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# Ethics and Public Service

## Laws, Principles and Resources for Information

Required Training for Planning Commissioners and Designated Staff



Presented by  
Joel Ellinwood, Assistant County Counsel

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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. Help you comply with AB 1234 (Stats. 2005, Ch. 700) ethics training requirements, codified at Gov. Code §§ 53234, et seq. – every two years

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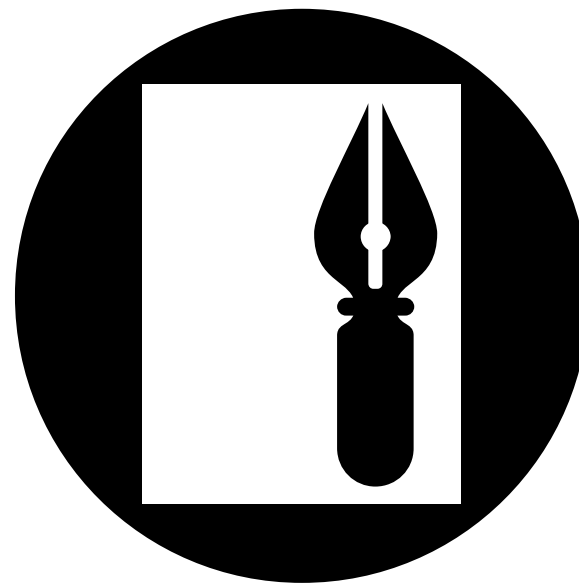
## Public Service Ethics is Different

- Laws play a bigger role
- Perception as important as reality
- **Key concept:** Actions & decision-making in the public's interest

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# Session Logistics - Requirements

- **2-hour session**
  - Specified content
  - Breadth versus depth
  - Handouts
- **Questions**
- **Proof of participation**
  - Sign in
  - Certificates



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# **What Is “Ethics” Anyway?**

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# Ethics:

*noun*

1. a system of moral principles: *the ethics of a culture.*
2. the rules of conduct recognized in respect to a particular class of human actions or a particular group


From: Dictionary.com

**Origin:** Middle English *ethik*, from Middle French *ethique*, from Latin *ethice*, from Greek *ēthikē*, from *ēthikos*

From: Webster.com

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## SYNONYMS FOR ethics

 Compare Synonyms

belief

criteria

honor

mores

standards

conduct

decency

ideal

nature

value

conscience

ethos

imperative

practice

moral code

convention

goodness

integrity

principles

natural law

conventionalities

honesty

morality

standard

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# Ethics Versus Ethics Laws

- **Ethics** = what we *ought* to do
- **Laws** = what we *must* do
  - Minimum standards
  - Penalties
  - Legal ≠ ethical





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## **What We *Ought* to Do = Values**

- ✓ Trustworthiness
- ✓ Loyalty
- ✓ Responsibility
- ✓ Respect
- ✓ Fairness
- ✓ Compassion

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## Responsibility Issues

- Making decisions for others
  - Stewards of taxpayers' resources
- Perception matters
- Personal *and* organizational ethics



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# Understanding Ethics Laws

- ✓ **What They Cover**
- ✓ **When You Need to Ask Questions**

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## Why Should You Take the Time?



- **Loss of freedom**--6 months to 20 years
- **Fines** (up to \$250,000) + restitution + forfeiture
- **Attorneys fees** (\$3K to \$1M+) – Own and others'
- **Delay of Public Agency Action**
- **Personal costs** (embarrassment, reputation, bar from future public service)



State Sen. Leland Yee

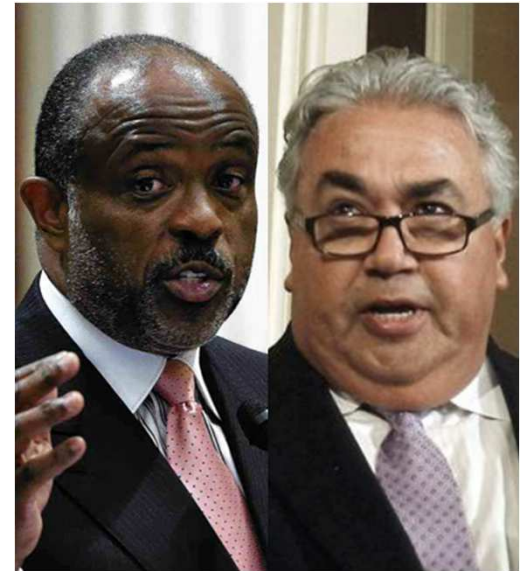


State Superintendent  
Of Public Instruction  
Bill Hoenig

## Two more enter pleas in L.A. Coliseum corruption case



Defense attorneys and rave promoter Pasquale Rotella, center, share a light moment in court earlier this week when Rotella pleaded to a misdemeanor in the Coliseum corruption case. He was placed on three years' probation and ordered to pay \$150,000 to the county. (Mark Boster/ Los Angeles Times)



State Senators Rod Wright and Rob Calderon

In Case You M



Los Angeles Times

COLUMN ONE : Trouble in California's Heartland : U.S. claims Fresno County land boom has spawned massive corruption involving dozens of officials, developers and lobbyists. Case is latest in area's colorful history of questionable dealings.

