SACRS FALL CONFERENCE

NOV. 10-13, 2026 | OMNI RANCHO LAS PALMAS RESORT & SPA | **RANCHO MIRAGE, CA**



Ethics Training for Public Officials (AB 1234)

Presented at the SACRS Spring Conference

SACRS FALL CONFERENCE

NOV. 11-14, 2025 | HYATT REGENCY HUNTINGTON BEACH RESORT AND SPA | HUNTINGTON BEACH, CA

Today's Presenters



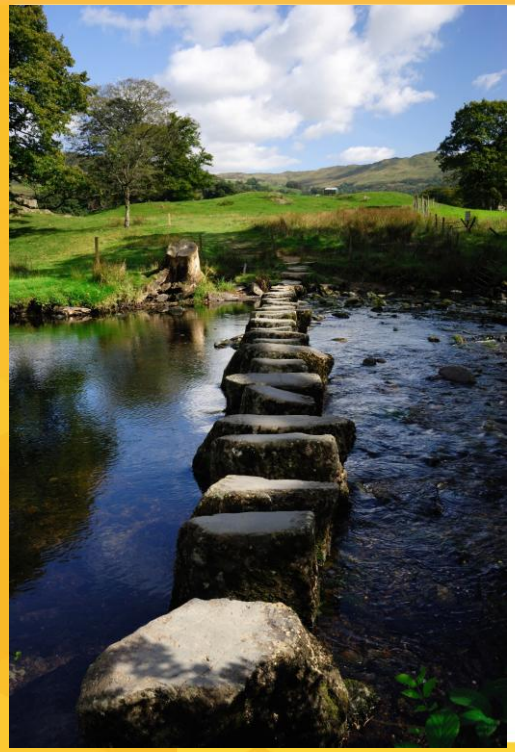
Ashley K. Dunning
Nossaman Partner and Co-Chair
Pensions, Benefits & Investments Group

Amber Maltbie
Nossaman Partner
Government Relations and Regulation



Ethical Standards Generally

- Combination of statutes and common law
- Public officials must avoid even the appearance of acting in their self interest
- Laws are minimum standards
  - The public expects and deserves the highest standard of conduct



Today's Objectives

- Familiarize you with the laws and relationships that trigger disclosure or disqualification
- Develop your sensitivity to issues and need for legal advice — don't try to pick your own way through the mine field
- Familiarize you with consequences of non-compliance

NOT Today's Objectives

- Teach you the law
- Make you an expert
- Give you the details





Overview of Presentation

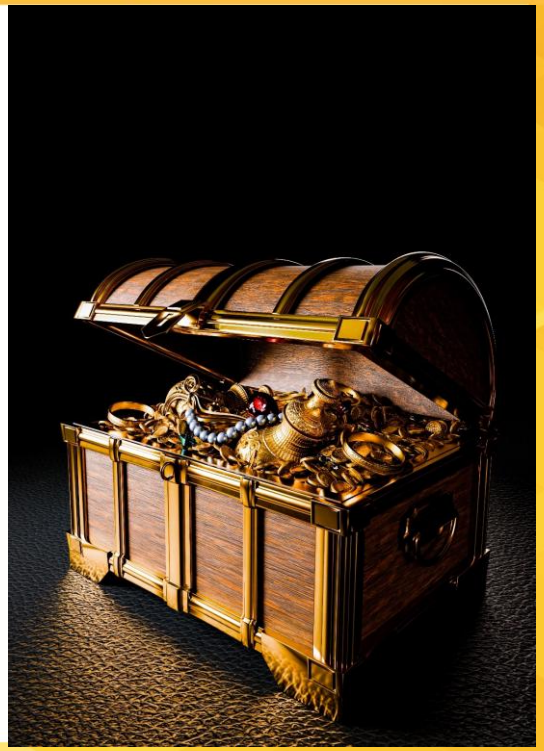
- Review Areas of Law
  - Personal Financial Gain
  - Claiming Perquisites of Office
  - Government Transparency
  - Fair Process
- Discuss
  - Basic Requirements and Exceptions
  - Consequences of Non-Compliance

Personal Financial Gain



Personal Financial Gain: General Rule

- Public officials must make decisions in the public interest, not in their own financial interest
- Even the appearance of a financial conflict is to be disclosed or avoided



Political Reform Act: Conflicts of Interest

- General Rule
  - No public official may make, participate in making, or attempt to use his or her official position to influence the making of a governmental decision at any stage, in which the official or their immediate family has a financial interest
- Rationale
  - To prevent actual or apparent biases resulting from financial interests of decision makers

In Other Words

- You have a conflict of interest with respect to a government decision if it is sufficiently likely that the outcome of the decision will have a material impact on your economic interests,

AND

- a significant portion of the public does not also feel the same impact on their economic interests.


Do you have a disqualifying economic conflict under the PRA?

Are you a public official?

- If a Retirement Board trustee, senior staff, or your position is designated in your agency's Conflict of Interest Code, then "Yes"
- Proceed to Step One



Step One

Is it ***reasonably foreseeable*** that the governmental decision will have a financial effect on any of the public official's financial interests?



- Apply Regulation 18701 to determine “reasonably foreseeable.”
- If **no**, no conflict of interest.
- If **yes**, go to Step Two.

Step Two

Will the ***reasonably foreseeable*** financial effect be ***material***?

- Apply Regulation 18702 to determine "materiality."
- If **no**, no conflict of interest.
- If **yes**, go to Step Three.



Step Three

Can you demonstrate that the material financial effect on your financial interests is indistinguishable from its effect on the public generally?

- Apply Regulation 18703 to determine "indistinguishable."
- If **yes**, no conflict of interest.
- If **no**, go to Step Four.



Step Four

Does an exception apply?

- If no exception, **may not make, participate in making, or in any way attempt to use official position to influence the decision**.
- Apply Regulation 18704 to determine ‘making, participating in, or influencing’ decision.



