



Ethics in Community College Governance & Administration

Presented by:

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Agenda

- Making Ethical Decisions
- Avoiding Abuse of Power
 - Laws Relating to Personal Financial Gain
 - Laws Relating to Claiming Perquisites of Office
- Acting in Service to the Institution & Public
 - Laws Relating to Transparency
 - Laws Relating to Fair Processes

PART ONE

MAKING ETHICAL DECISIONS

- Defining Everyday Ethics

How rationale people of goodwill act

- ✓ Greatest balance of good over harm
- ✓ Protect and respect rights of others
- ✓ Common good

Making Ethical Decisions

- Defining Everyday Ethics
Virtuous character traits
 - ✓ Trustworthiness
 - ✓ Respect
 - ✓ Responsibility
 - ✓ Fairness
 - ✓ Caring
 - ✓ Citizenship

Making Ethical Decisions

- Identifying an Ethical Issue

Using societal norms

- ✓ Action or situation involves possible or actual harm
- ✓ Possible violation of what is considered good or right
 - ✓ What if on the front page of the paper
- ✓ Could i explain to my grandmother

Making Ethical Decisions

- Identifying an Ethical Issue

Pushing beyond the norms

- ✓ “Known World” by Edward Jones
- ✓ Society blind or dulled to conduct
- ✓ Know why wrong

Making Ethical Decisions

- Get the Facts

What are relevant facts

- ✓ What is known and unknown
- ✓ Do I know enough

Who has an important stake in outcome

- ✓ What concerns more important

What are the options considering:

- ✓ Most good and least harm
- ✓ Rights of stakeholders
- ✓ Equity
- ✓ Greater community

Making Ethical Decisions

- Make a Decision and Test It
 - ✓ Considering all the options what best meets the situation
 - ✓ What would a person I respect say about my choice

Making Ethical Decisions

- Act and Reflect
 - ✓ Implement decision with care and attention to stakeholders concerns
 - ✓ What happened and what did I learn

**PART TWO:
AVOIDING ABUSES OF POWER:
LAWS RELATING TO
PERSONAL FINANCIAL GAIN**

Duty of Public Officials and Employees

- To be personally disinterested in contracts, financial matters or hearing processes in which you are officially responsible
- Avoid even the *appearance* or *possibility* of a conflict

Bribery - Penal Code §§ 7(6) and 68

- Anything of value/advantage (present or prospective) or any promise to give anything
- Asked, given, or accepted,
- Corrupt intent to influence, unlawfully, the person to whom it is given in his or her action, vote, or opinion, in any public or official capacity.
- Penalty: this is a crime, and you can go to jail.

Government Code §1090 Conflicts

General Rule

- A public officer or employee may not make contracts in which he or she is financially interested.
- Penalty: there can be criminal and civil consequences:
 - *P. v. Honig*
 - *Thomson v. Call*

Effect of 1090 Conflict

- Insufficient for interested party to abstain from voting
- Insufficient if contract is fair, just and equitable
 - Or even if more advantageous than another contract
- No “good faith” defense
- Contract is **void**

Political Reform Act Conflicts

General Rule

- No public official may:
 - make/participate/use position to influence decision
 - if knows/should know of disqualifying conflict of interest

Effect of Conflict

- Board member must:
 - Publicly declare the specific interest
 - Leave the room / refrain from participating
- Employees / Officials – No clear requirements
- Once again, no good faith defense!
- Penalties: primarily fines imposed by FPPC, and they can be large!

Conflicts of Interest and Campaign Contributions – Government Code § 84308

- Elected/appointed officer may not receive/solicit campaign contributions:
 - more than \$250
 - from parties/other financially interested persons
 - during proceeding involving a license, permit, or other entitlement for use and for three (3) months after
- May not make/participate in making/influence decision

Conflicts of Interest When Leaving Office - Government Code §§ 87406.3 and 87407

- Before leaving: Public official may not make/participate in making/influence government decisions directly relating to any persons with whom public official is negotiating or involved with regarding future employment
- After leaving: Elected official/ administrator may not be compensated to act as agent/ attorney/ representative of another person for purposes of influencing former agency regarding legislative action/ permit, license, grant, or contract proceeding/ sale or purchase of goods or property for **one year** after leaving

**PART THREE:
AVOIDING ABUSES OF POWER:
LAWS RELATING TO
CLAIMING PERQUISITES OF OFFICE**

Limitations On The Receipt of Gifts – Government Code §§ 89503, 89506

- Gift defined:
 - Any payment/benefit
 - To official
 - Confers personal benefit
 - Without consideration
 - Includes rebates/discounts not offered to public

