

AB 1234 ETHICS TRAINING



Vina Groundwater
Sustainability Agency

Board of Directors and
Stakeholders Advisory
Committee

May 6, 2021

4:00p.m. – 6:00 p.m.

John Jeffery Carter
LAW OFFICE

329 FLUME STREET · P.O. BOX 3606 · CHICO, CA 95927
(530) 342·6196 · FAX: (530) 342·6195

Introduction

On October 7, 2005, the Governor signed Assembly Bill No. 1234. AB 1234 requires that if a local agency provides any type of compensation, salary, or stipend to, or reimburses the expenses of a member of its 'legislative body' (as that term is defined in California Government Code Section 54952), that local agency's officials must receive training in ethics.

This will be a two hour interactive presentation.

Definitions

§ 82048 (a)

- “Public official” means every member, officer, employee or consultant of a state or local government agency.

§ 82020. Elected Officer.

- “Elected officer” means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

§ 82023. Elective Office.

- “Elective office” means any state, regional, county, municipal, district or judicial office which is filled at an election. “Elective office” also includes membership on a county central committee of a qualified political party, and members elected to the Board of Administration of the Public Employees’ Retirement System.

§ 82041. Local Government Agency.

- “Local government agency” means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

AB 1234 Ethics Training

AB 1234

All Public officials receiving expense reimbursement and compensation for their service. As mandated by AB 1234, all elected and appointed officials are required to take two hours of ethics training every two years. Employees are covered by AB 1234 requirements only to the extent so designated by their governing bodies.

Ethics Issues:

- Personal Financial Gain
- Gift and Travel Restrictions
- Financial Disclosure Requirements
- Fair Contract and Due Process Requirements

Core Ethical Principles

There are four significant core ethical principles all public officials must understand and implement.

1. Public offices cannot be used for personal financial gain.
2. Holding public office does not entitle anyone to personal advantages and perks.
3. The public's business must be conducted openly.
4. Fair processes and merit based decision making create an environment of good governance and service to the public.

Personal Financial Gain

- § 1090. Members of the Legislature, state, county, district, judicial district, and city officers or 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. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

- § 1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Officers are Prohibited from...

Government Code section 8920, the Code of Ethics, applies to state elected and appointive officers. It does not apply to civil service employees. The Code of Ethics generally prohibits officers from participating in decisions that will have a direct monetary effect on them.

Specifically, the Code of Ethics prohibits officers from:

- Having any direct or indirect financial interest, or
- Engaging in any business transaction or professional activity, or incurring any financial obligation, or
- If to do so would be in substantial conflict with the proper discharge of the official's duties.

This is a Misdemeanor

- § 1098. (a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.

Types of Economic Interest

Recognizing the economic interests from which conflicts of interest may arise is the most important step in complying with the law. The Act's conflict-of-interest provisions apply only to conflicts that arise from the five types of economic interests listed below:

1. Business entities
2. Real property
3. Sources of income to the public official
4. Sources of gifts to the public official
5. The “personal financial effects” rule

Economic Interests

- Local public officials must file statements of economic interests. (Form 700) Other officials or employees of state and local government agencies also must file statements of economic interests if they are "designated" in a conflict of interest code adopted by the agency for which they work. Each agency must adopt a conflict of interest code which designates all its officials or employees who make or participate in governmental decisions which could cause conflicts of interest.
- The Political Reform Act requires public officials at all levels of government to publicly disclose their private economic interests and to disqualify themselves from participating in decisions in which they have a financial interest.

Conflict of Interest

A public official or employee has a conflict of interest when all of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a governmental decision;
2. It is foreseeable that the decision will affect the official's economic interest;
3. The effect of the decision on the official's economic interest will be material;
4. The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

Conflict of Interest

§ 87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

§ 87460. (a) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

Disclosing Economic Interest

Disclosing Economic Interest

- Business Investments of \$2,000 or more;
- Business management positions in for profit entities;
- Real property interests of \$2,000 or more;
- Sources of income of \$500 or more;
- Sources of gifts of \$470 or more;
- Personal financial effects.