BY MARK ARAX  
DEC. 6, 1995 12 AM PT

SUBSCRIBERS ARE READING >

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## **State Ethics Laws – 4 Groups**

- 1. Personal financial gain**
- 2. Personal advantages and perks**
- 3. Governmental transparency**
  - Brown Act**
  - Public Records Act**
- 4. Fair processes – Federal & State Constitutions**

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# **Group 1: Personal Financial Gain Issues**

(aka Conflict of Financial Interest)

## **Principles:**

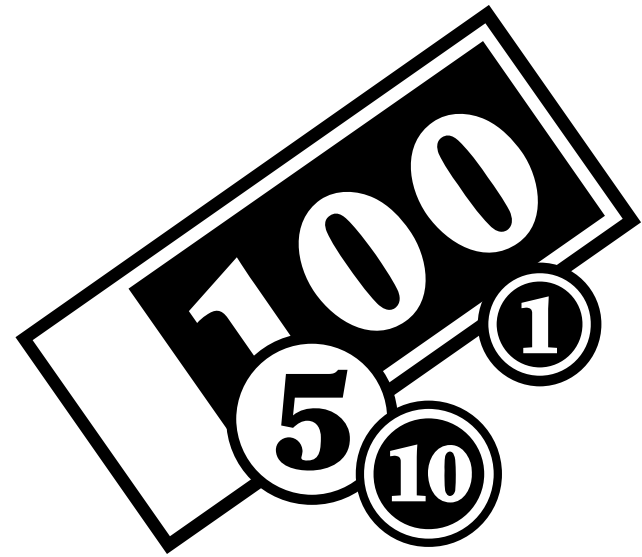
- Public's interest should be sole motivation
- Public servants should not benefit financially from their positions



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## Examples of Financial Gain Laws

- Bribery
- Prohibitions against self-dealing
- Employment-related restrictions



**Political Reform Act** – Proposition 9, June 1974; Government Code §§ 81000, *et seq.*



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# Bribery

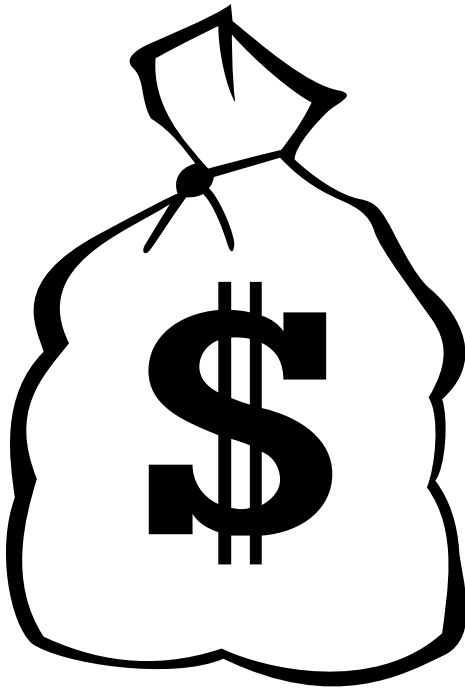
Public officials may not:

- Solicit, receive or agree to receive
- A benefit
- In exchange for their official actions



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## Bribery and Related Crimes

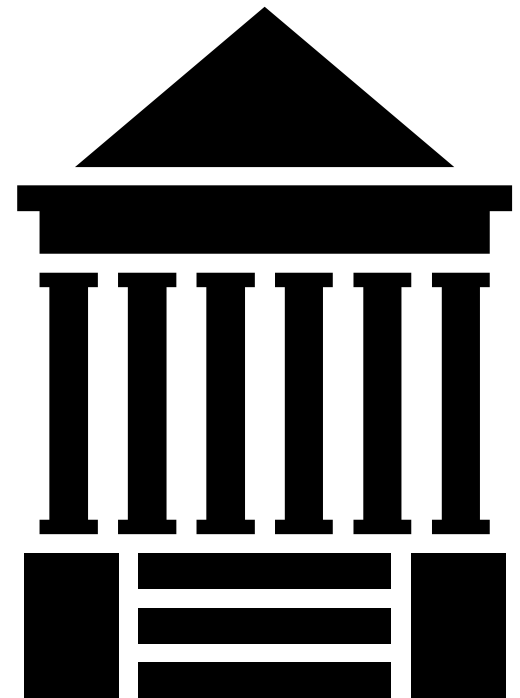


- Beware of: “this for that”
- Think about what you would say if someone approached you

