

MINUTES OF THE SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF  
VISTA IRRIGATION DISTRICT

May 12, 2020

A Special Meeting of the Board of Directors of Vista Irrigation District was held on Tuesday, May 12, 2020, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

President Vasquez called the meeting to order at 9:00 a.m.

**2. ROLL CALL**

Directors present: Miller, Vásquez, Dorey, Sanchez, and MacKenzie.

Directors absent: None.

Staff present: Brett Hodgkiss, General Manager; Lisa Soto, Secretary of the Board; Randy Whitmann, Director of Engineering; Marlene Kelleher, Director of Administration. General Counsel David Cosgrove was also present.

Other attendees: None.

**3. PLEDGE OF ALLEGIANCE**

Director Vásquez led the pledge of allegiance.

**4. APPROVAL OF AGENDA**

|          |   |
|----------|---|
| 20-05-38 | <i>Upon motion by Director Sanchez, seconded by Director Dorey and unanimously carried (5 ayes: Miller, Vásquez, Dorey, Sanchez, and MacKenzie), the Board of Directors approved the agenda as presented.</i> |
|----------|---|

**5. PUBLIC COMMENT TIME**

No public comments were presented on items not appearing on the agenda.

**6. ETHICS TRAINING**

See staff report attached hereto.

General Counsel David Cosgrove of Rutan & Tucker, LLP presented a two-hour training session on ethics pursuant to Government Code sections 53234 to 53235.2, and a handout was distributed (attached hereto as Exhibit A).

**7. DIRECTOR COMMENTS**

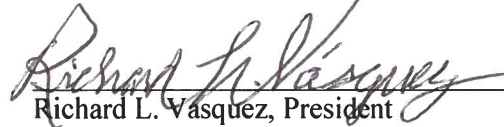
None were presented.

**8. COMMENTS BY GENERAL MANAGER**

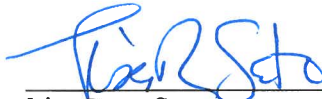
General Manager Brett Hodgkiss commented on an earthquake that recently occurred at Ocotillo Wells, noting that it outside of the District's notification and monitoring criteria and was not felt by staff at Lake Henshaw.

**9. ADJOURNMENT**

There being no further business to come before the Board, President Vasquez adjourned the meeting at 11:10 a.m.

  
Richard L. Vasquez, President

ATTEST:

  
\_\_\_\_\_  
Lisa Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT

# ETHICS AND PUBLIC SERVICE LAW AND PRINCIPLES



## AB 1234 Training

**RUTAN**  
RUTAN & TUCKER, LLP



**DAVID COSGROVE**  
Partner

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Orange County  
(714) 662-4602  
DCosgrove@rutan.com

May 12, 2020

# WHY ARE WE HERE?

- To review and reinforce knowledge of laws that govern your service, and to when it may be appropriate to seek advice;
- To overlay technical legal, and broader law and public ethics, principles;
- To satisfy AB 1234 requirements; and
- To discuss how to apply ethical principles to promote public trust in government

# **PUBLIC SERVICE ETHICS: WALKING A TIGHTROPE IN A FISHBOWL**

- Laws play a bigger role
- Perception as important as reality
- Public is entitled to honest service from its public officials



# ETHICS LAWS



- The Law = Minimum Standards
  - ✓ What we **must** do
- Ethics Principles = Guidance to What We **Ought** to Do
  - ✓ Avoiding the appearance of impropriety
- Asking yourself:
  - ✓ ***“How would this look in the newspaper?”***

# WHY SHOULD I CARE?

- Press cares
- Public cares
- Legislature cares
- Campaign opponent cares
- Violations may affect agency action
- Violations may result in a civil penalty
- Violations may result in a criminal penalty



# THINKING BEYOND ETHICS LAWS

- Ethics Laws: The starting point for most ethical analysis in public service
- **Floor** for ethical conduct – **not** the ceiling
- Just because it's legal, doesn't mean it is (or will be perceived as) ethical





# FOUR GROUPS OF ETHICS LAWS

1. Personal Financial Gain
2. Personal Advantages and Perks
3. Governmental Transparency
4. Fair Processes



# GROUP 1: PERSONAL FINANCIAL GAIN ISSUES

- **PRINCIPLE:** Public servants should not benefit financially from their positions



# OFFICIALS ABUSING THEIR OFFICES FOR PERSONAL FINANCIAL GAIN IS A PROBLEM NATIONALLY ...

- Ted Stevens, Alaska Senator
- Edwin Edwards, former Louisiana Governor
- Rod Blagojevich, ousted Illinois Governor



## ... AND CLOSER TO HOME ...

- Former State Senators Roderick Wright, Leeland Yee
- Ex-State Schools Superintendent Bill Honig
- Former Representative Randy “Duke” Cunningham



# BRIBERY

- Public officials may not solicit, receive or agree to receive a benefit in exchange for their official actions
- Penalties: Loss of office, prison time, fines, restitution, attorneys' fees and public embarrassment
- Executive Officers: Penal Code section 67
- Ministerial Officers: Penal Code section 67.5
- Legislators: Penal Code sections 85, 86.

