Interests, also called Form 700.<sup>43</sup> The gifts must be reported if the total value of all gifts from a source during the calendar year is \$50 or more.<sup>44</sup> If the official does

<sup>33</sup> Government Code § 53232.2.

<sup>34</sup> Government Code § 53232.2(b).

<sup>35</sup> Government Code § 53232.3.

<sup>36</sup> Government Code § 53232.3(d).

<sup>37</sup> Government Code § 53232.4.

<sup>38</sup> Government Code § 82028(a).

<sup>39</sup> *Id.*

<sup>40</sup> Lobbyists may not gift more than \$10 per month to any official. Government Code § 86203.

<sup>41</sup> 2 Cal. Code Regs. §§ 18942(a)(7); 18942(a)(8); 18942.2; 18944.3.

<sup>42</sup> 2 Cal. Code Regs. § 18943.

<sup>43</sup> Government Code §§ 87200, 87207, 89503; 2 Cal. Code Regs. § 18940(a).

<sup>44</sup> Government Code § 87207(a)(1).

not know the amount of the gift, he or she must make a good faith estimate of its fair market value.<sup>45</sup>

**Gift limitations.** Beginning in 2019 through 2020, an official may not receive gifts from one source of a value of more than \$500 in a calendar year.<sup>46</sup>

**Travel gifts.** These gifts are particularly fraught with peril for an official. An elected or appointed official must *forfeit* his or her office if he or she receives free or discounted transportation from transportation companies.<sup>47</sup> If travel is provided by anyone other than a transportation company, other rules apply. Generally, the official must report the travel gift on the official's Form 700 if the travel expense was worth more than \$50.<sup>48</sup> Like any other gifts, reportable travel expenses are *not* gifts if provided in connection with giving a speech or participation in a program such as admission, refreshments, intrastate transportation for the event, necessary lodging and meals on the day of activity.<sup>49</sup>

### **Gratuities and Rewards:**

An official commits a misdemeanor if he or she receives any type of gratuity or reward for performing his or her official duties.<sup>50</sup>

### **Honoraria:**

An official cannot receive an honorarium for giving a speech, writing an article, or attending a public or private conference, convention, meeting, social event, meal or similar gathering in his or her capacity as an official.<sup>51</sup> Honoraria are prohibited because such communications are part of an official's public service. An official may return an honorarium within 30 days of receipt without penalty or may donate the honorarium to a non-profit group.<sup>52</sup> Payment for a speech or article in connection with private business is not considered an honorarium.<sup>53</sup>

### **Misuse of Public Resources:**

<sup>45</sup> 2 Cal. Code Regs. § 18946(b).

<sup>46</sup> Government Code §§ 89503, 89506; 2 Cal. Code Regs. § 18940.2(a). The gift limit is generally adjusted every two years.

<sup>47</sup> Cal. Constitution, art. XII, § 7.

<sup>48</sup> Government Code § 87207(a)(1).

<sup>49</sup> Government Code § 89506; 2 Cal. Code Regs. § 18950–18950.3.

<sup>50</sup> Penal Code § 70(a).

<sup>51</sup> Government Code § 89502.

<sup>52</sup> Government Code § 89501(b)(2).

<sup>53</sup> 2 Cal. Code Regs. § 18932(a)(1).

Officials cannot use public funds or resources for personal, non-public purposes, including campaigns.<sup>54</sup> “Public resources” includes such things as staff time, office equipment (telephones, fax machines, photocopiers and computers), and office supplies (stationary, stamps, and other items), but excludes incidental or minimal uses.<sup>55</sup> “Personal” use of public resources includes activities that are for personal enjoyment, private gain or advantage. “Use” means the use of public resources that is substantial enough to result in a gain in advantage for the user and a loss to the local agency that can be estimated as a monetary value. Penalties for violation are severe: they include jail, disqualification from office, civil penalties up to \$1,000 per day plus three times the value of the unlawful use.<sup>56</sup>

### **Gifts of Public Funds:**

Local agencies cannot make a “gift” of public money or anything of value.<sup>57</sup> A gift means that the agency receives no consideration for the gift – that it gets nothing in return. Even if a private party incidentally benefits from a public expenditure, however, it is not a gift of public funds if the payment was made for public purposes within the agency’s jurisdiction (e.g., the agency offering discounted rates to a nonprofit organization for the use of its facilities). Courts generally give great deference to an agency’s determination of public purposes.