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## Bribery: Penalties

- Up to four years in state prison
- Loss of office
- Barred from holding office
- Fines/restitution
- Federal prosecutions: stiffer penalties



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## **No Self-Dealing Rules**

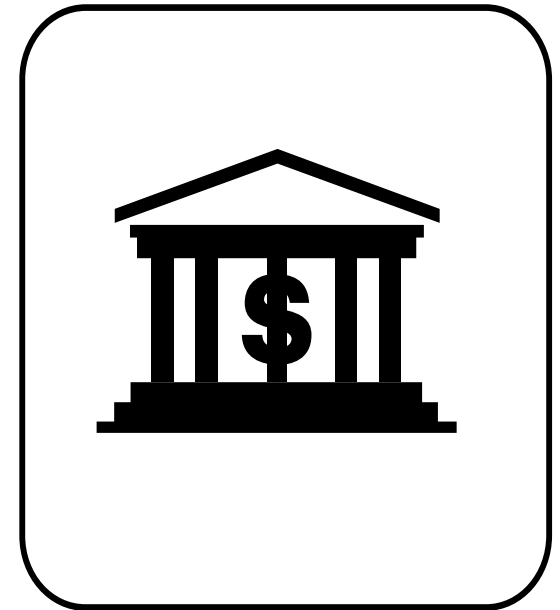
- **Disqualification/conflicts of interest rules**
- **Special rules for contracts**



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## Disqualification Based on Financial Interests

- **Rule:** You may not participate in a decision if financial interests are affected by a decision
- Effect can be positive or negative
- Annual Disclosure of Financial Interests Required (Form 700)



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# Disqualification versus Abstention

- **Disqualification => Legally required**
  - Does not imply wrongdoing
  - *Unless* don't disqualify
- **Abstention => voluntary**
  - Beyond minimum legal requirements

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# Getting Advice on Political Reform Act Conflict of Interest Issues

- **County Counsel**
  - No immunity though
- **The Fair Political Practices Commission**
  - Hotline (informal advice) 866-ASK-FPPC (1-866-275-3772)
  - In writing (formal opinion)
  - Allow plenty of time



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## If You Are Disqualified



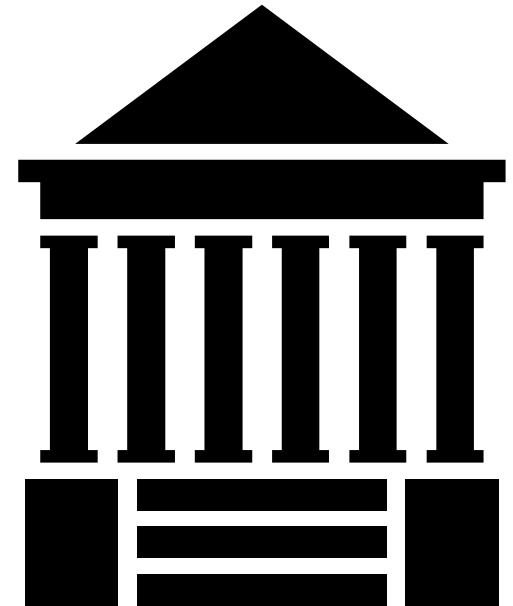
- 1. Don't discuss or influence (staff or colleagues)**
- 2. Identify nature of conflict at meeting**
- 3. Leave room (unless matter on consent)**



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## Failure to Step Aside: Penalties

- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees
- Embarrassment

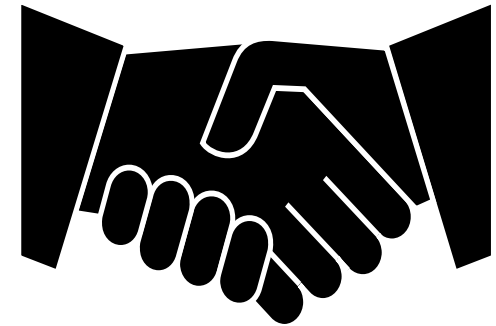


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## Warning!

