

SCV WATER

Lagerlof LLP

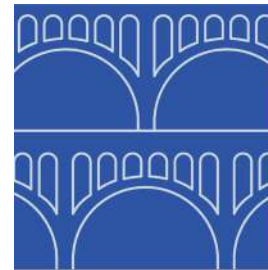
LAWYERS



AB 1234 ETHICS TRAINING

January 31, 2022

Presented by: Elsa Sham and Tom Bunn



I. Why is this training important?

1. Familiarize you with the laws and ethical principles that govern your service
2. Encourage you to *think beyond legal restrictions* and provide tools for doing so
3. Discuss general ethical principles to promote public trust in government
4. Meet statutory training requirement (Gov't Code § 53234 et seq.)

What happens when a public official violates the public's trust?



Former mayor indicted

Suspect in theft sought

City officials fear rerun of old scandals

Lawmaker's land sales questioned

Civil complaint planned against school officials

Prosecutors allege that Capistrano Unified trustees conducted public business in secret, according to grand jury transcripts.

Mayor's receipts probed

Official's future on hold

Extended term for ex-lawmaker

Thinking Beyond the Law

- Starting point for most ethical analyses in public service tends to be the law
- *The law is the floor* for ethical conduct—not the ceiling
- Just because it's legal, doesn't mean it is or will be perceived to be ethical

Principles of Public Service Ethics

TRUSTWORTHINESS

Public Office = Public Trust / Honest Service

FAIRNESS

The People's Business = Open Government

RESPONSIBILITY

Public Official's Decisions = No Bias

Must be Merit Based = No Personal Gain

No Conflicts of Interest

RESPECT

Public Confidence = No appearance of impropriety

POP QUIZ

- If a particular course of action is legal, then of course it's also ethical.

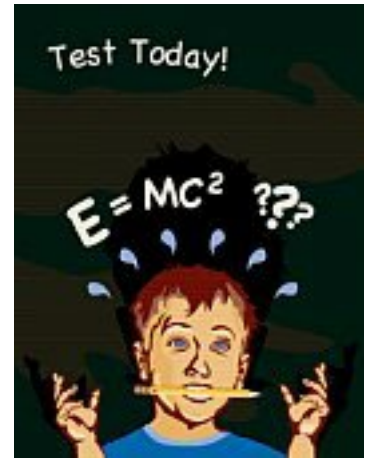
FALSE

- A true leader should not be concerned with the public's perception of his or her ethics

FALSE

- It is always easy to define what constitutes an ethical course of conduct.

FALSE



II. Conduct Public Business Openly



Conduct Public Business Openly



1. The Brown Act

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

(Cal. Gov. Sec. 54950)

2. Public Records Act

“The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. “

(Cal. Const. Art. I, Sec. 3)

Conduct Public Business Openly



1. The Brown Act

To whom does the act apply?

- Local agencies
 - Cities and counties
 - Special districts
 - Joint powers agencies
 - Certain private organizations
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office
- Does not apply to staff
 - But staff can cause a violation by acting as an intermediary

Conduct Public Business Openly



- What is a legislative body?
 - Governing body of the agency: board of directors
 - Committees created by the governing body
 - Standing committees comprised of less than a quorum
 - But not temporary (ad hoc) committees comprising less than a quorum

1. The Brown Act – Meetings

When does the Brown Act apply?

- What is a meeting?
 - In person gatherings
 - Communication through intermediary
 - Emails, Facebook, Twitter
- When is a gathering not a Brown Act “meeting”?

Conduct Public Business Openly

1. The Brown Act – Serial Meetings

- Expressly prohibited
- A series of communications
- Consensus on an issue
- Be careful with e-mail and other social media



Conduct Public Business Openly

1. The Brown Act – Types of Meetings

- Regular meeting
- Special meeting
- Emergency meeting
- Adjourned meeting



Conduct Public Business Openly



1. The Brown Act – Rules Governing Meetings

- Public's right to comment
- Agenda
- Location
- Access
- Special rules for teleconferencing (suspended by AB 361 during declared emergency)
- Announcement of votes taken

Conduct Public Business Openly

1. The Brown Act – Closed Sessions



- Must be expressly authorized
- Must be briefly described in agenda
 - Use safe harbor agenda descriptions
- Must verbally announce items
- If action is taken, may need to report to the public