# BRIBERY

## **ELEMENTS-BRIBERY OF A LEGISLATOR:**

- A person gives or offers to give a legislator
- Cash or something of value
- With corrupt intent
- To influence an official vote.
- (Penal Code section 85-two to four years sentence)

# BRIBERY

## **ELEMENTS-SOLICITATION OF BRIBES BY A LEGISLATOR:**

- A legislator requests, receives or agrees to receive
- Money or something of value
- With corrupt intent
- To sell their vote in an official matter.4,00
- (Penal Code section 86-sentence of 2-4 years; fine of \$4000-\$20,000; restitution of up to twice the bribe amount.)

# SIMILAR CASES

- 1. INFLUENCING OFFICIAL ACTION:** Asking, receiving or agreeing to receive any bribe upon any agreement or understanding that the official's vote or action shall be influenced thereby is punishable by up to four (4) years in prison. *Penal Code § 68*



# SIMILAR CASES

- 2. APPOINTMENT TO PUBLIC OFFICE:** Offering or accepting a gratuity or reward in consideration of appointment to a public office is a misdemeanor.  
*Penal Code § 73*

# SIMILAR CASES

- 3. EMBEZZLEMENT:** Appropriation of public funds or property for one's own or another's use or for a purpose not authorized by law.

*Penal Code §§ 424, 504*

*Pasadena City Hall \$6M  
embezzlement scandal larger than  
Bell case-Danny Ray Wooten,  
2015*



# EMBEZZLEMENT-NOT ALWAYS HIGH STAKES, OR HIGH PROFILE

- Padding Salary / Per Diem / Pension
- Improper Reimbursement
- Unauthorized Travel



# DISQUALIFICATION BASED ON FINANCIAL INTERESTS

- **Political Reform Act of 1974**  
(Government Code § 81000)
- **Appointee Campaign Contribution**  
(Government Code § 84308)
- **Contractual Conflicts of Interest**  
(Government Code § 1090)



# POLITICAL REFORM ACT OF 1974

- **GENERAL RULE:** “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”  
(Gov’t. Code sec. 87100)
- **ACTUAL BIAS IRRELEVANT** – Quantitative thresholds.  
(See, 2 Cal. Code Regs. Sec.18700 for overview.)

# POLITICAL REFORM ACT OF 1974

- **GENERAL RULE** – You may not make, participate in, or influence a decision if it may have a ***reasonably foreseeable material financial impact*** on you, your immediate family. (FPPC Regs. Sec. 18700(a).)
  - ✓ “**Material impact**” can be positive or negative, actual or potential.
- **TIMING** – Rolling 12 months.

# POLITICAL REFORM ACT OF 1974

- **DISQUALIFICATION-YOU'RE OUT OF HERE!**
  - ✓ Abstain from participation-prior to call of item
  - ✓ Publicly identify each disqualifying Financial Interest
  - ✓ Leave room
- See, FPPC Regs. Sec. 18707(a)
- Exception-needn't leave the room if conflict is on consent calendar (but still must declare conflict and interest).

# POLITICAL REFORM ACT OF 1974

- **DISCLOSURE REPORTING REQUIREMENTS**

- ✓ **Assuming Office**

- (within 30 days of assuming office for most filers)

- ✓ **Annual** (by April 1)

- ✓ **Leaving Office**

- (within 30 days of leaving office for most filers)

- ✓ **See-FPPC Regs. 18722, 18723**



# THREE-PART CONFLICT TEST

1. It is ***reasonably foreseeable*** that ***governmental decision*** will have ***financial effect*** on ***public official's financial interests***?
2. Financial effect ***material***?
3. Financial interest indistinguishable from the ***public generally***?

# WHO IS A “PUBLIC OFFICIAL” SUBJECT TO THE LAW?

- All public officials and employees involved in making governmental decision: (FPPC Regs. 18700(c)(1).)
  - ✓ Elected officials
  - ✓ Appointed officials
  - ✓ Employees
- Some consultants
  - ✓ Make final decisions
  - ✓ Contract management staff

*it's*  
**YOU**

# WHAT GOVERNMENTAL ACTIONS ARE SUBJECT TO THE LAW?

- Make a final governmental decision (FPPC Regs. 18700(c)(4).)
- Compel or prevent the making of a governmental decision by action or inaction
- Make substantive recommendations that are regularly followed
- NOT-committees or boards composed only for research or recommendations to other bodies

# WHAT “FINANCIAL INTERESTS” ARE SUBJECT TO THE LAW?

- Sources of Income, Loans: \$500 (FPPC Regs. Sec. 18700.1(a)(1).)
- Real Property Interests: \$2,000 (FPPC Regs. 18700(c)(6)(B).)
- Interest in Business: \$2,000 (FPPC Regs. 18700(c)(6)(A).)
- Business-director, officer, partner, trustee, manager (FPPC Regs. Sec. 18700(c)(6)(D).)
- Stocks: \$2,000
- Gifts: \$500 (FPPC Regs. Sec. 18700(c)(6)(E).)
- Measurable financial effect on the official or the official’s immediate family. (FPPC Regs. 18702.5)