Financial Interests

- **Investment** in any business entity ≥ $2,000 by official or immediate family or 10% owned entity
  - Investments exclude time deposits insurance and diversified mutual funds
  - New – Investments include digital financial assets (crypto)
- **Real property** in which invested $2,000 or more and certain leasehold interests
- **Income source** ≥ $500 (promised or provided) to official within prior 12 months (or $1,000, if community property)
  - Governmental income is not a “financial interest,” as defined in the PRA

Financial Interests

- Any **business entity** of which official is an officer, director, manager, or employee, even if the position is uncompensated
  - Uncompensated position on a nonprofit board is not a "financial interest"
- Received **gifts** ≥ $630 (2025-2026) or ≥ $680 (2027-2028) in 12-month period
  - Local restrictions on gifts by investment advisor placement agents or other "restricted persons" may be lower
- **Personal financial effect** → if own or family's finances will be impacted at all

Reasonably Foreseeable

- If the financial interest is a named party, or the subject of the decision, then “Yes”
  - Pay attention if any “interests” identified in Form 700 disclosure appear before the Board
- If the financial interest is not explicitly involved in the decision but the financial effect is a realistic possibility (more than hypothetical) , then “Yes”

Examples of Materiality

Distinct materiality standard for each type of financial interest. For example:

- The official's interest in a **business entity** is material:
  - If business entity is a party to any proceeding, contract, application, inspection, or is otherwise subject to the agency's authority, or likely to have an increase or decrease in costs, profits, or value as a result of the decision
- The official's interest in **real property** is material:
  - In any decision that would influence the market value of the property or other property within 500 feet of it (unless FPPC determines otherwise)
    - Excludes leasehold interest that is subject to less strict standards, unless the decision directly affects the value or terms of the lease or impacts the official's use or enjoyment of it

Examples of Materiality

- The official's interest in a **source of income** is material:
  - Financial interest in the sale of goods or services is material if the source of income is party to any proceeding, contract, application, inspection, or is otherwise a subject of the proceeding, or is an individual, business, or nonprofit that is likely to have a measurable benefit or loss from the decision or owns property that would be affected by the decision
  - Financial interest in the sale of real/personal property owned by the official is material if the source of income is involved in the proceeding or has any interest in any business entity or real property affected by the decision
- The official's interest in the **donor of a gift** of $630 (2025-2026) or $680 (2027-2028), or more is material:
  - If the donor is named, or the subject of the proceeding, or an individual or entity that will be financially affected by it

Examples of Materiality

- The official's interest in a **personal financial effect** of the decision on the official or their immediate family is material:
  - If the decision will have "measurable financial benefit or loss" on the official or family member (Per regulation § 18702.5 "if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period.")
  - Excludes effect of
    - Any employment or retirement benefit decision that applies equally to all employees in the same bargaining unit or other representative group;
    - Legally authorized official travel expenses;
    - Meeting stipends;
    - Use of government property for official or even negligible or inconsequential personal use;
    - Membership rewards available to the public for official travel; or
    - A decision to fill a position on the body of which the official is a member

Small Shareholder Exception

- With respect to investments, there is a "Small Shareholder Exception" under Regulation 18702.1(b), which provides that a decision's reasonably foreseeable financial effect on an official's financial interest in a business is not material if both:
    - The official's only financial interest in the business in an "investment interest" under Section 87103(a) valued at $25,000 or less; and
    - The official's interest in the business is less than one percent of the business's shares.

Unless . . .

Small Shareholder Exception

- The "Small Shareholder Exception" described on the prior slide applies unless one of the following circumstances exists as to the financial interest:
  - Gross Revenues and Assets or Liabilities. The decision may result in an increase or decrease in the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than:
    - $1,000,000; or
    - 5% of the entity's annual gross revenues and the increase or decrease is at least $10,000.

Small Shareholder Exception

- If the Small Shareholder Exception applies, the official is not disqualified from taking action on an investment in that company.
- If the exception does not apply, however, then the official would have a disclosure and recusal obligation under the PRA, unless another exception applies (see parent, subsidiary, otherwise related business entity discussion on next slide).

Parent, Subsidiary, or Otherwise Related Business Entity

- An official with a financial interest in a business entity also has a financial interest in a parent or subsidiary of the business entity or an otherwise related business entity, as those terms are defined by regulation. (Regulation 18700.2(c).) However . . .
- An official with a financial interest in a business entity does not have a financial interest in the parent, subsidiary, or otherwise related business entity **if:**
  1) the official's only interest is that of a shareholder and the official is a passive shareholder with less than 5 percent of the shares of the corporation; **and**
  2) the parent corporation is required to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and has **not** identified the subsidiary on those forms or its annual report. (Regulation 18700.2(d).)

FPPC Guidance

- **Cautionary Note: FPPC Advice Letter No. I-17-093**
  - Retirement board trustee reports stock ownership in companies in which retirement system invests on Form 700. This constitutes a "business interest" in those companies because of stock ownership in excess of $2,000 each.
  - FPPC says: "Disposing of interests in those entities or creating a blind trust for investments can eliminate the potential for conflicts of interest under the Act." The Act "would prohibit the Board member from taking part in a decision relating to [four named companies] if the decision would have a reasonably foreseeable material financial effect on one or more the Board Member's financial interests in those business entities."
  - Although the FPPC did not address the topics expressly, **neither the Small Shareholder Exception, nor the Parent, Subsidiary, Otherwise Related Business Entity exceptions applied.**

Generally Applicable Exception

- Notwithstanding the foregoing specific materiality standards there is a generally applicable exception in FPPC regulation 18702(b) that may potentially override them, stating:
  - "… the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant."
- This is an objective, not a subjective test, and recent FPPC advice letters and enforcement decisions appear not to rely on it in a disqualification analysis

Public Generally Exception

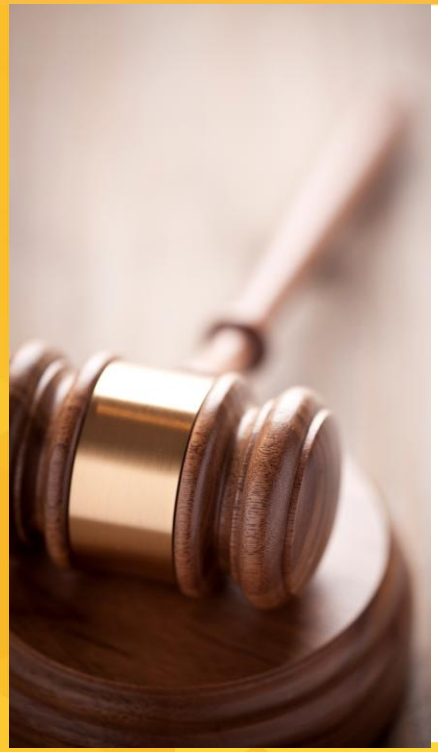
- Defined broadly as all individuals residing in the jurisdiction and those affecting residing outside of it, with similar broad definitions for business entities and real property
  - Jurisdiction defined in terms of geographical area, not scope of legal authority
  - Exception for legally created boards with appointed members to represent particular interests
  - Applicability of this exception to retirement boards is uncertain, but broad exception for generally applicable employment or retirement benefits from a personal financial effect may alleviate the narrowing applicability of the publically available exception for retirement board members