Common Closed Sessions

- Pending Litigation & Liability claims
- Anticipated Litigation
- Personnel Issues
- Instructions to labor negotiators
- Real Property Transactions/Negotiations
 - Price or terms only
 - No general “contract” negotiation exemption
- Threats to Public Security

Conduct Public Business Openly



1. The Brown Act – Ramifications

- Violations may be prevented/stopped by court order
 - But: There may be a right to cure
- Action not in compliance may be invalidated
- Court costs & attorney fees are recoverable
- Person violating the Brown Act may be guilty of a misdemeanor
- Disclosure of confidential closed session information is prohibited

Conduct Public Business Openly

1. The Brown Act – e-Mail

- Refrain from replying
 - DO NOT REPLY TO ALL!
- Do not take a position or make a commitment
- E-mail Board for info only
- Take caution
- Ensure compliance with law
- Applies to other social media as well – AB 992
- Public vs. private devices – San Jose case



Conduct Public Business Openly



2. Public Records Act

- *Every person has a right to inspect public records of any state or local agency (Government Code Section 6250 et seq.)*
- **What is a public record?**
“...any writing containing information relating to the conduct of the public’s business...”
(Government Code Section 6252(e) & (f))
- **What is a writing?**
 - *Any form of recorded communication including paper, tapes, cds, photographs and electronic documents in any form.*

Conduct Public Business Openly



2. Public Records Act – Handling Requests

- *Public agencies must make disclosable records “promptly available” ... “upon request”*
- *Obligation to assist requesting party*
- *Requests for copies:*
 - *10 days for determination on the request*
 - *Time extension (14 days) for “unusual circumstances”*
 - *Written response required if any exception to disclosure*
 - *Direct cost of duplication*

2. Public Records Act

When is a public record exempt from disclosure?

- *Exemptions are statutory*
- *Preliminary drafts, notes or memos not kept in ordinary course of business*
- *Real estate appraisals*
- *Personnel, medical, similar files*
- *Records about pending litigation*
- *Arrest records, complaint ..., investigating a security file*
- *Utility customer information*
- *Catch-all exemption – Gov. Code Sec. 6255 balancing test*
 - ***Public interest in non-disclosure clearly outweighs public interest in disclosure***

2. Public Records Act – Best Practices

- *Always respond in writing to records requests*
- *Comply with applicable policy provisions and the Act*
- *Don't use your personal e-mail account for official business*

Pop Quiz

The Brown Act applies to all of the following except:

- A. Standing Committees
- B. Boards of Directors
- C. Temporary Committees

Pop Quiz

The Brown Act applies to which of the following persons:

- A. Citizens advisory committee
- B. Special District Board members
- C. Planning Commissioners
- D. All of the above

Pop Quiz

Under the Brown Act, an emergency situation includes all of the following except:

- A. Work Stoppage
- B. Crippling Activity
- C. When the Board President declares an emergency
- D. Activity impairing public health

Pop Quiz

Does the Brown Act apply to elected officials who have not yet assumed office?

- A. No, there is a grace period until the official assumes office
- B. No, so long as conversations occur in the presence of Legal Counsel
- C. Yes
- D. Yes, unless a local ordinance provides otherwise

Pop Quiz

How many hours in advance of a special meeting must the agenda be posted?

- A. 24 hours
- B. 1 hour
- C. 12 hours
- D. 72 hours

Pop Quiz

Meetings can be held in all of the following locations except?

- A. Within District boundaries
- B. In the District office
- C. In Las Vegas

III. Fair Process

1. Due Process
2. Bias
3. Competitive Bidding
4. Missteps
5. Best Practices

Fair Processes

1. Due Process



- What does Due Process mean?
 - Notice
 - Opportunity to be heard
 - Fair and impartial decision-maker
- Due Process Clause

“No state shall deprive any person of life, liberty or property without due process at law”

- U.S. Constitution Amend XIV, sec 1

Fair Processes

2. Bias (not necessarily financial)

- Does the decision maker have a specific prejudice?
- Two types of bias
 - Personal bias
 - Financial bias
- Ultimate issue: can the decision-maker decide the matter on appropriate grounds?