# FINANCIAL INTERESTS – INCOME

- **SOURCES OF INCOME:** \$500 or more
  - ✓ Your own income
  - ✓ Promised income
  - ✓ Spouse's/child's income
  - ✓ Loans/guarantors
- **EXCLUSIONS:**
  - ✓ Government salary
  - ✓ Campaign contributions

# FINANCIAL INTERESTS – GIFTS

- **GIFTS:** Gifts from a single source are subject to a **\$500 limit until December 31, 2020. (FPPC Regs, 18940.2)** A gift is anything of value for which you have not provided equal or greater consideration to the donor. A gift is reportable if its fair market **value is \$50 or more**. In addition, multiple gifts totaling \$50 or more received during the reporting period from a single source must be reported.
- **COMMONLY REPORTABLE GIFTS INCLUDE:**
  - ✓ Tangible items or discounts not publicly available
  - ✓ Services, meals, drinks, entertainment
  - ✓ Transportation and Lodging

# GIFTS - RULES



- **EXCEPTIONS TO GIFT AND EXCEPTIONS TO GIFT LIMITS**
  - ✓ FPPC Regulation § 18942
  - ✓ Many exceptions (honoraria, home hospitality, reciprocal social exchanges, reportable campaign contributions, etc.)
  - ✓ Some restrictions limit the exceptions
  - ✓ NOTE: if a lobbyist is involved, many of the exceptions do not apply. Proceed with great caution.

# GIFT EXCEPTION – HOME HOSPITALITY

- Home v. Restaurant or similar venue
- Exemption not applicable unless host's relationship ***unrelated*** to official's position
- Exemption covers:
  - ✓ Residence
  - ✓ Vacation home
  - ✓ RV, boat





# GIFT EXCEPTION – RECIPROCAL EXCHANGES

- Taking turns to pay for:
  - ✓ Meals
  - ✓ Movies
  - ✓ Sports events
- Not Applicable If:
  - ✓ Lobbyist is gift-giver
  - ✓ Any single gift exceeds \$500



# GIFT EXCEPTION – GUEST AT A WEDDING

- Gifts given to attendees
- Meals and entertainment
  - ✓ Unless exceed benefit to other guests



# GIFT EXCEPTION – BEREAVEMENT, NEIGHBORLINESS

- Bereavement Offerings
  - ✓ Flowers, etc.
- Acts of Neighborliness –  
Customary Acts of:
  - ✓ Kindly Neighbor
  - ✓ Good Samaritan



# GIFT EXCEPTION – BONA FIDE DATING RELATIONSHIP

- Not Reportable
- But official has economic interest in dating partner
  - ✓ No participation in decisions affecting partner's financial interests
  - ✓ If you date a lobbyist-gift limits apply!
  - ✓ If your date has a matter coming to the agency in next 12 months-gift limits apply!

# GIFT EXCEPTION – ACTS OF HUMAN COMPASSION

- Compassionate offerings to help official cope with misfortune
  - ✓ Medical expenses – injury, illness
  - ✓ Loss of employment, housing
- Restriction – Donor may not:
  - ✓ Lobby agency
  - ✓ Do business with agency
  - ✓ Be regulated by agency



# GIFT EXCEPTION – LONG-TIME FRIENDS

- Long term personal friendship unrelated to official's position
- Restriction – Donor may not:
  - ✓ Lobby agency
  - ✓ Do business with agency
  - ✓ Be regulated by agency





# GIFT EXCEPTION – GIFTS UNRELATED TO OFFICIAL’S POSITION

- Gifts based on personal, business or other relationship
- No evidence that official may take any official action that may financially benefit donor
- Does not apply to gifts from lobbyist

# GIFT EXCEPTION – GIFTS TO FAMILY MEMBER

- Presumption that gift to family member is gift to *official* if:
  - ✓ No established relationship between donor and family member; or
  - ✓ Gift made by donor who is:
    - Lobbyist
    - Involved in action in which official will foreseeably participate
    - Regularly seeks contracts or comes before agency



# MATERIALITY: FINANCIAL INTEREST IN REAL PROPERTY

- Real Property Interests: \$2,000 or more
- Regulation to Review-FPPC Regs. Section 18702.2
- Lists 12 different types of effects deemed “material” (general plan or zoning amendment, change in tax or assessment, change in income or development potential, change highest and best use)
- Includes such decisions affecting property within 500 feet of official’s (subject to specific FPPC advice)
- Different standard for property official leases

# MATERIALITY: FINANCIAL INTEREST IN REAL PROPERTY CONT'D . . .

- Construction of public facilities triggers conflict if:
  - ✓ Facilities result in new or improved public services; **and**
  - ✓ Either:
    - Services distinguishable from that provided to similarly situated properties; or
    - Cause disproportionate benefit or detriment to official

# MATERIALITY: FINANCIAL INTEREST IN BUSINESS DECISIONS

1. Financial effect is material if: (FPPC Regs. 18702.1(a).)
  - ✓ Business Entity is explicitly involved or named in proceeding (permit, contract, subject of proceeding, etc.) **OR**
  - ✓ Decision would result in change to revenues, assets, or liabilities of:
    - More than \$1,000,000
    - 5% of gross revenues and at least \$10,000
    - Change in expenses of \$250,000 or 1% of gross revenues and over \$2,500
    - Affects business interest's real property, or has "substantial effect" on the property.