# Special Rules for Contracts

- **Interests in contracts are *forbidden***
- **Disqualification likely not be enough**
- **Penalties:** Refund money received, fines, imprisonment, and loss of office (felony)

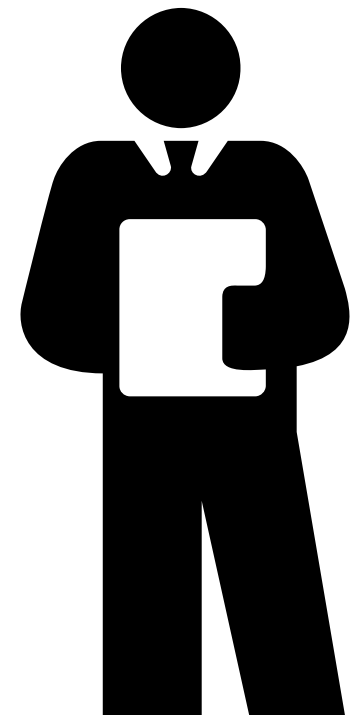


(Generally Not Applicable to Planning Commissioners)

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# Future Employment Issues

- **Revolving door prohibition**
  - Electeds and top managers
  - Cannot represent people for pay for a year after leaving their agency
- **No participation in decisions involving future employers**



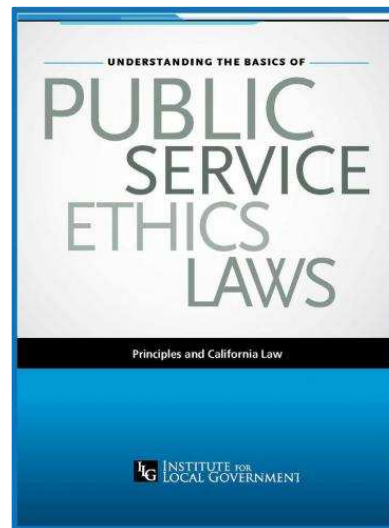


## **Key Things to Remember**

- **It's about the public's interest**
- **Not about the money**

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# For More Information on Personal Financial Gain Laws



**[www.ca-ilg.org/FinancialGain](http://www.ca-ilg.org/FinancialGain)**

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## Group 2: Perks

### **Principles:**

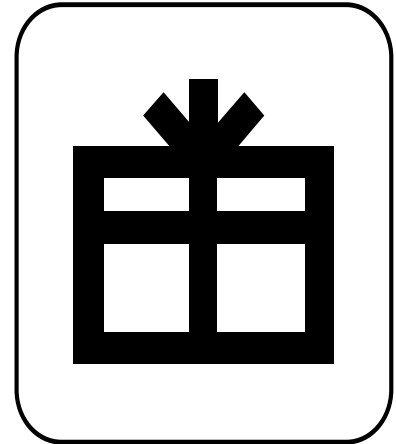
- Democratic equality and serving the public's interests
- No special privileges for public officials



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## Three Areas

1. **Compensation**
2. **Use-of-public-resources issues**
  1. Personal Use/Expense  
Reimbursement
  2. Political Use
3. **Gifts**



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# Local Official Compensation



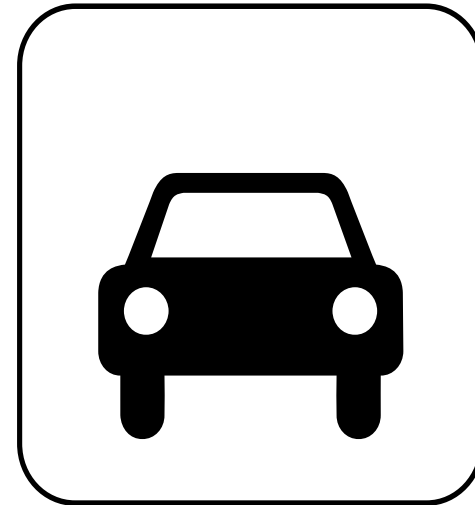
- Limited by law
- No honoraria rule for speaking or writing  
*(page 7 Perks)*



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# Use-of-Public-Resources Issues

- **Personal** use of public resources (including staff time and agency equipment) prohibited
- **Political** use of public resources also prohibited



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## “Public Resources”

**Money or anything paid  
for with public money:**

- Staff time
- Office space
- Equipment
- Supplies



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## Reimbursement Issues: It's the Public's Money