Legally Required Participation

- Difficult standard to meet – invoked only if:
  - There exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision, and
  - Cannot be used to break a tie, or add to the minimum of non-disqualified members sufficient to make up a quorum, even if such members cannot be present
- Must use a random method to select the minimum number of members to make up a quorum, and the selected member is selected for the duration of the proceedings in all related matters
- Additional disclosure and record requirements apply

Effect of Economic Conflict

- Board Member: Disqualified
  - Publicly declare the specific interest
  - Refrain from participating as board member and leave the room unless as a public participant on matters relating solely to the official's personal interests
  - Board may make decision without participation of disqualified officials
- Employees:
  - Follow same rules of non-participation as to non-ministerial matters



Effect of Violation of PRA Depends on Offense /Circumstances

- Criminal conviction of misdemeanor precludes public office for four years
- Fines up to $5,000 per occurrence
- Decision may be voided

Question for Attendees

- The retirement board is considering hiring an investment consultant for which a board member worked more than 12 months prior, and the board member continues to own between $10,000-$20,000 in stock in the company.
- **Must the trustee recuse herself under the Political Reform Act?**
  - Yes, the board member cannot be impartial with respect to a former employer.
  - No, the decision will only have a nominal financial effect on trustee.
  - No, the decision will have the same effect on all similarly situated holders of stock and is not discretionary as to a particular board member.
  - Maybe, depending upon whether the Small Shareholder Exception applies (e.g., will the retirement system's engagement of the investment consultant result in an increase in consultant's annual gross revenues by either 5% or $1,000,000?). Discuss with system counsel.

Question for Attendees

- The retirement board is considering allocating $100 million to an investment strategy through Hypothetical Investment Manager ("HIM"), and a trustee on the board reported owning between $10,000-$100,000 in stock in HIM on her Form 700 for the prior year.
- Must the trustee recuse herself under the Political Reform Act?
  - Yes, trustees cannot be impartial with respect to any company in which they own stock.
  - No, the board's decision will only have a nominal financial effect on trustee.
  - No, the decision will have the same effect on all similarly situated holders of stock and is not discretionary as to a particular board member.
  - Maybe, depending upon whether the Small Shareholder Exception and/or Parent, Subsidiary, Otherwise Related Business Exception applies (note: even if the trustee owns under $25,000 in stock, the exception might not apply given the size of the allocation). Discuss with system counsel.

Questions?




Conflicts of Interest

Conflicts of Interest in Contracting: General Rules

- Public officers and employees shall not be financially interested in any contract made by them or by any body/board of which they are members (Gov. Code Sec. 1090)
- Board members presumed to be involved in all contracts under Board's jurisdiction
  - Even disqualification or recusal of the interested member will not allow the board or board to make the contract unless an exception applies
- Interested employees may not participate
- The reach of the statute has been broadened to prohibit any individual from aiding or abetting a violation of Section 1090 by any public official or employee

Contracting Factual Analysis

- Public officer or employee?
- Is there a contract? Broadly defined
- Involved in making a contract?
  - Developing, negotiating, modifying and soliciting bids
- Financial Interest?
  - Direct or indirect, positive or negative.
- Does an Exception Apply?
  - Non-Interest
  - Remote Interest
- Rule of Necessity? Only for essential services
- Violation to aid or abet another's violation



Contracting Exceptions

- Non-Interests: List of statutory exceptions, including:
  - "Governmental salary" exception (1091.5(a)(9)):
    - No change in compensation to public employee; and
    - Contract is not with, nor "directly affects," employee's own department
    - See *Lexin v. Superior Court*
  - "Public services generally provided by the board" (1091.5(a)(3))
    - See *Lexin v. Superior Court*
  - Reimbursement by official's agency for actual and necessary expenses incurred in the performance of public duties (1091.5(a)(2))

Contracting Exceptions – Small Shareholder

The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income. (1091.5(a)(1))

- This non-interest exception exempts from Section 1090 coverage the type of stock ownership that would require disclosure and recusal under the PRA (see discussion on Small Shareholder Exception above)

- ***Caution***: 1090 Small Shareholder Exception does not apply to a public official or employee's interest in a limited partnership. Trustees and staff are not permitted to invest in limited partnership in which their retirement board is already invested. (See *Plescia Opinion* (89 Ops. Cal. Atty. Gen. 69 (2006).)

Lexin v. Superior Court (2010) "Governmental Salary" Exception

- The California Supreme Court concluded:
  - A contract that may result in future changes to a Board or staff member's government compensation is not exempted from Section 1090 by the "governmental salary" exception
  - A contract that is with, or directly affects, a Board member's employing City/County/District department (where said Board member's government compensation will not be impacted), requires that Board member to disclose and recuse
  - A contract that is between Retirement System and City/County/District, that does not affect (1) any Board or staff member's government compensation or (2) directly affect any Board member's employing department, is exempted from Section 1090 by this exception

Lexin v. Superior Court (2010) "Public Services Generally Provided" Exception

- The Supreme Court concluded that this exception may be invoked:
  - The contractual benefit provided to the public official is one of the benefits that the public agency provides generally;
  - There is no opportunity for the exercise of individualized discretion that would allow preferential treatment to be provided to the public official; and
  - The public official and the agency's "constituents" have access to benefits "on the same terms and conditions," without respect to the public official's status

Lexin v. Superior Court: A Warning to Others?