# MATERIALITY: FINANCIAL INTEREST IN BUSINESS DECISIONS

- ✓ Small shareholder exception - \$25,000 or less investment and less than 1% of total shares-then financial thresholds above apply, even if directly involved. (FPPC Regs. 18702.1(b).)



# MATERIALITY: FINANCIAL INTEREST IN SOURCE OF INCOME

- Income is material if source: (FPPC Regs. Section 18702.3)
  - ✓ is an individual applicant, claimant, respondent, contracting party;
  - ✓ will be financially affected by decision affecting source's business or real property (includes series of financial thresholds).
- **EXCEPTION:** Where public official owns retail business:
  - ✓ Income from retail customer exempt if business open to public and serves broad base of persons (imputed "significant segment").

# “PUBLIC GENERALLY” EXCEPTION

Governmental decision’s effect on official’s financial interest is indistinguishable from effect on public generally if: (FPPC Regs. Section 18703)

- **Significant segment** of the public is affected
- 25% of businesses, type of real property (commercial, residential), or individuals
- Not applicable if decisions creates disproportionate effect on official’s interest.
- Rates, fees, taxes applied equally or proportionately to official and other users=substantial segment-no conflict.

# DISQUALIFICATION V. ABSTENTION

- Abstention = Voluntary
- Disqualification = Legally Required
  - ✓ Public statement of reason
  - ✓ Does not imply wrongdoing
- Non-compliance may:
  - ✓ result in fines and penalties
  - ✓ invalidate decision

# WHEN IN DOUBT, DISQUALIFY YOURSELF!

- You are responsible for your own compliance
- Agency counsel may help
  - ✓ Full disclosure of facts
  - ✓ Not confidential
  - ✓ Get advice in writing
- FPPC may help: (FPPC Regs. Section 18329.)
  - Informal Advice: 866-275-3772
  - Formal Advice: Written letter with all facts required





# IF YOU ARE DISQUALIFIED

- Steps to take (on the record):
  - ✓ **Identify** nature of conflict
  - ✓ **Leave** room (unless matter on consent)
  - ✓ **Don't** discuss or influence
  - ✓ **Limited exceptions** to speak at a public meeting regarding an effect of decision on personal interest (owned property or owned/controlled business)



# PENALTIES

- Can invalidate decision
- Misdemeanor (could result in loss of local office)  
(G.C. Sec.91002)
- Fines (up to \$10,000 per violation or 3 times unreported amount) (G.C. 91000(b).)
- Attorneys Fees (yours and others)
- Embarrassment (personal/political)



# REPORTING REQUIREMENTS

- Political Reform Act requires Annual Reporting of Economic Interests—Form 700.
  - ✓ Investments in Business Entities
  - ✓ Real Property
  - ✓ Sources of Income
  - ✓ Management Positions in Businesses
  - ✓ Sources of Gifts Aggregating \$50 per year (FPPC Regs. Sec. 18940(d).)

*Government Code § 87103*

# REPORTING GROUP GIFTS

- Report gifts over \$50
- If group gift, only report individuals contributing \$50+ to overall value of the gift
- (FPPC Regs. Section 18945.2)



# REPORTING WEDDING GIFTS

- Value at half (1/2) the received gift value for each spouse  
(FPPC Regs. Sec. 18946.3)



# REPORTING INVITATION-ONLY EVENTS

- Pro-rata share of food, catering, swag and entertainment
- Drop-in Rule:
  - ✓ Value of minimal appetizers consumed by official not reportable
    - But must report drinks, gifts over \$50
- Lobbyist hosts must report expenses on pro-rata basis (FPPC Regs. Secs.18946.2; 18640.)

# WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308*

- Special rules covering receipt of campaign contributions
  - ✓ Limits on contributions
  - ✓ Disqualification
- Applicable to most elected water agency directors – AB 1728 (2014)
- Not applicable to non-water agency elected officials if:
  - ✓ Acting as elected official; ***and***
  - ✓ All members of governing board are elected

# WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308*

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# **WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308***

## **WHAT GOVERNMENTAL OFFICIALS ARE COVERED:**

- Elected directors of agencies formed under Water Code
- Appointed Officials
  - ✓ Commissioners
  - ✓ Elected officials in appointive capacity

# **WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308***

## **WHAT NON-GOVERNMENTAL OFFICIALS ARE COVERED:**

- **Parties** who file for or are subject to applications for license, permit, entitlement to use, contract.
- **Participants** interested in approval or denial of the application.