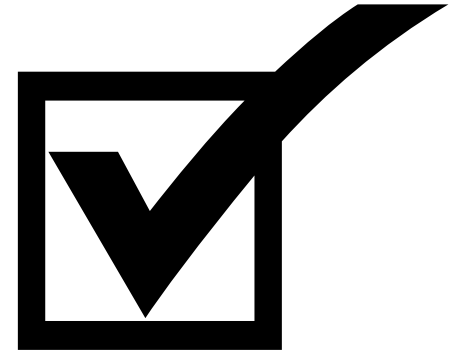


- **Statutory & Local expense reimbursement policies**
- **Note: Partner/spouse expenses**

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## Political Use of Public Resources

- **By individuals or the agency itself**  
(support of or opposition to ballot measures)
- **Mass mailing restrictions**
  - Goal: restrict incumbents' advantages



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## Consequences of Violations

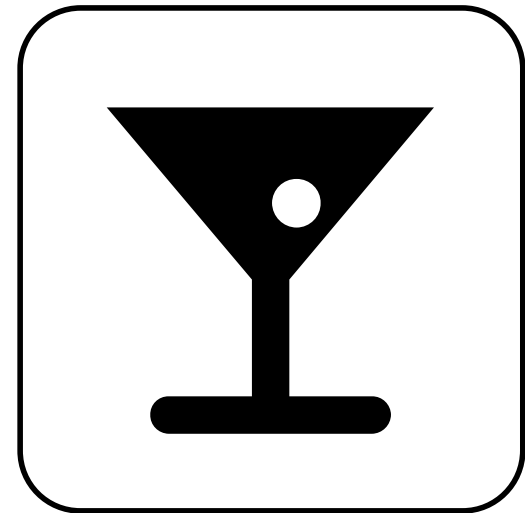
- **Civil penalties:** \$1,000/day fine + 3X value of resource used
- **Criminal penalties:** 2-4 year prison term + disqualification from office
- Can also have **income tax** implications



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## Gifts Don't Always Have Bows

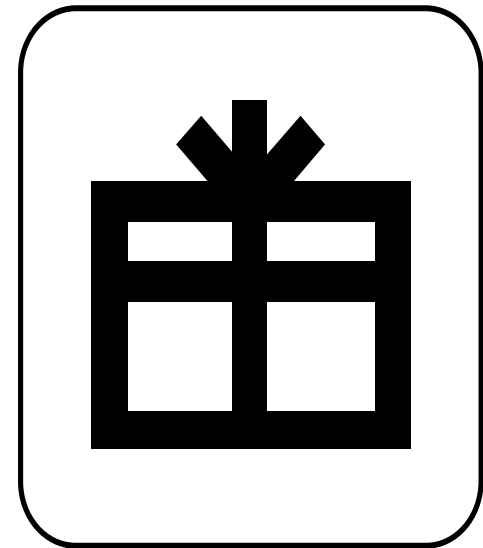
- Meals, food and drink
- Entertainment  
(concerts & sporting events)
- Certain kinds of travel



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## Gift Rules

- Report \$50 and up (over a year)
- Limit \$520 per year (as of 2021-2022)
- Exceptions for some kinds of travel, informational materials
- May also be a disqualifying interest (over \$520 in prior 12 months)



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## **Gift Limits: State Law Penalties**



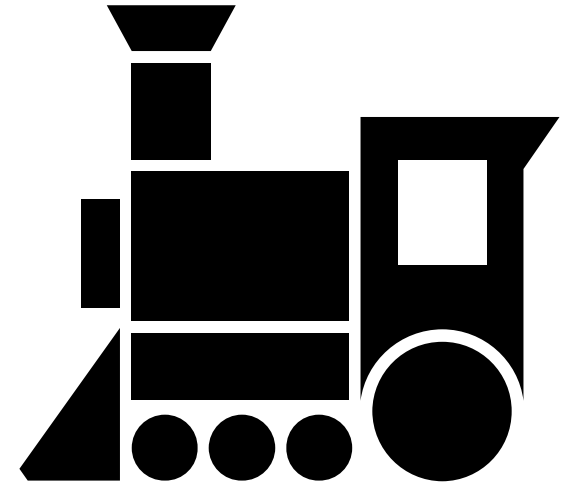
- Up to \$5,000 per violation
- Own attorneys fees (\$3,000 - \$30,000)



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## Special Rule

- No free transportation from transportation carriers
- **Penalty:** Loss of office



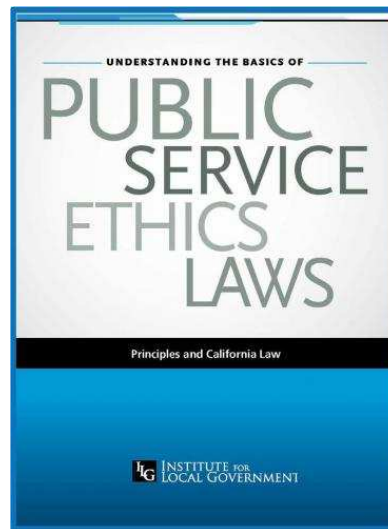


## **Key Things to Remember**

- **Avoid rationalization traps**
- **Beware of people's nice gestures**

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# For More Information on Perk Issues