Disclosing Economic Interest

- A public official has an economic interest in sources of *income* to the official. A source of income to a public official is anyone, whether an individual, business entity or an organization, that provides or promises \$500 or more in income to the official within 12 months prior to the government decision-in-question.
- Source of Income to the Official's Spouse In California, a public official has a community property interest in his or her *spouse's* income. Therefore, a person or entity that provides income to an official's spouse *may* be a source of income to the public official, as well.

The Political Reform Act conflict-of-interest rules apply only to public officials as they are making, participating in making, or influencing a governmental decision. Following is a list of situations in which the Act's conflict-of-interest rules apply.

- The public official makes a governmental decision like voting or making an appointment.
- The public official participates in making a governmental decision such as giving advice or making recommendations to the decision maker.
- The public official influences a governmental decision by communicating with the decision maker.

Gift Restrictions

Gift Restrictions § 89503

- A public official may not accept gifts from any single source totaling more than \$470 in a calendar year.
- A 'gift' includes any payment or other benefits conferring a personal benefit for which the public official does not provide goods of services of equal or greater value.
- A rebate or discount not regularly available to members of the public is also considered a gift.
- A gift has been received or accepted when the official takes actual possession of the gift or exercises direction or control over the gift, including discarding the gift or turning it over to another person.

Honoraria

Honoraria

- § 89501. (a) For purposes of this chapter, "honorarium" means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.
- § 89502. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

Travel

Travel

Gifts of travel are particularly tricky. As a general rule, transportation, lodging and accommodations are covered by the gift limit. However, there are a number of exceptions.

When an official makes a speech, conducts a seminar or serves on a panel held within California, payments or reimbursements for certain items are not gifts. Following is a list of these exceptions.

- Transportation to and from an event within California
- Food and beverages at the event
- “Necessary” lodging and accommodations in connection with the event

Contract-Making

Contracts

- An official participates in the making of a contract if the official is involved with its preparation at any stage in the process. The contract-making process begins at the time the idea for the contract is conceived and continues through the actual execution of the contract. That means that planning, determining the scope of the contract, drafting plans and specifications, setting contract terms, evaluating applicants, and negotiating are all included.
- Officials may avoid a violation of section 1090 by disqualifying themselves from participation in the making of the contract **whenever they have a financial interest in the contract.**

Contracts

- Public Contract Code section 10410 imposes additional conflict-of-interest restrictions concerning state contracts and contractors. This section contains two separate prohibitions. First, there is a general ban on state officers and employees from having economic interests in state contracts. Second, there is a separate ban against state officers and employees acting as independent contractors with state agencies.
- Section 10410 specifically prohibits a state officer or employee from contracting on his or her own behalf with a state agency as an independent contractor to provide goods or services.

One-Year Ban

- Government Code section 87406 places a one-year ban on former state government officials from contacting specified government agencies. Former officials may not accept compensation to act as the agent, attorney or representative of another person for purposes of influencing specified government agencies through oral or written communications.

The Brown Act

The Brown Act (Ralph M. Brown Act) is found in California Government Code beginning at § 54950. The Act requires governmental agencies to conduct business at open and public meeting at which time the public may address their specific concerns.

§ 54950

The people of this State do not yield their sovereignty to the agencies which serve them. 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.

WHO'S COVERED

- *Local agencies*, including counties, cities, school and special districts.

(§ 54951)

- "*Legislative bodies*" of each agency--the agency's governing body plus "covered boards," that is, any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary. (§ 54952(b))
- Any *standing committee* of a covered board, regardless of number of members. (§ 54952(b))

WHO'S COVERED

- Newly-elected members of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office. Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

- All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

What is not a “Meeting”:

The Brown Act creates six exceptions to the meeting definition:

1. Individual Contacts
2. Conferences
3. Community Meetings
4. Other Legislative Bodies
5. Standing Committees
6. Social or Ceremonial Events

Gatherings Include

Brown Act gatherings include a legislative body's regular meetings, special meetings, emergency meetings and adjourned meetings.