Limitations On The Receipt Of Gifts – Government Code §§ 89503, 89506

- Acceptance & Reporting Requirements
 - Applies to elected officials, candidates and designated employees
 - May not accept any gift(s) from one source worth more than \$390 in a single *calendar* year
 - Disqualified from participating in decisions involving source of gift(s) of \$390 or more in previous *12-month* period
 - Gifts aggregating \$50 or more must be reported on Form 700
 - Cannot cure through donation

Honoraria Ban – Government Code § 89501-89502

- “Honoraria” defined:
 - Payment for any speech given, article published, or attendance at conference, meal, or event
 - Exceptions reportable as income/gifts:
 - Hired to write book, play or screenplay
 - Travel, food, lodging in connection with speech or conference
 - Earned income from bona fide, independent profession
 - Exceptions NOT reportable as income/gifts:
 - Charitable or tax exempt non-profit contribution that neither references nor passes through public official
 - Received from family member

Misuse Of Public Funds – Government Code § 8314, Penal Code § 424

- Government Code § 8314 - Prohibits local official/employee from using (or permitting others to use) public resources for campaign/ personal purpose/ unauthorized purposes
- Penal Code § 424 - Makes it a **felony**

Gifts Of Public Funds Prohibited – California Const. Art. XVI, Sec. VI

- All expenditures of public funds must have public purpose.
- Test: Does expenditure serve public interest?
 - The good intentions of the decision maker will not convey a public benefit

Prohibition On Free Or Discounted Travel - California Constitution, Art. XII, SEC. 7

- Public officers may not receive free or discounted travel from transportation companies, whether for personal or business travel
- Violation of the prohibition results in immediate forfeiture of office

**PART FOUR:
ACTING IN SERVICE:
GOVERNMENT TRANSPARENCY
LAWS**

GOVERNMENT TRANSPARENCY LAWS

- Financial Disclosure
- Open Meetings
- Public Records

Economic Interest Disclosure - Government Code § 87200

- Covered officials:
 - Chief administrative officers
 - Board members
 - Public officials who manage public investments
 - Candidates for any of these offices at any election
 - Other officials designated by local agency conflict of interest codes

Economic Interest Disclosure - Government Code § 87200

- Filed upon taking office/ leaving office/
annual basis
- Requires disclosure of personal financial
interests
- Alerts you to conflicts
- Informs the public about potential conflicts

Form 700: What is Covered?

- Business Positions
- Commission Income
- Gifts of value in excess of \$50.00 that are not from family members:
- Individual Retirement Accounts
- Investments, Loans
- Owning a Business or Partnership
- Real Estate Holdings, including rental property

Form 700: What is Covered?

- Spouse's Income
- Stock Holdings
 - Less than 10%
 - 10% or more
- Tickets and passes
- Travel Reimbursements or Payments
- Trusts

Brown Act

- Requires that public agency actions “ be taken openly and that their deliberations be conducted openly” .
- Consequences can be civil or criminal, although criminal is very rare.

Public Records Act

- The Act applies to “any writings containing information relating to the conduct of the business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics”

Examples of Exempt Records:

- Preliminary Drafts
- Pending Litigation
- Communications received from Legal Counsel
- Complaints and Investigations
- Personnel Records
- Library Circulation Records
- Financial Data
- Others as defined by Government Code § 6254

**PART FIVE:
ACTING IN SERVICE:
LAWS RELATING TO FAIR
PROCESSES**

Due Process Requirements

- Notice of intended action
- Opportunity to prepare
- Opportunity to be heard
- Fair and impartial hearing
- Requirements of due process are flexible depending upon the interests at stake

Competitive Bidding Requirements Public Contract Code § 20650 et seq.

- If contract for materials or supplies exceeds \$50,000 (as adjusted) or public works exceed \$15,000, must solicit bids and award the work to the lowest responsible bidder or reject all bids.
- Illegal to split projects to avoid bidding!
 - Public Contracts Code § 20657.

Competitive Bidding Requirements

- Result of violations of competitive bidding laws:
 - Contract is void and illegal;
 - Contract cannot subsequently be ratified; and
 - Contractor has no right to reimbursement for service or materials furnished, even if they were rendered in compliance with contract requirements

Nepotism

- FEHA prohibits discrimination based on marital status, but allows employers to reasonably regulate for reasons of "supervision, safety, security, or morale" spouses working in the same department, division or facility.
- Public official should not participate in decisions directly affecting family members

Resources

- Markkula Center for Applied Ethics
www.scu.edu/ethics
- Josephson Institute of Ethics
www.josephsoninstitute.org
- Chancellor's Office
www.cccco.edu
- The Fair Political Practices Commission
www.fppc.ca.gov (1-866-275-3772)
- The Attorney General
www.ag.ca.gov

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