# **WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308***

## **WHAT IS COVERED:**

- Campaign contributions of more than \$250
  - ✓ Received by officer
  - ✓ Solicited by officer
  - ✓ Directed by officer to third party
- Contribution need not directly benefit officer
- Contribution need not relate to officer's agency

# WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308*

## CONTRIBUTION RESTRICTION:

- **Appointee may not:**
  - ✓ **accept** contribution of more than \$250; or
  - ✓ **solicit** or **direct** a contribution of more than \$250 from any **direct party** or **interested party** to an application before the governmental body, while application **pending** or for **3 months following** the date of decision.

# WATER DISTRICT DIRECTOR AND APPOINTEE CAMPAIGN CONTRIBUTION RESTRICTIONS *GOVERNMENT CODE § 84308*

## DISQUALIFICATION RULE:

- Appointee receiving contributions aggregating **more than \$250** within **prior 12 months** must:
  - ✓ *disclose receipt and*
  - ✓ *disqualify*

if the source of contribution is a **direct** or **interested party** to an application pending before the governmental body.

# BEST PRACTICE



- Avoid temptation to view public service as opportunity for personal gain
- Look at every decision and ask yourself whether it involves a financial interest for you
- Consult counsel and, when in doubt, disqualify yourself

# § 1090 WARNING!

## SPECIAL RULES FOR CONTRACTS

- Virtually all elected officials, employees covered – consultants may also be covered
  - ✓ Direct or indirect interest
  - ✓ Agency barred if elected official has an interest that is not remote (See Gov't Code sec 1091(b).)
- May have to refund money paid
- Punishment: \$1,000 fine, imprisonment, permanent loss of office
- Contract is void

# LEAVING OFFICE



- Prohibition against lobbying “old” agency.
- **RULE:** Elected officials and general manager prohibited from representing third parties for pay before their former agency for one year after leaving government.
- Appearance representing personal interests-not prohibited, except quasi-judicial proceedings where official participated.
- (FPPC Regs. Section 18746.3)



# GROUP 2:

## PERKS

- **Principle:** Public servants should not receive special benefits by virtue of their positions
- **Principle:** Democratic equality

**PERK!**

# TYPES OF RULES

1. Perks that others offer you (gifts)
2. Perks that you give yourself/misuse of public resources



# GIFTS CAN BE TANGIBLE OF INTANGIBLE

1. Meals, food and drink (including receptions)
2. Entertainment (concerts, sporting events)
3. Certain travel and lodging



# PERKS OTHERS OFFER

- Report \$50 and up (cumulative over a year).
- Exceptions for some kinds of travel at tours/demonstration, informational materials. (FPPC Regs. Sec. 18942.1.)
- Limits are subject to change. (Confer with FPPC Regs. Section 18940.2.)

# NON-PROFIT GROUPS:

- **Non-Profit and Political Fundraising Event Tickets**
  - ✓ **Issue:** How to value ticket to non-profit entity fundraising event
  - ✓ Report the value of the non-deductible portion of the ticket.
  - ✓ Usually, the value of meal, catering, entertainment
  - ✓ 501(c)(3) Corporations-2 tickets allowed at no imputed value.  
(FPPC Regs. Section 18946.4)

# BEWARE OF STAKEHOLDERS, CONSULTANTS BEARING GIFTS

- Gift Limitation: Government Code § 89503
  - ✓ Maximum \$500 from any single source (set by regulation bi-annually)
  - ✓ Exceptions – e.g., reciprocal, unrelated to position, acts of compassion
- Honoraria & Travel Reimbursement (FPPC Regs. Sec.18930.)
  - ✓ Honoraria prohibited (Gov't Code sec. 89502.)
  - ✓ Travel reimbursement subject to gift limit

# BEWARE OF STAKEHOLDERS, CONSULTANTS BEARING GIFTS

- If gift exceeds \$250/year/source, must disqualify (G.C. Section 87103(e).)
- But gift over \$500/year/source is **illegal** even with:
  - ✓ Disclosure
  - ✓ Disqualification
  - ✓ (FPPC Regs. Section 18940.2)

# PENALTIES

- Up to \$10,000 criminal fine per violation / \$5,000 civil penalty per violation (Gov't Code sections 91000(b); 91005.5.)
- Disqualification from holding elective office or lobbying
- In private enforcement action, violator liable for enforcer's attorneys' fees





# MISUSE OF PUBLIC RESOURCES

- Personal use of public resources prohibited (Government Code § 8314)
  - ✓ Public resources include staff time and agency property
  - ✓ Personal use includes political campaigns



# CONSEQUENCES OF VIOLATIONS

- Civil penalties: \$1,000/day fine plus 3X value of resource used
  - ✓ (Government Code § 8314)
- Criminal penalties: 2-4 year prison term and disqualification from office
  - ✓ (Penal Code § 424)
- Can also have income tax implications (i.e., imputed income)

# AGENCY EXPENSE REIMBURSEMENT

- Be familiar with your agency's policies/limits
  - ✓ What kinds of expenses
  - ✓ What rates for food, lodging, transportation
  - ✓ The importance of documentation
- **Note:** Both State and Local District standards apply.