**[www.ca-ilg.org/Perks](http://www.ca-ilg.org/Perks)**

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## Group 3: Transparency Laws

### Principles:

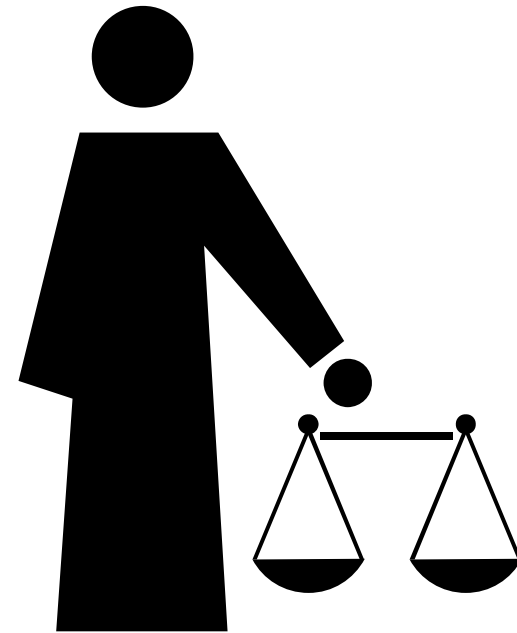
- It's the public's business
- The public trusts a process it can see



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## Types of Laws

- Financial Disclosure
- Charitable Fundraising
- Brown Act
- Public Records Act



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# Financial Interest Disclosure

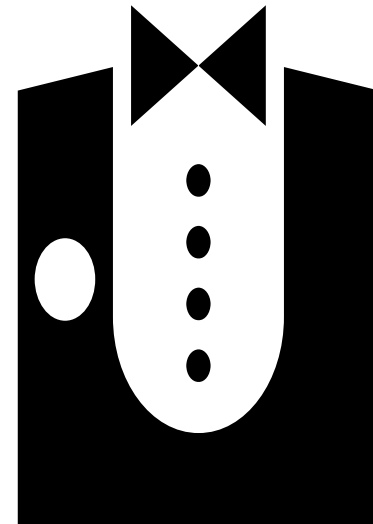


- Transparency includes obligation for higher level public servants to disclose financial interests
  - Assuming office
  - Annually while in office
  - Upon leaving office
- Includes Planning Commissioners and Planning Staff

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# Charitable Fundraising

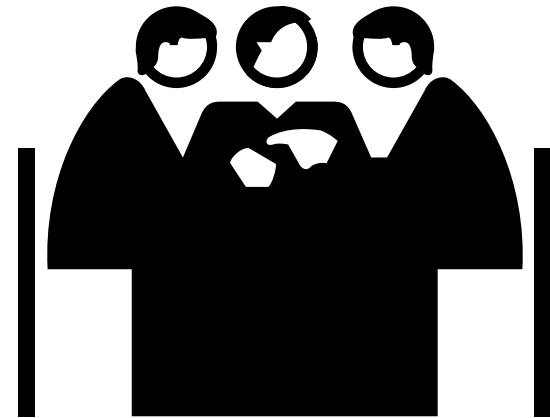
- Rule applies to elected officials
- Disclose \$5,000 or more from single source
- Charitable, legislative or governmental purpose



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## More Transparency Rules

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





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# **Brown Act**

## **Conducting Business at Open Meetings**

- A majority may not consult outside an agency-convened meeting
  - Media vigilance
  - Newspaper test
- Failure to comply may invalidate or delay actions, award of attorney fees



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# Public Records Act



- Agendas + writings prepared, owned, used or retained by agency (including electronic); emails, texts, IMs on public or private devices
- Penalties: Adverse media attention + costs and fees if litigated
- Production can be burdensome and time-consuming for staff

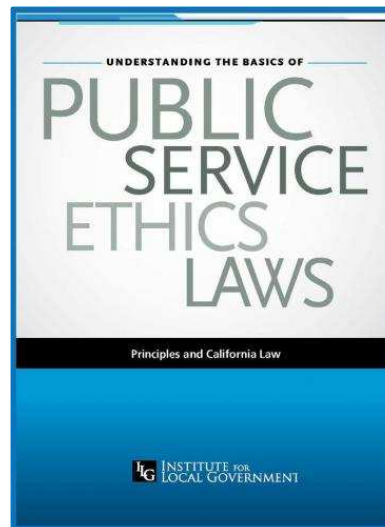


## Key Things to Remember

- **“Who’s going to know?” is a very risky line of thinking**
- **Nothing to hide may be a good goal**