### **Mass Mailings:**

Officials cannot send newsletters or other “mass mailings” at public expense.<sup>58</sup> The rule generally applies to the distribution of 200 or more items “featuring” the official.<sup>59</sup> “Featuring” means documents that contain the name or pictures of an elected official except as part of a standard letterhead. While there are some exceptions, no exception applies for someone who is a candidate, 60 days before that election.<sup>60</sup>

An official could have criminal liability and be forced to pay restitution if he or she violates this law.<sup>61</sup>

## **III. Fair Process Laws and Merit-Based Decision Making that Avoids Personal Financial Gain**

<sup>54</sup> Penal Code § 424; Government Code § 8314.

<sup>55</sup> Government Code § 8314(b)(1) and (3).

<sup>56</sup> Government Code § 8314(c)(1).

<sup>57</sup> Cal. Constitution, art. XVI, § 6.

<sup>58</sup> Government Code § 89001.

<sup>59</sup> 2 Cal. Code Regs. § 18901(a)(4).

<sup>60</sup> Government Code §§ 89002-89003.

<sup>61</sup> Government Code §§ 91005.5, 91000, 91002.

California law – unsurprisingly – prohibits the use of public office for personal financial gain and promotes fair processes and merit-based decision making.

## **A. General Laws.**

### **Loan Restrictions:**

An official cannot receive a loan from those within his or her agency or with whom the agency contracts.<sup>62</sup> (This does not operate to prohibit bank or credit card indebtedness made in the regular course of the company's business.) An official also cannot receive a personal loan greater than \$500, unless the loan is made in writing, with clear terms, and with the date, amounts and interest payable.<sup>63</sup> However, loans are not covered by these rules if they are made to the official's campaign committee, are normal bank and credit indebtedness, or are loans from family members.<sup>64</sup>

### **Solicitations of Political Support:**

Soliciting campaign funds from agency officers or employees is unlawful except when included as part of a communication to a significant segment of the community.<sup>65</sup> Officials also cannot condition employment or compensation decisions on political support.<sup>66</sup>

### **Bribery and Extortion:**

It is a crime to request, receive or agree to receive anything of value, including money or "advantages," in exchange for official action.<sup>67</sup> The advantage can be a future one and need not involve the payment of money. It is also illegal to receive payments for appointments to public office.<sup>68</sup> Extortion is the wrongful use of an official's position in order to get something of value from someone.<sup>69</sup> Penalties for bribery and extortion are harsh: criminal fines, forfeiture of office, and disqualification from office.<sup>70</sup>

### **Competitive Bidding:**

<sup>62</sup> Government Code § 87460.

<sup>63</sup> Government Code § 87461.

<sup>64</sup> Government Code §§ 87460, 87461.

<sup>65</sup> Government Code § 3205.

<sup>66</sup> Government Code §§ 3204, 3205.5.

<sup>67</sup> Penal Code §§ 7, 68.

<sup>68</sup> Penal Code § 74.

<sup>69</sup> Penal Code § 518.

<sup>70</sup> Penal Code §§ 68(a), 85; see also Government Code §§ 3060 - 3074.

Competitive bidding and the award of a contract for a “public works” project to the lowest responsible bidder is generally required for special districts, but the threshold amount triggering such requirement varies among districts. The purpose of these laws is to encourage competition and eliminate favoritism, fraud, and corruption in the awarding of public contracts.<sup>71</sup> Local agencies are also required to have purchasing policies that govern the purchase of equipment, supplies and services that are not otherwise governed by state law.<sup>72</sup>

## B. Political Reform Act and Other Conflict of Interest Rules.

### Conflict of Interest Rules:

The two primary statutory schemes addressing conflicts of interest are the Political Reform Act and supporting Fair Political Practices Commission regulations, along with Government Code section 1090 and following. Conflict of interest rules are based on the idea that public officials owe the highest loyalty to the public, and that their personal or private financial needs should not be part of their political decisions.