# VISTA'S EXPENSE REIMBURSEMENT POLICY

- Ground Transportation: Use District vehicle when available; when not, District pays IRS forced rate, tolls, parking. Maintenance, insurance, etc., is Directors' responsibility.
- Spousal Expenses-not reimbursable.
- Meal Expenses – to be reasonable. \$85/day maximum; 20% gratuities maximum reimbursable.
- NO-alcoholic beverages, recreation or entertainment (except when such entertainment is part of a function of the event), laundry services.



# VISTA'S EXPENSE REIMBURSEMENT POLICY

- Rules and Regulations Section 1.5.2
- Must use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.
- Conference or event lodging expenses shall not exceed the maximum group rate.



# VISTA'S EXPENSE REIMBURSEMENT POLICY

- Common carrier transportation shall be at the government, coach or a comparable rate; cannot exceed airfare cost.
- Must file district-approved expense reimbursement form within 60 days of the expense, for all expenses in excess of \$10.
- Prepaid, unused expenses-District may require reimbursement unless another Director goes.

# TICKET RULES-NOTHING IS REALLY FREE!

- Value of a ticket is “fair value” (formerly “face” value”). (FPPC Regs. Sections, 18946, 18946.1)
- Ticket has no reportable “fair value” until is used or given to another (unlike other gifts-full value even if unused, partially used, or discarded).
- Value of a “pass” is individual admission value, times number of times used, up to its “face” value.



# **RULES RE TICKETS AND PASSES THAT AGENCY GIVES TO ITS OFFICIALS**

- FPPC Regs. Section 18944.1-when a ticket is not a “gift.”
- Requires tickets given by an agency per adopted policy.
- Policy must set forth public purposes, how ticket accomplishes purpose, and prohibit transfer except to official’s immediate family or a single guest.



# **RULES RE TICKETS AND PASSES THAT AGENCY GIVES TO ITS OFFICIALS**

- Must be publicly reported within 45 days-on website:
  - Official receiving the ticket
  - Event description and date
  - Fair Value of ticket
  - Number of tickets provided to each person
  - Names of behesting officials or transferees
  - If for an inspection-report of findings or recommendations



## DISTRICT'S TICKET POLICY

- District Rules and Regulations Section 1.5.8
- Lists 9 different public purposes, including promotion District's activities and water conservation, education, intergovernmental relations.
- General Manager is “agency head” for distribution and Form 802 reporting.
- Transfer is **more restrictive**-no transfer except to an authorized District official or employee.

# GIFTS TO FAMILY MEMBERS

- FPPC Regs. Section §18943
- Gifts to family are considered gifts to the official.
- Generally, spouses and dependent children = “family.”
- Adult children who are not fully self-supporting-check regulation for specifics.



# GIFTS FROM AGENCY TO AGENCY'S OWN OFFICIALS

- FPPC §18944.3: “...payment by a government agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.”

# GIFTS FROM AGENCY TO AGENCY'S OWN OFFICIALS (CONT'D)

- Circumstance:
- Agencies providing retiring officials expensive gifts
- Agencies pay for expensive dinners for board members
- Agency provided meals, snacks **not a gift** if a “lawful expenditure of public moneys”
- Agency can adopt policy establishing public purpose for:
- Meals, snacks at meetings held during mealtimes
- Provision of shirts, jackets with agency logo

# OTHER PERK RULES

- Personal Perk Bans
  - ✓ Free or discounted transportation from transportation companies (Cal. Const. Art. 12, § 7)
  - ✓ Honoraria (Government Code § 89502)
- Agency Perk Bans
  - ✓ Mass mailings (Government Code Sec. 89001)
  - ✓ Gifts of public funds (Cal. Const. Art. 16, § 6)

# BEST PRACTICE

- **Avoid perks *and* the temptation to rationalize about them.**
  - ✓ Legally risky
  - ✓ Public relations headache
  - ✓ Possible loss of office
  - ✓ Public embarrassment



# GROUP 3:

# TRANSPARENCY LAWS

- **Principles:**

- ✓ It's the public's business
- ✓ The public will not trust what it cannot see





# TRANSPARENCY RULES

- Conduct business in open and publicized meetings
- Encourage public to attend and participate in meetings (even with COVID-19!)
- Allow public inspection of records

# TRANSPARENCY RULES – RALPH M. BROWN ACT

- **Open Meeting Requirement:** Right to *attend and observe* government in action. (Attendance currently modified by Executive Order.) (GC sec. 54953)
- **Agenda Posting Requirement:** Right to *advance notice* of what business government will consider. (GC sec. 54954-agenda 72 hour posting requirement)
- **Public Comment Required:** Right to *address government* on:
  - ✓ Any item to be considered by government
  - ✓ Any item within subject matter jurisdiction of government

# BROWN ACT: “MEETINGS” OF LEGISLATIVE BODIES MUST BE OPEN TO THE PUBLIC

- **Meeting: (Government Code section 54952.2)**
  - ✓ “Any congregation of a **majority** of the members of a legislative body ...
  - ✓ **at the same time and place** ...(including teleconferencing)
  - ✓ to **hear, discuss, or deliberate upon** ...
  - ✓ any item within the **subject matter jurisdiction of the legislative body ....”**