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# For More Information on Transparency



**[www.ca-ilg.org/TransparencyLaws](http://www.ca-ilg.org/TransparencyLaws)**

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## **Group 4: Fair Process Laws**

- **Principle: Under certain circumstances, public officials are stewards of fair processes**
  - Decision-making
  - Contracting
  - Employment



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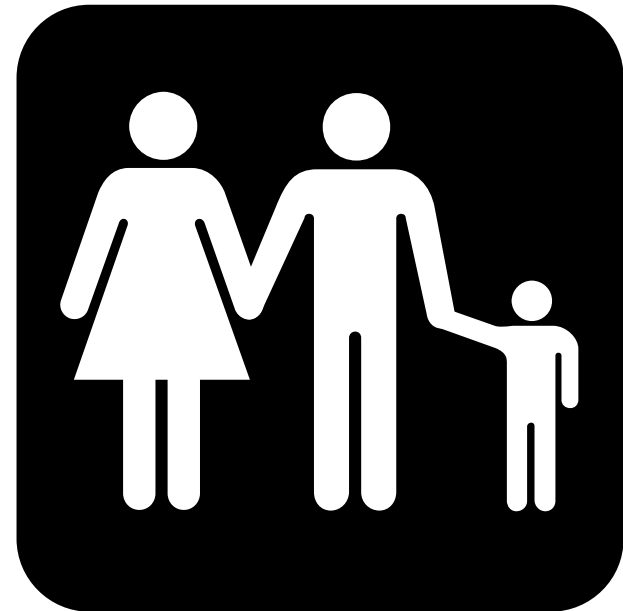
## Fair Process Laws

- **Due process requirements and rules against bias**
  - Expressions of views prior to hearing
  - Personal, but non-financial interests

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## Fair Process Laws, continued

- Disqualification requirements if decision involves family members
- Nepotism



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# Campaign Contribution Issues

- **State law campaign contribution restrictions**
- **Demands for contributions** in exchange for favorable action = federal fraud and extortion “*Quid Pro Quo*”
- **Soliciting campaign contributions** from fellow officials and employees prohibited



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## Fair Process Laws, *continued*

- Incompatible office prohibitions (judicial doctrine)
  - **Issue:** Conflicting loyalties & overlapping jurisdictions
  - **Result:** forfeit first position



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## Fair Process Laws, *continued*

- Competitive bidding requirements
  - Everyone has a right to compete for agency's business
  - Competition produces the best price for taxpayers
  - Prevents graft
- Kickbacks prosecutable under federal fraud and extortion laws



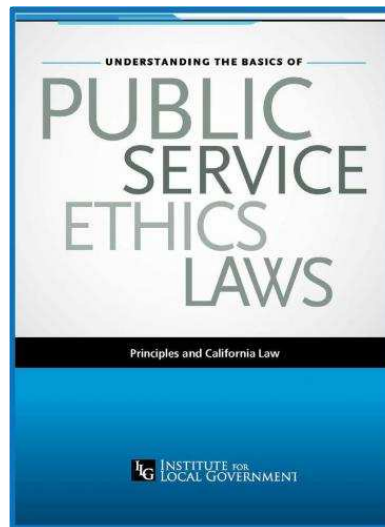
## Key Things to Remember

Focus on

- The *merits* of decisions
- Providing *fair* decision-making processes

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# For More Information on Fair Process Laws



**[www.ca-ilg.org/FairProcess](http://www.ca-ilg.org/FairProcess)**

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# Resources

- Cross Reference
  - Attorney General
  - FPPC
  - [www.ca-ilg.org](http://www.ca-ilg.org)
- Also [www.ca-ilg.org/everydayethics](http://www.ca-ilg.org/everydayethics)

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# **Beyond the Law: Public Service Ethics Principles**

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# **Applying Values to Public Service**