Fair Processes

3. Competitive Bidding

- Purposes of public bidding
- General Rule – No competitive bidding is required unless specifically required by statute or local rule or policy
- Contract goes to lowest, responsive, responsible bidder
- Exceptions

Fair Processes

4. *Avoid These Missteps*

- Appearance of bias or actual bias
- Financial interests
- Personal interests
- Statements that your “mind is made up”
- Relying on evidence presented outside the record

Fair Processes

5. Best Practices

- Think fairness and merit-based decision-making in contracting decisions (not personal relationships)
- Listen during public meetings
- Be prepared – read materials submitted

IV. Conflict of Interest

1. Incompatible Offices
2. “Revolving Door” Restrictions
3. Campaign Finances

Conflict of Interest

1. Incompatible Offices Doctrine



- What is the doctrine of incompatible offices?
- Ramifications

Conflict of Interest

2. *“Revolving Door” Restrictions*

- Elected and top managers
- Officials are prohibited from being paid to represent others before their former agency for the purpose of influencing the agency’s decisions.
- One-year ban after leaving office
- Local agency may adopt own more restrictive rules

Conflict of Interest

3. Campaign Finances

- Soliciting campaign contributions from public employees
- Limitations on cash contributions

V. Personal Financial Interests

1. Political Reform Act (1974)

*(Ethical laws dealing with public
officials
financial interests)*

2. Contracts (Gov. Sec. 1090)

3. Bribery



Personal Financial Interests

1. Political Reform Act

Public officials should make decisions based solely on the public's interests and not for their own personal financial benefit

How is this done?

- **Disqualification**
- **Disclosure (Form 700)**

Personal Financial Interests

1. Political Reform Act

87200 Filers

- Officials listed in Government Code Section 87200—may be listed in Appendix of Conflict of Interest Code for informational purposes only
- Full Disclosure Requirements
- Limited by Jurisdiction only

Designated Employees

- Listed in the Appendix of and subject to the Agency's Conflict of Interest Code
- Assigned One or More Disclosure Categories
- Disclosure Limited by Assigned Category and Jurisdiction of Agency

Personal Financial Interests

1. Political Reform Act

Statements of Economic Interests (SEI) Form 700

- **What**
- **How**
- **When**
- **Where**

Personal Financial Interests



CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Received _____
Official Use Only

A Public Document

Please type or print in ink

NAME (LAST)	(FIRST)	(MIDDLE)	DAYTIME TELEPHONE NUMBER
MAILING ADDRESS (May use business address) STREET CITY STATE ZIP CODE			(XXXXXXXXXX) OPTIONAL: FAX / E-MAIL ADDRESS

1. Office, Agency, or Court
Name of Office, Agency, or Court: _____
Division, Board, District, if applicable: _____
Your Position: _____
➔ If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)
Agency: _____
Position: _____

2. Jurisdiction of Office (Check at least one box)
 State
 County of _____
 City of _____
 Multi-County _____
 Other _____

3. Type of Statement (Check at least one box)
 Assuming Office/Initial Date: ____/____/____
 Annual: The period covered is January 1, 2006, through December 31, 2006.
-or-
 The period covered is ____/____/____, through December 31, 2006.
 Leaving Office Date Left: ____/____/____ (Check one)
 The period covered is January 1, 2006, through the date of leaving office.
-or-
 The period covered is ____/____/____, through the date of leaving office.
 Candidate

4. Schedule Summary
➔ Total number of pages including this cover page: _____
➔ Check applicable schedules or "No reportable interests."
I have disclosed interests on one or more of the attached schedules:
Schedule A-1 Yes – schedule attached
Investments (Less than 10% Ownership)
Schedule A-2 Yes – schedule attached
Investments (10% or greater Ownership)
Schedule B Yes – schedule attached
Real Property
Schedule C Yes – schedule attached
Income, Loans, & Business Positions (Income Other than Gifts and Travel Payments)
Schedule D Yes – schedule attached
Income – Gifts
Schedule E Yes – schedule attached
Income – Travel Payments
-or-
 No reportable interests on any schedule

5. Verification
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date Signed _____ (month, day, year)
Signature _____ (File the originally signed statement with your filing official.)