# BROWN ACT: “MEETINGS” OF LEGISLATIVE BODIES MUST BE OPEN TO THE PUBLIC (CONT’D)

- **SERIAL MEETING PROHIBITIONS: (GC SEC. 54952.3)**
  - ✓ Use of *direct communications, personal intermediaries, or technological devices*
  - ✓ employed by a *majority* of the members
  - ✓ to *develop a collective concurrence*
- **TRAPS FOR THE UNWARY:**
  - ✓ Emails and texting
  - ✓ Facebook, Twitter

# **BROWN ACT: “MEETINGS” OF LEGISLATIVE BODIES MUST BE OPEN TO THE PUBLIC (CONT’D)**

- **EXCEPTIONS TO “MEETING” UNDER BROWN ACT: (GOVERNMENT CODE SECTION 54952.2(C).)**
  - ✓ Individual contacts
  - ✓ Conferences open to the public
  - ✓ Community meetings
  - ✓ Other open and noticed meetings
  - ✓ Social events

# BROWN ACT: MEETINGS OF “LEGISLATIVE BODIES” MUST BE OPEN TO THE PUBLIC

- **LEGISLATIVE BODY:  
(GOVERNMENT CODE SECTION 54952.)**
  - ✓ The ***governing body*** of a local agency
  - ✓ Commission, board or other body of a local agency ***created by the legislative body***
    - Except: Ad hoc advisory committees comprised wholly of legislative body members
  - ✓ Boards of ***private corporations or entities*** if:
    - Created by elected legislative body; or
    - Receives funds from local agency ***and*** includes a legislative body member on the board.

# OPEN MEETINGS: BASIC RULES

- **Meetings Open:** Except as allowed by statute, all meetings of legislative body must be open and public, and all persons must be allowed to attend any meeting
- **Decisions Only at Meeting:** Majority of legislative body may not “meet” outside an open and noticed meeting.
- **Recording: (GC 54953.5.)** Public has the right to record by video or audio.

# CONDUCTING BUSINESS AT OPEN MEETINGS

- Majority may not “meet” outside an agency-convened meeting
  - ✓ Meeting includes emails, serial discussions, “hubs”
  - ✓ Legislative Body includes committees, commissions and boards (except *ad hoc* committees of less than a quorum)
- **Exceptions:** Social events, conferences, etc.
  - ✓ So long as majority does not discuss agency business



# CLOSED SESSIONS

- Must be agendaized and announced
- Only those subjects allowed by statute:
  - ✓ Litigation
  - ✓ Personnel
  - ✓ Labor negotiations
  - ✓ Real estate deals
- Attendance by staff on “need to know” basis
- Specific Actions to be reported out-GC sec. 54957.1



# CLOSED SESSIONS

- Closed Sessions are, and must be kept, confidential.
- Negative consequences of “leaks:”
  - Fosters a climate of omission or misdirection among Board members
  - Impairs long term, multi-step strategies
  - Inverts the Staff/Board relationship; staff begins “managing” information given to Board
  - Impugns respect for the Board as a whole. Perception that important District information can be used as currency for personal or political purposes.

# PUBLIC PARTICIPATION

- No governing body action on items not listed on posted agenda
  - ✓ Limited exceptions-2/3 finding the need to take action occurred after agenda posting emergencies. (Government Code section 54954.2(b).)
- Public's right to be heard before or during body's consideration of an issue
- Public comment
  - ✓ Grandstanding, negative feedback and gadflies must be accepted as part of public service (Government Code section 54954.3.)

# PUBLIC PARTICIPATION (CONT'D)

- Public Access and Disability-related accommodation
- Meetings must be held within jurisdictional boundary of agency (GC sec. 54954.)
  - ✓ Limited Exceptions-
    - Comply with Court Order
    - Inspect property
    - Multi-agency meetings
    - Office of legal counsel for closed sessions



# CONSEQUENCES OF VIOLATIONS

- Injunction/Recording of Closed Sessions
- Nullification of decision
  - ✓ Cure Provisions-30 day notice for open session actions, 90 days for closed sessions (Government Code section 54960.1.)
  - ✓ Fix violations ASAP!
- Criminal sanctions: misdemeanor (Government Code section 54959)
- Costs and attorneys' fees (Government Code section 54960.5.)
- Intense adverse media attention

# INTENTIONAL VIOLATION

- Each Member of a Legislative Body who:
  - ✓ Attends a meeting which does not comply
  - ✓ Where action is taken
  - ✓ With the intent to deprive the public of information to which he has reason to know the public is entitled

Is guilty of a misdemeanor

- Criminal sanctions (up to 6 months in jail; \$1,000 fine)  
(Government Code section 54959.)