- “Regular meetings” are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.
- “Special meetings” are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings.

- “Emergency meetings” are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.
- “Adjourned meetings” are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.

- Every regular meeting of a legislative body of a local agency – including advisory committees, commissions, or boards, as well as standing committees of legislative bodies – must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.
- The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.” The courts have not definitively interpreted the “freely accessible” requirement.
- The California Attorney General has interpreted this provision to require posting in locations accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.

Publicly Report Action

- California Senate Bill 751, recently signed into law, will require all legislative bodies to publicly report any action taken in any meeting, and the vote or abstention on that action of each member present. The bill is effective January 1, 2014. In order to comply with these requirements, legislative bodies must verify the vote or abstention of each member, and publicly announce the action taken and the vote or abstention of each member in attendance. This information should also be noted in the minutes. As a practical matter, votes may need to be taken by roll call or in another manner that allows verification of the vote of each member in order to comply with the requirements of SB 751.

- There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.
- Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

- The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?
- While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda.

Closed Meetings

Closed Meetings

- Closed meetings are the exception and permitted only if they meet defined purposes and follow special requirements (§§ 54954, 54954.2, 54954.5, 54957.7).

Even at Closed Meetings...

- Special public notice and agenda requirements apply (§§ 54954, 54954.2, 54954.5, 54957.7).
- All actions taken and all votes in closed session must be publicly reported orally or in writing within 24 hours (§ 54957.1(b)), and copies of any contracts or settlements approved must be made available promptly (§ 54957.1(b),(c)).

Closed Meetings May Be Held For:

Personnel – Only to discuss the appointment, employment, performance evaluation, discipline, complaints about or dismissal of a specific employee or potential employee (§ 54957).

- The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception. That authority may be delegated to a subsidiary appointed body.
- An employee must be given at least 24 hours notice of any closed session convened **to hear specific complaints or charges against him or her.**

Closed Meetings

Closed Meetings May Be Held For:

- **Pending Litigation** – Only if open discussion "would prejudice the position of the agency in the litigation." The litigation must be named on the posted agenda or announced in open session unless doing so would jeopardize the board's ability to service process on an unserved party or conclude existing settlement negotiations to its advantage. (§ 54956.9).
 - Existing litigation
 - Threatened litigation against the Public Entity
 - Initiation of litigation by the Public Entity
- **Labor Negotiations**
- **Property Negotiations**
- **Others** – License applications for people with criminal records (§ 54956.7); threats to public services or facilities; (§ 54957) insurance pooling (§ 54956.95)).

CA Public Records Act (CPRA)

- The public may inspect or obtain a copy of identifiable public records. Writings held by state or local government are public records. A writing includes all forms of recorded information that currently exist or that may exist in the future.
- To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records. One legislatively-approved method of providing assistance is to make available an index of the agency's records. A request for records may be made orally or in writing.
- When a person seeks a record in an electronic format, the agency shall, upon request, make the information available in any electronic format in which it holds the information. Computer software developed by the government is exempt from disclosure.

- The CPRA entitles natural persons and business entities as members of the public to inspect public records in the possession of government agencies.
- Records may be inspected at an agency during its regular office hours.
- A person need not give notice in order to inspect public records at an agency's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions.
- When a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor.

- Under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure.
- When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record.

Exceptions

- Personnel, medical or similar record generally refers to intimate or personal information which an individual is required to provide to a government agency frequently in connection with employment.
- Disclosure Would Constitute An Unwarranted Invasion Of Privacy
- Preliminary Notes, Drafts and Memoranda
- Investigative records
- Intelligence Information
- Pending Claims and Litigation
- Attorney-Client Privilege
- Attorney Work Product
- Official Information