Personal Financial Interests

OUR REGION

PUBLIC SAFETY
Box is a paper tiger
A suspicious-looking box found outside National Guard armory in Linda Vista turns out to be nothing more than a container of paper. **B2**



BUSINESS
Good news for Goodrich
When Boeing rolls out its new 787 jetliner on Sunday, Goodrich employees in Chula Vista will be joining the celebration. **C1**

SHORT TAKES
Mexico candidate ruling due
Mexico's top electoral tribunal is to decide today whether a former Tijuana mayor can run in Baja California's Aug. 5 gubernatorial race. **B2**

CHULA VISTA
City councilman pleads not guilty to 15 charges

Felony perjury is among allegations

By Tanya Mannes
STAFF WRITER

City Councilman Steve Castaneda, who once called himself the victim of a "political witch hunt" led by District Attorney Bonnie Dumanis, yesterday pleaded not guilty to felony perjury and other criminal charges.

A county grand jury indicted Castaneda last week on 12 felony perjury counts, one felony count of preparing false documentary evidence, and two misdemeanor counts of failing to report his income on state-required economic disclosure forms.

Prosecutor Patrick O'Toole, who heads the District Attorney's Public Integrity Unit, sought the indictment. It was sealed until Castaneda's arraignment yesterday in San Diego. **SEE CASTANEDA, B3**



Online: To read the indictment against Steve Castaneda, go to uniontrib.com/more/castanedaandict

Prosecutor Patrick O'Toole (right) spoke yesterday at the arraignment of Chula Vista City Councilman Steve Castaneda (center). At left is Castaneda's attorney, Marc Carlos. *Earnie Grafton / Union-Tribune*

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Personal Financial Interests

1. Political Reform Act

Public Official's Conflict of Interest economic interest Checklist

- Income
- Business Management or Employment
- Real Property
- Personal Finances
- Gifts

Ethics Law

A Public Official may not participate in a decision if the official has a direct or indirect financial interest in that decision

Personal Financial Interests

1. Political Reform Act

Avoiding Financial Conflict of Interest

Four questions to ask relative to disqualification:

- Will you be participating in the decision?
- Does the decision affect your economic interests?
- Is the effect of the decision on your economic interest “material?”
- Does the decision affect your economic interests differently than the “public generally?”

Personal Financial Interests

1. Political Reform Act

Public Generally Exception

- Particularly important relative to rate-making and special rules apply
- Most common exception to the PRA
- “Significant segment”

Personal Financial Interests

1. Political Reform Act

What to do when a conflict exists?

- DO NOT PARTICIPATE IN THE DECISION.
- DO NOT participate in the discussion, render any opinion or advice, or act in any way that might influence the decision.
- DISCLOSE
- DISQUALIFY

Personal Financial Interests

1. Political Reform Act

Ramifications

- Possible invalidation of decision
- Misdemeanor or felony perjury sanction
- Possible loss of office
- Stiff fines
- Attorney fees
- Political embarrassment / public distrust

Personal Financial Interests

2. Interest in a Public Contract *(Gov. Code § 1090)*

Ethics Law

Public officials and public employees...

“shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

(Gov. Code §1090)

Personal Financial Interests

2. Interest in a Public Contract *(Gov. Code § 1090)*

Prohibition applies to all aspects of contract making applies to the following people:

- Elected officials
- Appointed public officials
- Commission/Board members
- Employees
- Consultants
- Anyone who acts in a fiduciary capacity

Personal Financial Interests

2. Interest in a Public Contract *(Gov. Code § 1090)*

- No Disqualification Allowed (if no exception applies)
 - Disqualification not allowed for members of the governing board
 - Employees and staff may disqualify
- Financial Interests
 - Direct Interests
 - Indirect Interests

Personal Financial Interests

2. Interest in a Public Contract *(Gov. Code § 1090)*

Exceptions:

- Statutory Remote Interests
- Statutory Non-Interests
- Narrow rule of necessity

Personal Financial Interests

2. Interest in a Public Contract *(Gov. Code § 1090)*

Ramifications

- Contract is void
- Felony conviction
- Pay restitution
- If convicted - barred from public office

Political Reform Act & Govt. Code § 1090: Comparison

	When it Applies	If Board Member Has Financial Interest	Consequence of violation
Political Reform Act	Any governmental decision	Individual member <u>must</u> recuse him/herself	Penalties for member
§ 1090	Contract only (including grants)	Contract cannot be made even if individual recuses him/herself	Contract void; penalties for member

Pop Quiz

- May a public agency purchase agency vehicles from a member of its board of directors if she's the owner of the only car dealer in town?

NO

- Can a public official can buy surplus property from a public agency just like anyone else?

