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CALIFORNIA ASSOCIATION OF COUNTY TREASURERS & TAX COLLECTORS

2017 CACTTC ANNUAL CONFERENCE

Tips to Promote an Ethical and Transparent Culture

PRESENTED BY:

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The Institute for Local Government ILG is the non-profit training and education

affiliate of



CSDA

**California Special
Districts Association**

Districts Stronger Together



About ILG

The Institute's goals are:

- To assist local leaders in governing effectively and ethically;
- To promote collaboration; and,
- To foster healthy and sustainable communities.





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ILG Programs



Ethics &
Transparency



Local Government
Basics



Collaboration &
Partnerships



Public
Engagement



Sustainable
Communities



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Ethics and Transparency

AB 1234 Training

Understanding Public
Service Ethics Laws

The Brown Act and
Open Meetings

Good Governance Checklist





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UNDERSTANDING ETHICS

Case Study:

McDonnell v. United States



- Bob McDonnell case
 - Former Governor of Virginia
 - Convicted of bribery for accepting \$175,000 worth of gifts from a businessman
 - Conviction appealed to US Supreme Court





- What happened?
 - “Bob’s for Jobs” campaign
 - Jonnie Williams owned Star Scientific, which developed a nutritional supplement called “Anatabloc”, made from anatabine, a compound found in tobacco products
 - Star Scientific wanted FDA approval and needed independent research on the health benefits
 - Williams wanted Virginia public universities to perform the research using grant funds



- “Valuable Things” Received:
 - \$50,000 loan, and \$15,000 gift to pay wedding expenses
 - \$50,000 loan for rental properties
 - \$20,000 shopping trip for designer clothes for governor’s wife
 - Use of vacation home and Ferrari
 - A Rolex
 - \$20,000 loan
 - Rounds of golf
 - A free trip
 - \$10,000 wedding gift
 - Use of a private plane during the campaign





- The Quid Pro Quo:
 - Introduced Williams to Secretary of Health and Human Resources
 - Sent an article on Star Scientific
 - Meeting with an aide
 - Lunch event with University researchers
 - Healthcare industry reception
 - Mentioned Anatabloc in meetings on state employee health plans
- But,
 - No action was ever taken
 - No evidence that Virginia officials were influenced





- Federal bribery statute:
 - Giving a thing of value, knowing that the thing of value was given in return for an “official action”
- Key question:
 - Did Governor McDonnell engage in an “official act”?
 - Prosecution: *Any* activity by a public official
 - Defense: Direct a resolution of a specific decision



- SCOTUS's Ruling:

1. There must be a formal exercise of governmental power that is specific and focused. Setting up meetings, talking to officials, or organizing an event – without more – does not meet this definition.
2. Conscientious public officials arrange meetings for constituents, contact other officials on their behalf, and include them in events all the time.





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“There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute. A more limited interpretation of the term “official act” leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.”

-Chief Justice John Roberts



QUESTIONS

- Lessons learned?
 - Are legal and ethical lines necessarily consistent?
 - What was the public perception?
 - Are there two sides to the story?
- Any positive takeaways from the case?
- Could this happen in California?
- Why do ethics matter?



WHY DO ETHICS MATTER?

- Chapman University annually performs a survey of Americans' top fears
- In April of 2016, a random sample of 1,511 adults were asked their level of fear about 79 different fears
- Where did fear of corrupt government officials rank?





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Fear	% Afraid or Very Afraid
1. Corrupt government officials	60.6
2. Terrorist Attack	41
3. Not having enough money for the future	39.9
4. Terrorism	38.5
5. Government restrictions on firearms and ammunition	38.5
6. People I love dying	38.1
7. Economic/financial collapse	37.5
8. Identity theft	37.1
9. People I love becoming seriously ill	35.9
10. The Affordable Health Care Act/Obamacare	35.5



- Source:

- Chapman University. 2016. The Chapman University Survey of American Fears, Wave 3. Orange, CA: Earl Babbie Research Center [producer].

- <https://www.chapman.edu/wilkinson/research-centers/babbie-center/survey-american-fears.aspx>



CALIFORNIA LAW

- Ethics for Public Officials:
 1. Personal Finances
 2. Advantages and Perks
 3. Fair Process
 4. Transparency
- AB 1234





- Where do California's ethics laws come from?

The common law rule:

“A public officer is impliedly bound to exercise the powers conferred on him [or her] with disinterested skill, zeal and diligence and primarily for the benefit of the public.”

-Noble v. City of Palo Alto



PERSONAL FINANCES

- Political Reform Act
 - No public official shall make, participate in making, or attempt to influence a governmental decision in which he or she has a financial interest.
- Government Code Section 1090
 - Public officials shall not be financially interested in any contract made by them in their official capacity





Under recent FPPC opinions Any consultant who “considerably influences” agency decision-making are subject to section 1090.