## **Trustworthiness:**

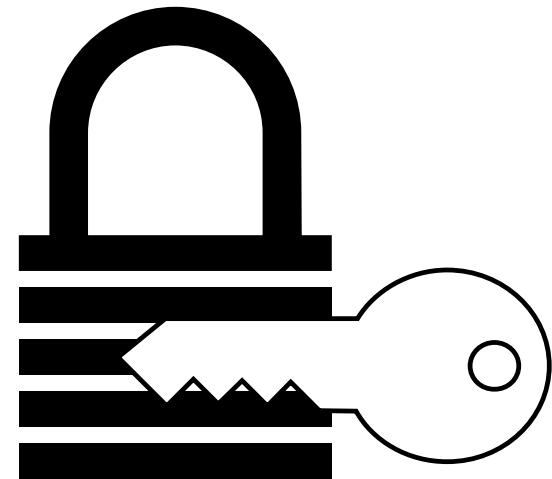
- **I am truthful and candid with my fellow officials, the public and others.**

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# Ethics = Values

## Six universal ethical values:

- ✓ Trustworthiness
- ✓ Loyalty
- ✓ Responsibility
  - ✓ Public's interest
- ✓ Respect
- ✓ Fairness
- ✓ Compassion





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# Analyzing Ethical Dilemmas

- Two competing “right values”
- Doing the right thing costs more than one wants to pay (moral courage)

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## Example

- Supporter(s) want you to do something you aren't sure is best for public
- Right versus right dilemma (loyalty versus responsibility)
- Can then become a personal cost dilemma

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## Questions to Ask

- What values are at stake in a particular decision?
- What would make the public feel best/inspire public confidence?
- What would you want to read about on the front page?
- How do you want to be remembered?

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# Organizational Culture

## ✓ What's the message?

- “Doing it right” versus “whatever it takes”
- Are staff clear they are expected to use ethical behaviors to get results?
- “How it looks”-- Awareness of public perception



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# Creating a Culture of Ethics

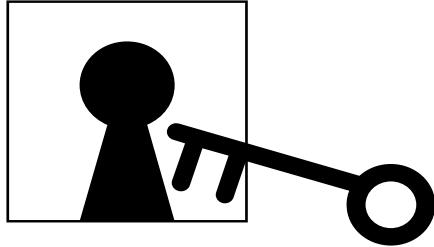


- ✓ **Tone at the top**
- ✓ **Support speaking truth to power**
- ✓ ***Who* you hire and how they are evaluated**

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## Is it a Job to Do, or a Job to Have?

- Determine your boundaries *before* you are in a difficult situation
- Is it worth compromising your values to keep your job/position?
- Think long term: People will ask “what did you know and what did you do about it?”



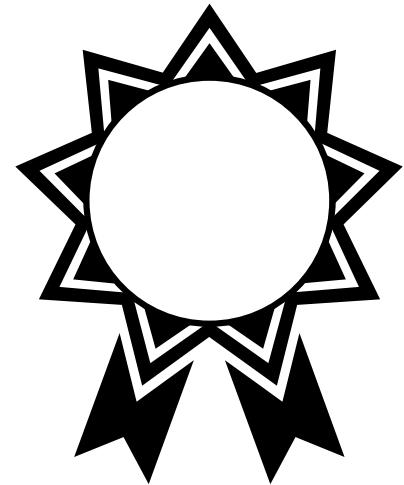
## Key Lessons

- It's your choice how high you want to set your sights above the minimum requirements of the law
- The law sets minimum—sometimes quite high--standards for ethical behavior
  - Violations of ethics laws carry stiff penalties
  - When in doubt, ask and ask early

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# AB 1234 Ethics Training Compliance

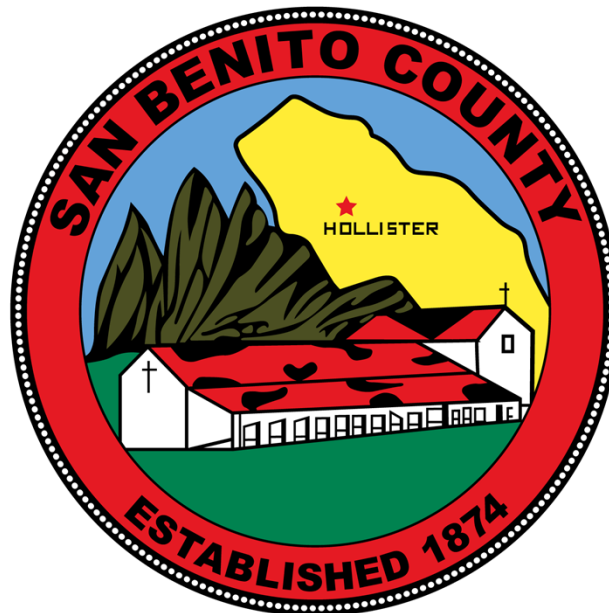
- Sign in
- Proof of participation certificate
- Provide to custodian of records as public record
- Consider going beyond the minimum in terms of education





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# Questions?



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*Thank you for your commitment  
to public service*