***Disclosure of financial interests.*** Public officials report their financial interests in their Form 700 statements. These statements are intended to alert officials to personal interests that might interfere with public duties, and also let the public know about potential conflicts. The disclosure requirements apply to nearly every local elected official, members of commissions, boards, committees and other local bodies with significant decision making authority, and staff members designated by the local agency.<sup>73</sup> The forms require the disclosure of interests in real property, investments, business positions, sources of income, and gifts.<sup>74</sup> The forms are filed once the official assumes office, each year thereafter (by April 1), and after leaving office.<sup>75</sup> The document is filed with the local agency, which will send it to the FPPC if needed. These forms are public records,<sup>76</sup> and late filers may face fines or penalties.<sup>77</sup>

***Economic Interest Conflicts.*** Generally, a public official may not make, participate in, or influence a governmental decision that will have a foreseeable and material financial effect on the official’s economic interest.<sup>78</sup> Such economic interests

<sup>71</sup> Public Contract Code §§ 100 and 102.

<sup>72</sup> See for example Government Code § 61063 requiring community services districts to adopt special purchasing policies and procedures.

<sup>73</sup> Government Code § 82019.

<sup>74</sup> Government Code §§ 87206 -87210.

<sup>75</sup> Government Code §§ 87202 – 87204.

<sup>76</sup> Government Code § 81008.

<sup>77</sup> Government Code § 91013.

<sup>78</sup> See Government Code § 87100 and following.

include those of the official as well as the official's immediate family.<sup>79</sup> The prohibition does not just apply to voting, but the entire process leading up to voting.

The conflict rules are extremely complicated. Officials should seek advice very early if the official believes any of these economic interests may be affected by a decision:

- ✚ any source of income of \$500 or more during the prior 12 months for either the official or his or her spouse or partner;<sup>80</sup>
- ✚ any business entity in which the official has a direct or indirect investment of \$2000 or more or where the official is a director, officer, partner, trustee, manager or employee of the business;<sup>81</sup>
- ✚ real property interests worth \$2,000 or more<sup>82</sup> (and look out for any projects that may affect the characteristics of the land use or zoning around the official's real property, modify the taxes, fees or assessments applicable to the property, or generally affect the market value of properties within a 500 foot radius of the project site);<sup>83</sup>
- ✚ sources of gifts to the official worth \$500 or more (total) in the past 12 months;<sup>84</sup> or
- ✚ personal finances if the official or officials' immediate family's finances would receive a measurable financial benefit or loss from the decision.<sup>85</sup>

**Exceptions to disqualification rule.** Two exceptions apply that may allow an official to participate in a decision even if he or she has one of the interests listed above. First, the **public generally** exception means that an official may participate in a decision if the decision would affect a "significant segment of the public" and, in comparison, that effect on the public official's financial interest is not "unique".<sup>86</sup> Second, the **legally required participation** exception may apply if a conflict disqualifies so many officials that there would not be a quorum to take action.<sup>87</sup>

<sup>79</sup> See Government Code § 87103.

<sup>80</sup> Government Code § 87103(c); 2 Cal. Code Regs. § 18700(c)(6)(C).

<sup>81</sup> Government Code § 87103(a),(d); 2 Cal. Code Regs. §§ 18700(c)(6)(A), 18700(c)(6)(D).

<sup>82</sup> 2 Cal. Code Regs. § 18700(c)(6)(B).

<sup>83</sup> 2 Cal. Code Regs. §§ 18700(c)(6)(B), 18702.2.

<sup>84</sup> 2 Cal. Code Regs. § 18700(c)(6)(E).

<sup>85</sup> 2 Cal. Code Regs. § 18702.5.

<sup>86</sup> 2 Cal. Code Regs. § 18703.

<sup>87</sup> Government Code § 87101. Note: this exception does not apply where a quorum could later be met with a qualified member who is absent.