# PUBLIC'S RIGHT TO RECORDS

- Right expressly granted by State Constitution  
*Cal. Const. Art. 1 § 3*
- Agenda and meeting materials  
*Government Code § 54954.1*
- Other writings prepared, owned, used or retained by the agency (including emails and other electronic documents)  
*Government Code § 6252*
- Enforcement: Person seeking records entitled to costs and fees  
*Government Code § 6259*

# EXCEPTIONS TO RECORDS DISCLOSURE

- Strictly construed
- E.g., personnel files, medical records, rates of payment, records that reveal trade secrets (for 2 years), peer review records; real estate appraisals
- Catchall exemption: Public interest in non-disclosure outweighs interest in disclosure  
(Government Code section 6254(a).)
- Agency may disclose anyway unless disclosure is expressly prohibited by law



# FINANCIAL INTEREST DISCLOSURE (POLITICAL REFORM ACT OF 1974)

- Transparency includes obligation for high level public servants to disclose financial interests
  - ✓ Assuming office
  - ✓ Annually while in office
  - ✓ Upon leaving office

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# BEST PRACTICE

- Assume all information is public or will become public
- Don't discuss agency business with fellow decision-makers outside noticed public meetings or authorized closed sessions



# **GROUP 4:**

## **FAIR PROCESS LAWS**

- Principle: Public expects governmental decision-makers to be impartial and avoid favoritism

# EXAMPLES

- Due process requirements
  - ✓ Notice and fair hearing opportunity
- Rules against bias
- Competitive procurement requirements
- Incompatible office prohibitions
- Disqualification requirements if decision involves family members
- Campaign contributions (appointed bodies)

# COMMON LAW CONFLICT - BIAS

- Personal interest in an outcome
- Personal animosity against an applicant
- Pre-existing opposition to specific project
  - ✓ Political Reform Act covers financial conflicts; common law covers non-financial interests as well.
  - ✓ *Petrovitch Development Co. v. City of Sacramento*-recent example of pre-committed official invalidating agency decision.

# MORE CONSIDERATIONS

- Seeking election or appointment to office is a private activity
- Soliciting political contributions from agency officers and employees generally prohibited
- Giving or promising favors may be prohibited
- Using agency time or identity for nongovernmental purpose is inappropriate

# INCOMPATIBLE OFFICES

- **Rule:** a public officer is prohibited from simultaneously holding two public offices that are ***incompatible***
- Offices ***incompatible*** generally where:
  - ✓ Either office audits, overrules, removes members, dismisses employees, or supervises the other body
  - ✓ Possibility of significant clashes of loyalty based on powers and jurisdiction
  - ✓ Improper to hold both offices due to public policy



# BEYOND THE LAW: PUBLIC SERVICE ETHICS PRINCIPLES

# ETHICS = VALUES

## SIX UNIVERSAL ETHICAL VALUES:

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

*Source: Institute for Global Ethics*

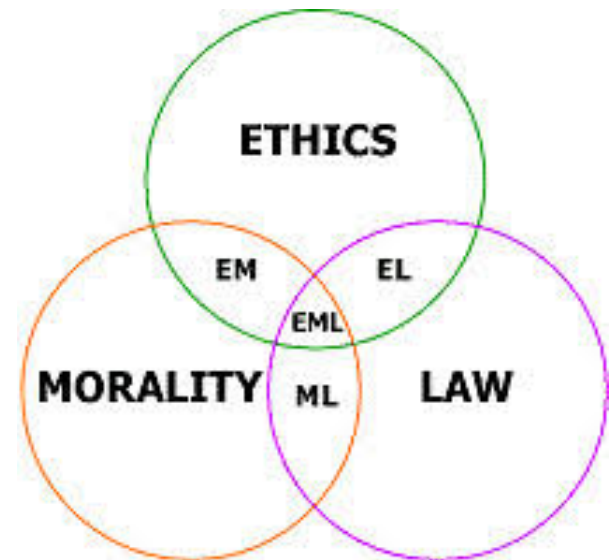
# APPLYING VALUES TO PUBLIC SERVICE

## **TRUSTWORTHINESS:**

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

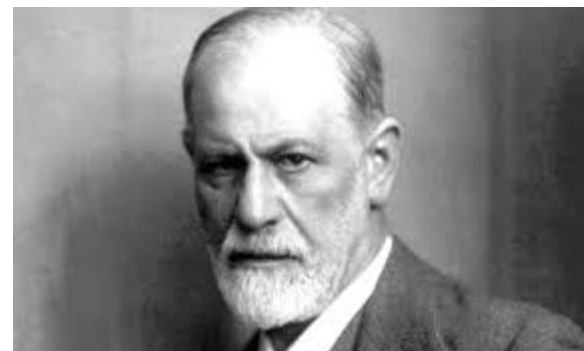
# ANALYSIS BY ETHICAL DILEMMAS

1. Legal Issue v. Ethical Issue
2. Potential for competing “right values”
3. Doing the right thing costs more than what one wants to pay



# QUESTIONS TO ASK

- What would make the public feel best/inspire public confidence?
- What would you want to read about on the front page?
- What would you be proud to tell your mother about?



# BEST PRACTICE

- Be clear on your own values – how they apply to public service
- Promote a culture of ethics at the District



# KEY LESSONS

- The law sets minimum standards for ethical behavior
- Violations of ethics laws carry stiff penalties
- When in doubt, ask and ask early



# QUESTIONS?