NO

Personal Financial Interests

3. Bribery



Los Angeles Times

Former head of DWP agrees to plead guilty to bribery charge



Personal Advantages and Perks

1. Gifts
2. Honoraria
3. Loans
4. Reimbursements
5. Misuse of Public Funds

“When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office ...”

- Terry v. Bender (1956)

Personal Advantages and Perks

- What is a gift?
- To whom does it apply?
- Application
- Exceptions

Personal Advantages and Perks

Gifts

Disclose
\$50+

Disqualify
\$520/12mos.

Refuse
\$520+

Personal Advantages and Perks

Gifts

- Estimate
- Track
- If gifts exceed the \$520 annual cap, then within 30 days:
 - Refuse
 - Return
 - Donate

Personal Advantages and Perks

Exceptions

- Return unused gifts or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Equal-value gifts



Personal Advantages and Perks

Gift Limit Ramifications



- FPPC civil action
- Penalty: 3 times the amount of the gift
- \$5,000 fine
- 6 months jail
- Bribery/Extortion – Felony-Prison

Personal Advantages and Perks

Honoraria are Illegal

- What is Honorarium?
- To whom does it apply?
- Application
- Exceptions

Personal Advantages and Perks

Loans

- What is a Loan?
- To whom does it apply?
- Application
- Exceptions

Personal Advantages and Perks

Reimbursement

- What is a reimbursement?
- To whom does it apply?
- Application
- Exceptions

Personal Advantages and Perks

Misuse of Public Funds

“Public Funds” are:

- **Money**
- **Equipment**
- **Supplies**
- **Compensated Staff Time**
- **Use of Telephones, Computers, Fax Machines, etc.**
- **Charitable contributions – secondary benefit**

Personal Advantages and Perks

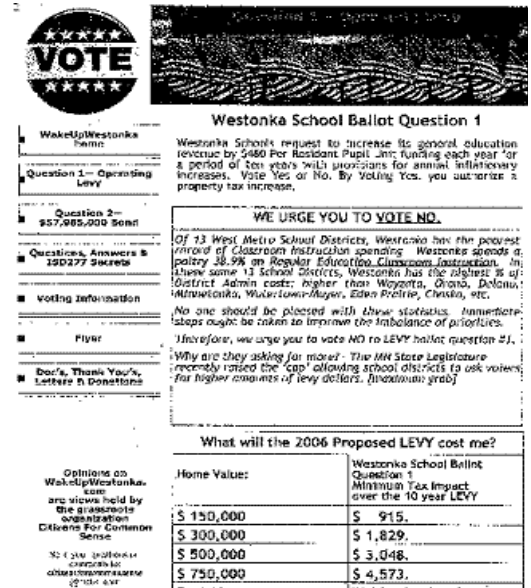
Misuse of Public Funds – Campaign Activities



Ballot Measures



Endorsements & Legislative Activities



Westonka School Ballot Question 1

Westonka School's request to increase its general education revenue by \$480 Per Resident Pupil unit funding each year for a period of ten years with provisions for annual inflationary increases. Vote Yes or No. By Voting Yes, you authorize a property tax increase.

WE URGE YOU TO VOTE NO.

Of 13 West Metro School Districts, Westonka has the poorest record of Classroom Instruction spending. Westonka spends a paltry 38.9% on Regular Education Classroom Instruction. In those same 13 School Districts, Westonka has the highest % of District Admin costs: higher than Waparra, Olney, Delano, Murfreesboro, Waterdown-Meyer, Eden Prairie, Chaska, etc.

No one should be pleased with these statistics. Immediate steps ought to be taken to improve the imbalance of priorities. Therefore, we urge you to vote NO to LEVY ballot question #1.

Why are they asking for more? The MN State Legislature recently raised the 'cap' allowing school districts to ask voters for higher amounts of levy dollars. (read: grab)

What will the 2006 Proposed LEVY cost me?	
Home Values:	Westonka School Ballot Question 1 Minimum Tax Impact over the 10 year LEVY
\$ 150,000	\$ 915.
\$ 300,000	\$ 1,829.
\$ 500,000	\$ 3,048.
\$ 750,000	\$ 4,573.

Informational Materials

Personal Advantages and Perks

Misuse of Public Funds

RAMIFICATIONS

- Up to Four (4) Years in Prison
- \$5,000 per Violation
- Restitution to Agency
- Attorney Fees (Personal and Opposing Party's)
- Barred from Holding Public Office