- Supreme Court noted "a wealth of other legal remedies exists to ensure municipalities and retirement boards do not abuse the public trust," even if there is no criminal liability under section 1090, such as:
  - Actions for declaratory relief or mandamus challenging governmental actions
  - Civil suits for breach of fiduciary duty

Post-*Lexin* Guidance

- Statutory immunity for discretionary decisions by public retirement board (but not its consultants) was confirmed in
  - *Naswari v. Buck Consultants LLC et al*. (2014)
- No immunity, however, for "ultra vires" acts such as public officials providing "excessive compensation" to themselves.
  - *People ex rel. Harris v. Rizzo* (2013)
  - Attorney General alleged that City of Bell's CAO and Asst. CAO modified the City's supplemental retirement plan to "create particularized benefits to themselves," in violation of section 1090

"Remote" Interest Exception to Section 1090 (Sec. 1091(b)(15))

- Permits settlement of litigation between public body or board of which the officer is a member, and officer is a party if all of the following apply:
  - The body or board is represented by legal counsel in the litigation
  - Court finds that the agreement serves the public interest
  - The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board
  - Disclosure is made of the interest and is noted in board's official records

Contracting Hypothethical

- Retirement board has allocated $50 million into a private credit fund sponsored by High Return Company (“HRC PC Fund”), which is also in private markets. The HRC PC Fund is structured as a Limited Liability Partnership, and retirement board is a limited partner.
  - Trustee A is considering a potential personal investment in a private equity fund (“PE Fund”) that is sponsored by HRC.
  - Trustee B owns between $2,000-$10,000 in HRC stock.
- What steps should these trustees, and retirement board, take with respect to the topics raised in this hypothetical?

Receipt or Solicitation of Campaign Contributions: Conflicts of Interest Under PRA §84308

- Application: Applies to Retirement Board members receiving campaign contributions in connection with proceedings before the Retirement Board on licenses, permits and other entitlements for use, including investment contracts



Receipt or Solicitation of Campaign Contributions: Conflicts of Interest Under PRA §84308

- General Rules:
  - Board member may not accept, solicit, or direct campaign contributions >$500 from parties or participants while the proceedings are pending, and for 12 months thereafter
  - All such contributions, and contributions made or received during the preceding 12 months must be disclosed and Board member is disqualified from any participation in the proceeding
- Effect of Conflict:
  - Disclosure by the Board member made on the record at the beginning of any public hearing on and disqualification from any participation in the proceeding
  - If the Board member returns the contributions within 30 days from the time that they should have known about the contribution and the proceeding, then the Board member may participate in the proceeding



Conflicts of Interest: Retirement Board Investments

- General Rules:
  - No board member or employee shall have a personal interest or gain in making an investment
  - Cross-selling ban: prohibits sales of investment products by all California public retirement system board members and staff to any California public retirement system (Gov. Code sec. 7513.95)

Common Law Conflicts of Interest

- *In re Torres*, Cal. Ops. Att'y Gen. No. 07-807 (2009)
  - AG invoked the common law conflict of interest doctrine as the basis for advising a redevelopment agency board member to recuse herself with respect to a proposed loan as to which she had no disqualifying personal financial interest under Section 1090 or the PRA, but that would be made to her adult non-dependent son who resided with her in the same apartment
  - Lesson: May have common law conflict of interest even if no statutory conflict of interest. Note also: FPPC does not advise on common law conflict of interest.

Conflicts of Interest After Leaving Office

- General Rule: Public officials may not make, participate in making, or use their official positions to influence the making of a government decision directly relating to any person with whom they are negotiating or have an arrangement concerning future employment
  - Certain elected officials and employees are covered by other prohibitions after leaving office

Conflicts of Interest After Leaving Office

- Two-year waiting period on post-governmental activities by former California public retirement system board members and executive officers (Gov. Code §7508.5.)
  - Forbidden to influence, on behalf of another person or entity and for compensation, any legislative, administrative or contract decision by their former public retirement system during that period



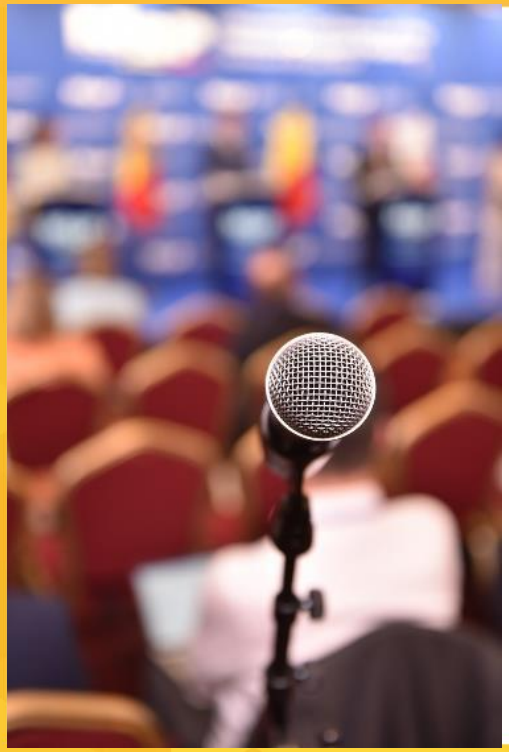
Questions?




Graft / Bribery / Extortion

Graft/Bribery/Extortion (Federal & State Law)

- General Rule: It is wrong to ask for, be given, or accept anything of personal value in exchange for your action or inaction as a public official
- Prohibited: Obtaining anything of value or advantages (present or future) through misuse of a public position
  - Graft: The acquisition of money, gain or advantage by dishonest, unfair, or illegal means, especially through the abuse of one's position or influence in politics, business, etc.
  - Bribe: Conferring benefit on a public official to influence that person's vote, opinion or action
  - Extortion: Obtaining property from another by the wrongful use of one's public position
- Penalties: Criminal, removal from office and fines



Claiming Perquisites of Office

- Public officials and employees may not use their office for personal gain

Perquisites – Gifts

- Gift: Anything of value that provides a personal benefit to the official for which he or she does not provide consideration of equal or greater value.
- Examples:
  - Discounts/rebates not given to public
  - Tickets
  - Plaques (some exceptions
  - Flowers
  - Travel, hotels, meals
  - Invitation-only events (pro rata share of cost of event must be reported)



Perquisites – Limitation on Gifts

- Reporting:
  - Gifts aggregating $50 or more from a source must be reported on Form 700
- Annual Gift Limit:
- No elected official, candidate or designated employee of a local agency may accept gifts from a single source (including intermediaries) > $630 for 2025/2026 and > $680 for 2027/2028
- Conflicts of Interest Limit:
- Disqualification from participating in decisions involving source of gifts of $630 for 2025/2026 and > $680 for 2027/2028, or more, in previous 12 months
- Local rules?
  - BEWARE: some local agencies, including boards of retirement, may have lower gift limits or source restrictions; know the rules that apply to your agency and board.