- Firm who prepared traffic signal master plan cannot obtain contract for work implementing plan.
- Subcontractor who helped design a golf course cannot help construct the course.
- Firm who prepared analysis of existing development impact fees cannot perform new fee study.



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DISCUSSION

The County has put out an RFP for an investment advisor. You've been directed to participate in scoring the proposals. Your husband works for a company that provides investment services and submitted a response to the RFP. What should you do?



- Questions to ask:
 - Is there a decision or a contract?
 - What will be the public perception?
 - If you have concerns, who do you speak with?
 - Does your agency have a policy or procedure for addressing employee conflicts?



ADVANTAGES AND PERKS

- Gift is anything of value received without giving adequate consideration.
- Gift Limit
 - >\$50 – Must disclose on Form 700
 - >\$470 – Cannot accept
- If exceeds gift limit:
 - Refuse
 - Donate to a charity or government agency
 - Pay the difference



- Exceptions to gift limit:
 - Campaign contributions
 - Gifts to public agency
 - Gifts from non-profit for legislative or governmental purpose
 - Informational material
 - Gifts from family members
 - Gifts of hospitality/neighborliness
 - Gifts commonly exchanged on a holiday, birthday, or other occasion
 - Reciprocal exchanges
 - Tickets/passes to certain fundraisers
 - Prizes in bona fide competitions
 - Wedding Gifts (only the limit) / Gifts to wedding guests
 - Bereavement gifts
 - Gifts in a bona fide dating relationship
 - Acts of human compassion



DISCUSSION

You work with an outside CPA throughout the year. During the holiday season, the CPA sends you a gift basket from a winery. You research the gift and find that the wine and other items are worth about \$500. What do you do?

What other perks/advantages might be available to public employees?



FAIR PROCESS

- Due process: “No state shall deprive any person of life, liberty or property without due process of law”. - U.S. Constitution Amend XIV, sec 1.
- What does this mean?
 - Notice
 - Opportunity to be heard
 - Fair and impartial decision-maker



- Types of bias:
 - Personal interest in outcome of decision
 - Personal bias
 - People
 - Belief/ideology
 - Factual bias (ex parte information)
 - Dual role influence

*Source: Understanding the Basics of Public Service Ethics Laws, Institute of Local Government, http://www.ca-ilg.org/sites/main/files/ethics_booklet_full_v4.pdf



- **Contracting/Purchasing**

“The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest.”

- But what happens when there is no rule requiring competitive bidding?



TRANSPARENCY

- Brown Act – All business of local governing bodies must be conducted in public in accordance with a properly noticed agenda
- Public Records Act – with limited exceptions, all records pertaining to the government's business are public records and must be disclosed upon request



BROWN ACT

- Serial meetings – use of direct communications, intermediaries, or technology to develop a collective concurrence outside of a meeting is prohibited.
- When communicating with Board members:
 - Don't "reply all"
 - Use BCC to avoid replying all
 - Avoid discussing communications with other Board members



PUBLIC RECORDS ACT

- Tips:
 - Develop and follow internal best practices for responding to requests
 - Establish clear responsibilities for responding to requests
 - Communicate with legal counsel
- Hot Topic – E-mails
 - *City of San Jose* case – e-mails on private electronic devices are considered public records
 - The Newspaper Test: What happens if your e-mail or text shows up in the newspaper?



TIPS FOR AN ETHICAL ORGANIZATION

- Understand the importance of ethics to the public
- Hold regular ethics trainings
- Encourage open discussion about ethical issues and concerns
- Be prepared for ethics issues to arise – have procedures in place



- ETHICS ASSESSMENT (ILG)
- In my local government, I am...
 1. Encouraged to speak up about any agency practices and policies that are ethically questionable.
 2. Expected to report questionable ethical behaviors of others.
 3. Clear about where to turn for advice about ethical issues.
 4. Expected to follow the spirit as well as letter of the law in my work for the agency.
 5. Expected to use ethical behaviors in getting results.



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6. Expected to tell the complete truth in my work for the agency.
7. Expected to treat everyone who comes before the agency equally, regardless of personal or political connections.
8. Expected to follow stated policy of the governing body and not the desires of individual elected or appointed officials
9. Surrounded by coworkers who know the difference between ethical and unethical behaviors, and seem to care about the difference.
10. Working with one or more trusted confidantes with whom I can discuss ethical dilemmas at work.

*http://www.ca-ilg.org/sites/main/files/file-attachments/assessing_your_agencys_ethical_culture.pdf



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THANK YOU FOR ATTENDING

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