**Future Employment Conflicts.** An official is generally not allowed to participate in a decision involving a prospective employer.<sup>88</sup> This situation arises when an official is negotiating or has “any arrangement” concerning prospective employment with someone with business before the official’s agency. There is an exception, however, if the prospective employer is a local, state or federal governmental agency.<sup>89</sup> Moreover, *revolving door* rules restrict an official and senior management from representing parties before their former agency until they have been out of office for at least one year.<sup>90</sup> Note that some agencies have adopted even more restrictive prohibitions.

**Incompatible Office Conflicts.** There can be such a thing as too much public service, particularly where an official holds multiple public offices and the duties of such offices create potentially conflicting loyalties. State law prohibits public officers from simultaneously holding multiple *offices* that are “incompatible” (e.g., the powers or jurisdiction of the offices may overlap such as a city council member and a school board member).<sup>91</sup> Acceptance of the second office results in the official automatically vacating the prior office.<sup>92</sup>

**Other Personal Interests or Bias Conflicts.** An official must be careful to be aware of - and not act on - personal interests or biases about the facts or parties that could cast doubt on the official’s ability to make a fair decision. Such biases may result in disqualification under the common law doctrine.<sup>93</sup>

**What If An Official Is Disqualified?** If an official is disqualified due to a conflict of interest, then he or she must take the following steps:

- ✚ state the specific nature and details of the interest so that the public can understand it (it is not enough to simply say “I have a conflict”);
- ✚ step down from the dais and leave the room when the matter is discussed (unless the item is on the consent calendar); and
- ✚ do not discuss the issue with staff or other officials.<sup>94</sup>

Even if disqualified, an official can appear before the agency as a member of the public on matters that directly affect the official’s personal interests.<sup>95</sup>

---

<sup>88</sup> Government Code § 87407.

<sup>89</sup> 2 Cal. Code Regs. § 18747.

<sup>90</sup> Government Code § 87406.3.

<sup>91</sup> Government Code § 1099.

<sup>92</sup> Government Code § 1099(b).

<sup>93</sup> See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4<sup>th</sup> 1152, 1170-1173.

<sup>94</sup> 2 Cal. Code Regs. §§ 18704, 18707; Government Code § 87105.

<sup>95</sup> 2 Cal. Code Regs. §§ 18704(d)(2), 18707(a)(3).

**Penalties.** Violations of the conflict of interest rules may result in criminal and civil sanctions, disqualification from office, and administrative fines assessed by the FPPC.

### C. Section 1090: Ban on Contractual Conflicts of Interest

Government Code section 1090 bans self-dealing, so that officials cannot personally benefit from contracts with their agency. This law makes it illegal for officials to have financial interests in contracts that they make in their official capacities or any contract made by the board or body of which the official is a member.<sup>96</sup> Courts have interpreted broadly what constitutes a contract.<sup>97</sup> An official does not actually need to have financial gain in order to trigger this rule.<sup>98</sup> Moreover, Section 1090 does not require an officer to have any actual significant personal influence over a contract, but rather the “mere possibility of any such influence.”<sup>99</sup> Unlike the Political Reform Act, the prohibited interest does not need to have a “material effect” on the public official’s source of income. “*Any interest, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute.*”<sup>100</sup>

Simply choosing not to vote (abstaining) does not make the contract acceptable.<sup>101</sup> The agency body cannot enter into an agreement if one of its members has a financial interest in it.

**Exceptions.** There is no problem if the contract existed before the official took office, provided that the contract is not changed while the official is in office.<sup>102</sup> Moreover, contracts may not be prohibited if the official’s interest is terminated before participating in the governmental decision.<sup>103</sup> There are also more complicated exceptions for what are designated as “remote” and “non-interests”, which may allow the contract to be executed provided the official a “remote” interest does not participate in the making of the contract.<sup>104</sup> An official should speak with the agency’s counsel to get advice about whether these exceptions apply.

<sup>96</sup> Government Code § 1090.

<sup>97</sup> *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

<sup>98</sup> *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

<sup>99</sup> *Id.* at 325.