Exceptions – Not Gifts

- Informational material, including discounted or free admission to educational conferences to assist in performance of duties
  - Excludes meals, transportation, entertainment, non-educational take away items
- Returned unused to donor within 30 days
- From close relative or devise/inheritance
- Hospitality in the home (unless cost of hospitality paid by third party or deducted as business expense)
- Exchange of gifts (with exceptions based on gifter)
- Unused tickets or passes
- Wedding gifts—not limited, but can disqualify

Reporting Gifts

- Multiple Gifts from one Source:
  - Gifts from a single source are aggregated for reporting
  - E.g., If you eat 3 lunches worth $20 each within a calendar year, then you must report each one for a total of $60—if you eat only 2, then no reporting required
- One Gift from Multiple Sources:
- Group gift not reported unless one or more donors' share is $50 or more, either for that gift or aggregated with other gifts during the reporting period

Question for Attendees

- A retirement plan staff member is invited to a Broadway show by an investment manager. Attendance at the event has a value of $300. May the staff member attend with her spouse?
  - Yes, the spouse does not work for the retirement plan.
  - Yes, the aggregate value to the official and her spouse is within the gift limit.
  - No, unless the spouse and the official are planning to divorce.
  - Yes, if the official and her spouse do not consume any food or beverages at the event.

Perquisites – Honoraria

- Honoraria:
  - Payments for any speech made, article published or attendance at a public or private conference, meal, social event, or other gathering
- General Rule:
  - Certain local officials and candidates may not accept honoraria
- Limitation:
  - Other local officials and employees may not receive honoraria from any source of income reported on Form 700

Honoraria Exceptions

- Not Reportable:
  - Donated to charity without reference to official and no tax deduction, and official and immediate family members do not hold a position with the charity
  - Returned unused, reimbursed or donated to agency's general fund within 30 days
- Reportable as Income:
  - Earned income for services provided customarily in connection with business

Travel Payments – Exceptions, With Conditions

- Travel payments exempted from gift limit and reporting rules:
  - Received from governmental entity for proper agency activity (Gov. Code §89506(a); FPPC Reg. 18950(c)(2))
- Travel payments exempted from gift limit and prohibition rules:
  - Received from conference host by public official who gives a speech (as defined) within the United States, so long as:
    - The food and beverages are limited to meals provided at the conference to all attendees (they also are exempted from reporting rules as noted above), and
    - Transportation and accommodation expenses are reported on the official's Form 700 as a gift, and
    - Accommodations are limited to one day immediately before, the day of, and one day immediately after the speech
    - NOTE: These expenses will disqualify the public official from acting on matters involving the conference provider if expenses are in excess of the statutory gift limits (Gov. Code Sec. 89506(c); FPPC Regs. 18950, 18942)

No Free or Discounted Travel from Transportation Company

- Constitution Prohibits:
  - Free or discounted travel for personal or business travel for public officers (not employees) from transportation companies
- Exception:
  - Passes or discounts provided to all members of a larger group, unrelated to official's position, such as frequent flier programs
- Effect of Violation:
  - Immediate forfeiture of office

No Personal Use – or Gifts – of Public Funds

- General Rule: Officials and employees must not use (or allow others to use) public resources for campaign, personal or unauthorized purposes
  - Staff time
  - Facilities, supplies
  - Credit cards
  - Campaigns to support candidates or support ballot measures
  - Letterhead/Title
  - Charitable donations

No Personal Use – or Gifts – of Public Funds

- Exceptions:
  - "incidental and minimal" – narrowly defined, includes certain charitable donations subject to appropriate findings made by governing body, also includes incidental and minimal use of office space, equipment or telephones for personal purposes
- Consequences of Violation:
  - Felony – reimbursement may not be a defense and fines

No Mass Mailings at Public Expense

- Rule:
  - Unethical to use public funds to enhance elected official's name or visibility
- Mass Mailing:
  - More than 200 substantially similar pieces of pieces of mail sent in one calendar month containing name or picture of official and prepared in coordination with elected official
- Exceptions:
  - Letterhead and other official business; few exceptions allow photograph of official
- Violation:
  - Civil and criminal sanctions and fines (PRA)

Public Contracting Rules

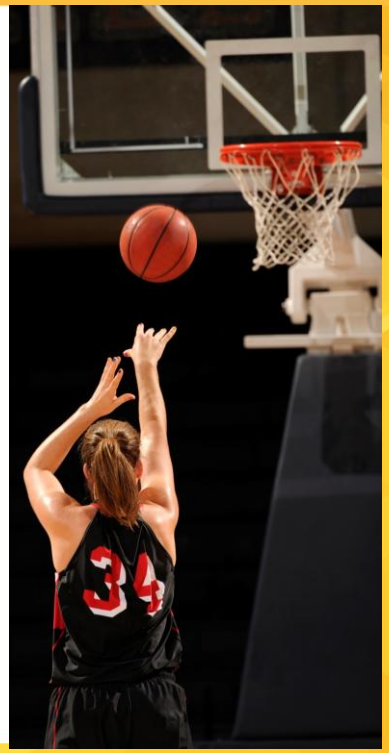
- Rule:
  - Generally speaking, the Public Contract Code requires contracts for public works to be competitively bid and awarded to the lowest responsive and responsible bidder. "Public works" includes the construction and alteration of public structures and buildings.
- Retirement system nuances:
  - The Public Contract Code expressly applies to state agencies, generally, as well as to a long list of specific local agencies, such as counties, cities, water districts, transit districts, sanitation districts, flood control districts, fire protection districts, harbor commissions, and utility districts. There is no specific mention of local public retirement systems within the list.
    - (continued on next slide)

Public Contracting Rules

- Retirement system nuances (cont.):
  - Laws applicable to counties, local laws, and/or retirement system policies may require competitive bidding of certain retirement system contracts.
  - Prevailing wage law is governed by the Labor Code, which has a different set of definitions for what constitutes a “public work” and when prevailing wage requirements apply.
  - Fiduciary and related legal, including cost, considerations should also be assessed.
  - Consultation with system counsel warranted on a contract-by-contract basis.
- Consequences of violation:
  - Contracts may be invalidated, leading to delays and rebidding costs

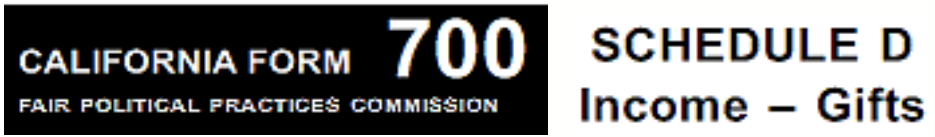
Gifts – Example

- Tickets to the Ball Game
  - Company offers Retirement CEO/Administrator tickets to all board members and senior staff and spouses. 3 respond and request 5 tickets at $50 each.
    - Board Member A: 1 ticket—goes to game
    - Board Member B: 2 tickets—goes to game with spouse
    - Board Member C: 2 tickets—but can't go, so asks that they be redistributed. Board member A gives tickets to county employee who takes his spouse to game.
  - What are reporting requirements for A, B, C and CEO/Administrator?



Example – Reporting Requirements

- Answers:
  - Board Member C: Nothing to report – did not use tickets and returned them
  - Board Member B: Must report $100 for two tickets – gift at face value or price to public
  - Board Member A: Must report $50 for one ticket – gift for self, and $100 for two tickets – gift to county employee
  - CEO/Administrator: Nothing to report – tickets not given to her for her use, but rather to distribute to Board members, senior staff, and spouses
- (FPPC Reg. 18946.1)



Questions?




Government Transparency

Transparency: Disclosure of Economic Interests

- Purpose:
  - Alert official and public to potential conflicts
- Officials covered:
  - Public officials who manage public investments
  - Local elected/appointed officials
  - Designated employees (participation in decisions)
- Requirements:
  - File upon taking/leaving office and annually
  - Disclose personal financial interests (see conflicts)
- Penalties:
  - Criminal and civil sanctions (PRA)



Transparency: Deliberations

- Brown Act, Bagley-Keene Open Meeting Act, and, potentially, other local open meeting requirements:
  - Balance public access and need for candor in deliberations
- Application:
  - Elected bodies, agencies, boards
- Public Access to Meetings:
  - Posting agenda for regular meeting – 72 hours under Brown Act; 10 days under Bagley-Keene
    - Time, location, description of items
  - NO action if item not on agenda unless finding that there is an emergency or a need to take "immediate action," and appropriate Board findings are made on that topic
  - Information to board members and public
  - Public comment

Transparency: Meetings Defined

- Meeting: A majority of members of the body in the same time and place, to hear, discuss or deliberate on any item within their jurisdiction
  - Informal sessions or conference attendance
  - Telephone conferences
  - E-mails, Texts

Transparency: Meetings Defined

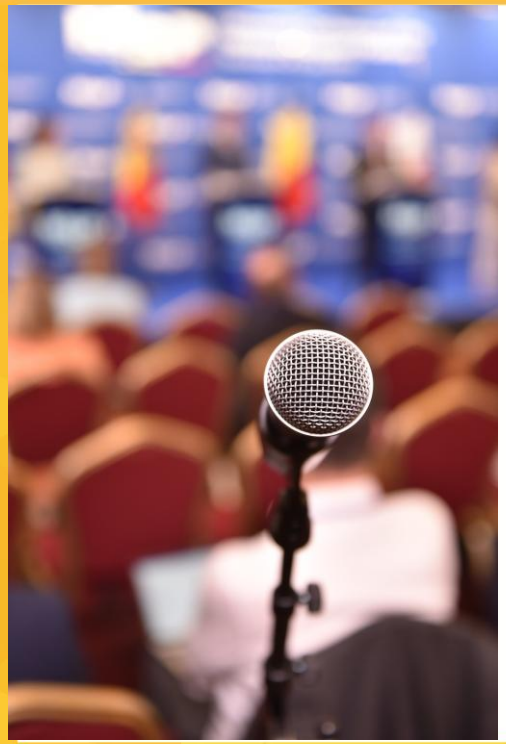
- Not a "Meeting":
  - Individual (not serial) meetings
    - Public employee or official may have one-on-one meetings with Board members to answer questions and provide information of matters within subject-matter jurisdiction of Board so long as "that person does not communicate to members of the legislative body the comments or position of any other member of the Board" [Gov. Code sec. 54952.2, subd. (b)]
  - Conference attendance to discuss general issues
    - Provided that a majority of members "do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the [retirement system]" [Gov. Code sec. 54952.2, subd. (c)(2)]
  - Social or ceremonial attendance

Closed Sessions Exception

- Must be specifically permitted by statute, such as:
  - Personnel evaluations, hiring decisions (not compensation)
  - Pending litigation or significant exposure to litigation
  - Real property negotiations
  - Purchase or sale of a particular, specific pension fund investment (Brown Act)
  - Labor negotiations (with negotiators for board, not those with whom negotiation occurs, and no final decision)

Closed Sessions Exception

- Notice in regular agenda required (or other statutory requirement)
- No one permitted in closed session unless has an "official" role
- Disclosure of closed session discussion is prohibited; reportable action must be reported by roll call vote
- May not take action in closed session on topics that require open session deliberation (*Mary's Kitchen v. City of Orange* (4th DCA, 10.25.23)
  - Minutes re closed session item agendized as "anticipated litigation" recited City Council "action" that "unanimously confirmed" City manager termination of licensing contract – court deemed allegations to constitute a potential Brown Act violation



Public Meetings

- Possible Consequences of Violation:
  - Nullification of decision
  - Criminal penalties (misdemeanor) if an action is taken
  - Civil remedies—injunction or voiding of acts (court can order taping of closed sessions in future)
  - Attorneys fees to plaintiff

Access to Public Records – California Public Records Act

- Purpose:
  - Give the public access to information in possession of public agencies while maintaining individual right to privacy
- Public Records:
  - Writings held by a state or local government, including:
    - All forms of recorded information including electronic
    - Names, salaries, hiring, and termination dates and department
    - Names and retirement allowance amounts of retirees, but not addresses or other personal information

Access to Public Records

- General Rule: State and local agencies will provide access to records based on specific and focused requests while balancing need for privacy
  - Access to be provided during regular business hours and agency must help identify records relevant to the request
  - Requests must be granted or denied by agency within 10 days
  - Access is always free but may charge for copies

Rules re communications on private devices

- *City of San Jose v. Superior Court* (Smith) (2017)
  - Background: Public Records Act request for private email and text messages of public official
  - "Public record" = prepared, owned, used, or retained by any state or local agency
  - HELD: public officers' and employees' communications on personal devices and nongovernmental accounts concerning "the conduct of public business," are public records. As such, they are subject to disclosure in response to a CPRA request, unless a specific statutory exemption applies.
    - Covered devices include, but are not limited to, personal cell phones, personal computers, and personal email accounts

Rules re communications on private devices (cont.)