<sup>100</sup> *Id.* at 328.

<sup>101</sup> Government Code § 1092.

<sup>102</sup> 85 Ops.Cal.Atty.Gen. 176 (2002); 68 Ops.Cal.Atty.Gen. 337 (1985); see also *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191.

<sup>103</sup> 86 Ops.Cal.Atty.Gen. 187 (2003).

<sup>104</sup> Government Code §§ 1091, 1091.5.

**Penalties.** Severe penalties apply to those who violate Section 1090. First, a contract that violates Section 1090 is void, and the government will get the money back that was paid under the contract.<sup>105</sup> A *willful* violation is punishable by jail, fine, and disqualification from public office.<sup>106</sup>

#### IV. General Ethics Principles

Despite the myriad rules and regulations pertaining to ethical conduct, officials and their agencies are often confronted with situations where there are no black and white rules. In addition, many of the ethics laws simply set minimum standards as to what must (or must not) be done, not what should be done. Thus, the question of how high to raise the ethical ceiling is often left to agencies and their officials to determine.

To resolve an ethical dilemma, an official must first determine what type of dilemma he or she is facing. There are two common types of ethical dilemmas: (1) *personal costs* and (2) *right-versus-right*.

A “personal cost” dilemma can involve concerns that doing the right thing may jeopardize one’s position or impact a valued relationship. While these decisions are not easy, the answer is relatively straightforward: being ethical means doing the right thing regardless of personal costs.

A “right-versus-right” dilemma can be more difficult to resolve because they typically involve competing positive interests. For example, what do you do when a loyal supporter or employee is competing for a position? Loyalty is a bona fide value, but so is responsibility in terms of selecting the person who will best serve the agency. When deciding a right-versus-right dilemma, the official must evaluate which ethical values are involved in the decision, whether the values conflict, whether a course of action will meet both values, whether one course of action will better meet a more important value, what decision best benefits the community as a whole, and what decision will promote public confidence in the official’s agency and leadership.

An official must establish his or her own ethical framework to assist in making tough decisions. Important public service values attach to all public officials, including *community first, trustworthiness, responsibility, respect, and fairness*.

*Community First* includes compliance with applicable laws and policies, making impartial decisions free of any outside or personal financial influences, and not using agency resources for personal gain.

---

<sup>105</sup> Government Code § 1090, 1092.

<sup>106</sup> Government Code § 1097.

*Trustworthiness* includes such behaviors as acting truthfully with the public, staff and other officials, using accurate information to support a position, and reporting suspected improprieties.

*Responsibility* includes coming prepared for meetings, avoiding representing personal opinions as agency positions, and only making realistic promises.

*Respect* includes treating everyone with courtesy, listening carefully and asking questions, and making sure to involve relevant staff members with decision making.

*Fairness* requires that an official focus on the merits of issues, not personalities, promote public involvement, apply agency policies consistently, and consider exceptions when policies have unintended consequences or undue burdens.

Finally, *public perception* is a good test of whether a decision is ethical or not. If an official would not be comfortable reading about the action on a newspaper's front page or an internet web portal, the official should consider the action carefully with the law and these principles in mind.

## Ethics Resources

An official can turn to several resources for ethics advice.

- The FPPC has a toll free number (1-877-ASK-FPPC) and a website at [www.fppc.ca.gov](http://www.fppc.ca.gov).
- The California Attorney General's office has resources available online at [www.ag.ca.gov](http://www.ag.ca.gov).
- The Institute for Local Government has many excellent publications on ethics available at [www.ca-ilg.org](http://www.ca-ilg.org).
- League of California Cities also has many helpful articles and publication on ethics at [www.cacities.org](http://www.cacities.org).

Finally, an official may ask his or her own agency's legal counsel for assistance.

For further information on California ethics laws and training opportunities please contact:

Donald M. Davis  
BURKE, WILLIAMS & SORENSEN, LLP  
444 South Flower Street, Suite 2400  
Los Angeles, CA 90071  
213-236-0600 phone  
213-236-2702 direct  
ddavis@bwsllaw.com  
www.bwsllaw.com