- *City of San Jose v. Superior Court*
  - The four aspects of a public record include the following:
    - "It is (1) a writing,
    - (2) with content relating to the conduct of the public's business,
    - which is (3) prepared by, or
    - (4) owned, used, or retained by any state or local agency."
  - "The overall structure of the CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure."
    - To qualify as a public record under the CPRA "a writing must relate in some substantive way to the conduct of the public's business."
  - Though this standard is "broad," it "is not so elastic as to include every piece of information the public may find interesting. Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records."

Rules re communications on private devices (cont.)

- *City of San Jose v. Superior Court*
  - Due to the potential complexity and time-sensitivity in responding to CPRA requests, public agencies should note the Court's practical guidance on how to conduct searches of writings on private devices while balancing individual privacy.
  - When responding to a CPRA request, the "agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search their own personal files, accounts, and devices for responsive materials."
  - The Court also provided that agencies may also adopt policies that will reduce the likelihood of public records being held in employees' private account, such as requiring all employees to use or copy their government accounts for "all communications touching on public business."

Social Media Use by Public Officials

- "A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body." (Gov. Code sec. 54952.2 (b)(3)(A).)
  - Includes use of emojis, the "like" button on Facebook or Instagram, and/or retweeting on Twitter
  - Provision originally was to sunset on January 1, 2026. NOTE: SB 707 extends this rule indefinitely!
- **Note also:** 2024 U.S. Supreme Court precedent establishes that public employees who mix personal and official public posts may potentially be prohibited from blocking users for reasons grounded in the First Amendment.

Exempt Records

- Exempt from Access (high need for privacy):
  - Personnel files, medical records, home addresses & phone numbers, birth dates, and other data that would invade privacy
  - License applications (sometimes)
  - Preliminary notes, memoranda, related to deliberative process, if not maintained in the normal course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure
  - Investigative records
  - Litigation and attorney records, except that billing invoices are not categorically exempted unless they are "for work in pending and active legal matters" *L.A. County Bd. of Sups v. Superior Court* (2016)

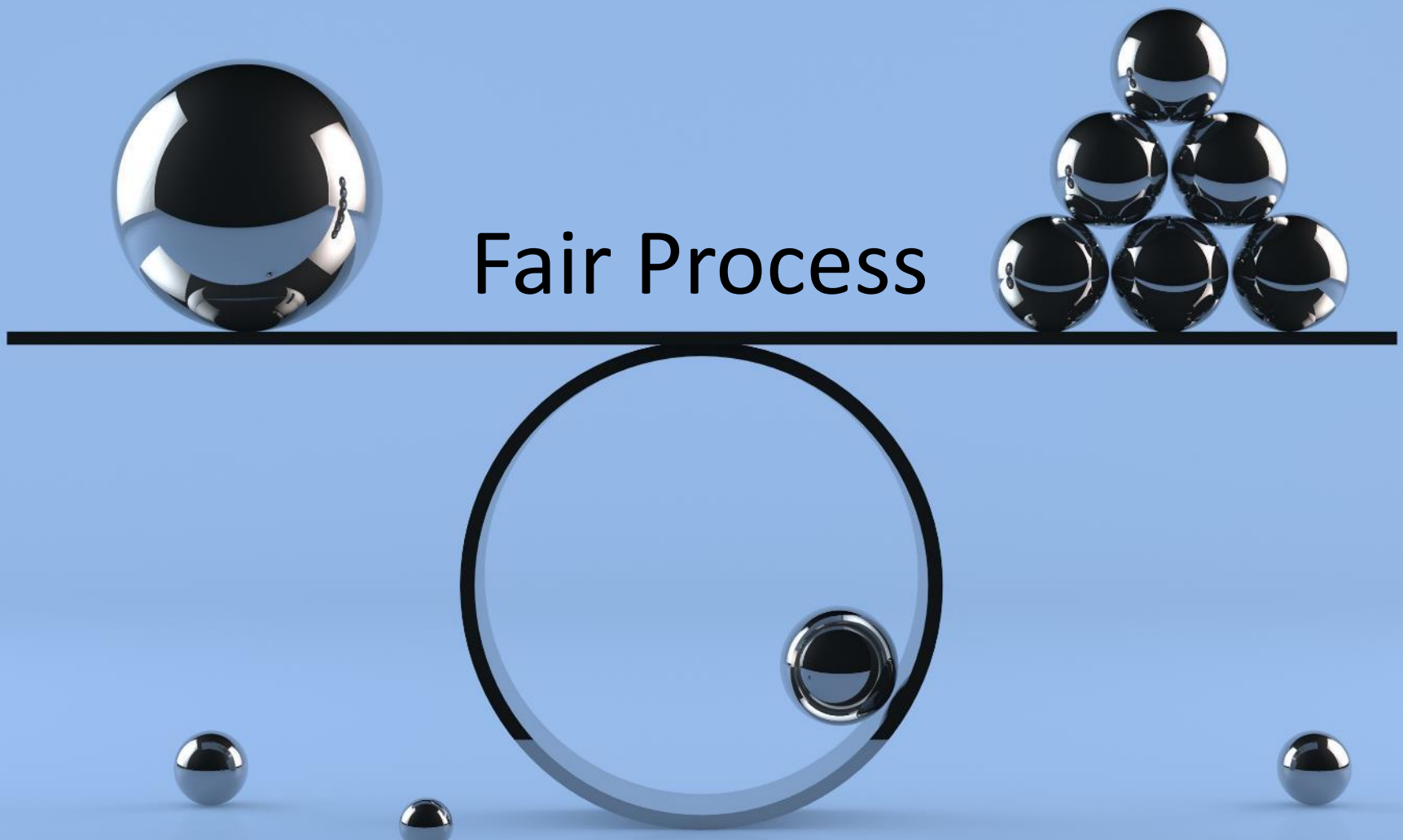
Access to Public Records

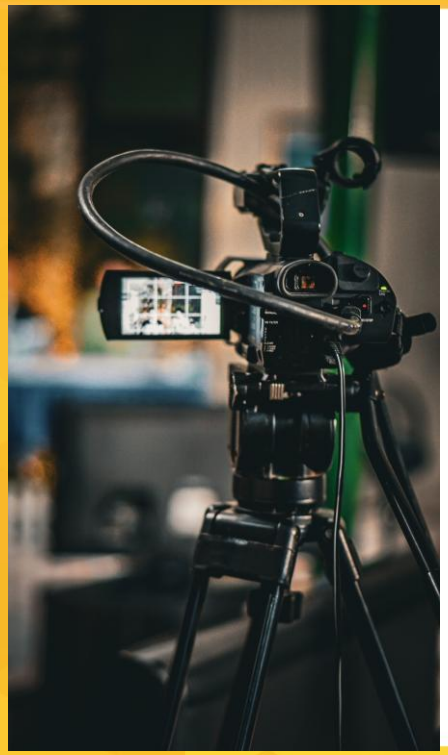
- Consequences of Violation:
  - Requestor gets access to records
  - Losing Defendant pays Plaintiff's attorneys' fees (plus its own attorneys' fees!)
  - Losing Plaintiff pays Defendant's attorneys' fees only if Plaintiff's case is deemed to be clearly frivolous



Questions?




Fair Process



Fair Process in Meetings

- Advance Notice of Action—per open meeting laws
- Voluntary sign-in
- Taping Allowed
- Opportunity for Public Comment
  - Reasonable limits
- Consequences of Violation:
  - Decision is voidable, criminal sanctions, possible civil rights violations

Due Process in Determinations of Property Rights (i.e., public retirement benefits)

- No deprivation of property rights without due process
  - Disability retirement determinations
    - Impartial adjudicators advised by impartial counsel
    - Evidentiary proceeding before finally deny application
  - Hipsher – felony forfeiture
    - Court of Appeal held that retirement system should have provided due process in determination of employment connection, but ruled statute to be otherwise constitutional; same decision after remand from Supreme Court.
  - Extent to which various indicia of due process may or may not be required depends on the circumstances



Right to Unbiased Decisions – Common Law

- General Rules:
  - Officials bound to exercise powers to benefit those required by law not for their own personal benefit
    - Retirement board trustees serve the interests of participants and beneficiaries
  - Officials must make unbiased decisions without:
    - Closed mind with regard to facts presented
    - Personal bias against or loyalty to individuals
    - Personal interest in outcome

Right to Unbiased Decisions – Common Law

- Effect of Conflict:
  - Disqualification
- Consequences of Violation:
  - Voidable decision, loss of office, may violate constitutional due process



Question for Attendees

- If multiple members of the public want to speak about a particular topic during a retirement board meeting, may the board limit public comment to ten minutes per side on the topic?
  - No, all members of the public must be given the opportunity to speak.
  - Yes, but only if there are more than 25 people who want to speak.
  - Yes, if the Board passes a motion authorizing a fair limitation of speaking time in these circumstances.
  - No, unless the Board has declared a public emergency.

Incompatible Government Offices

- General Rule:
  - An official may not hold two public offices (not employment) where there is a potential conflict or overlap in the functions or responsibilities of the offices
- Exceptions:
  - Positions expressly required or authorized by law (e.g., 1937 Act board appointee and county supervisor)
- Consequences of Violation:
  - Deemed to have forfeited first office
  - Disqualification not available

The Law is the Floor for Ethical Behavior

- Spirit of law reflects values and ideals
- Resist tendency rationalize behavior:
  - I spend so many hours, work so hard, etc.
  - My financial interest is so small, it has no effect on my decision
- Learn to recognize potential conflicts
- Avoid even the appearance of financial conflicts
- Seek advice early

Core Values



Ethics: The Turkey Buying Test

- Wash your hands
- Check for freshness
- If it smells bad, it is bad





Ethics: The Newspaper Test

- How would my neighbor feel if he read about this in the newspaper?
- How would I feel if I read about this in the newspaper and it was about a fellow board member?
- How would I feel if my children read about this in the newspaper?

Questions?



SACRS FALL CONFERENCE

NOV. 11-14, 2025 | HYATT REGENCY HUNTINGTON BEACH RESORT AND SPA | HUNTINGTON BEACH, CA

Thank You!



Ashley K. Dunning
Nossaman Partner and Co-Chair
Pensions, Benefits & Investments Group

Amber Maltbie
Nossaman Partner
Government Relations and Regulation Group



Additional Resources

- The Fair Political Practices Commission (PRA): www.fppc.ca.gov
- FPPC Advice Line: 1-866-ASK-FPPC
- California Attorney General: www.ag.ca.gov
- Institute for Local Government: www.cacities.org
- California Statutes and Constitution: www.leginfo.ca.gov
- California Regulations: www.calregs.com

Statutory and Constitutional References

- Personal Financial Gain
  - Conflicts of Interest: Political Reform Act (PRA)
    - Government Code § 87100 et. seq. and regulations drafted by Fair Political Practices Commission
  - Contracting Conflicts: Government Code § 1090 et seq.
  - Campaign Contributions: PRA
    - Government Code § 84300 et. seq.
  - Conflicts Retirement Board Investments
    - Government Code § 31528(b)
  - Conflicts After Leaving Office: PRA
    - Government Code §§ 87406.3, 87407
  - Graft Bribery and Extortion: Penal Code §§7(b), 67.5, 68

Statutory and Constitutional References

- Claiming Perquisites of Office
  - Gifts: PRA
    - Government Code §§ 82028 (definition), 89503 (exceptions), 89506 (travel exception), 87460 (loans) and Regulations § 8940 et. seq.
  - Honoraria: PRA - Government Code §§ 89501-02
  - Misuse of Public Funds: Government Code § 8314, Penal Code § 424
  - Gifts of Public Funds: Cal. Constitution art. XVI, sec 6
  - Mass Mailings: PRA
    - Government Code §§ 8204.5 (definition), 89001 and Regulations § 18901
  - Discounted Travel: Cal. Constitution art. XII sec.

Statutory and Constitutional References

- Government Transparency
  - Disclosure of Economic Interests—PRA
    - Government Code § 87200 et seq.
  - Open Meetings—Brown Act
    - Government Code § 54950 et seq.
  - Public Records—California Public Records Act
    - Government Code § 7920.000 et seq.
- Fair Process
  - Incompatible Offices—Government Code § 1099
  - Due Process—14th Amendment of US Constitution