



GOVERNMENTAL ETHICS: SCCD COUNCILMEMBER AUTHORITIES & RESPONSIBILITIES

State Council on Developmental Disabilities
Council Meeting
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Ethics

- Principles that govern a person's or group's behaviors
- Some say: “The right thing to do” or “right vs. wrong”

Ethics

- Universal?

- Personal Ethics v. Professional Ethics

Personal Ethics vs. Professional/Govt. Ethics

Principles of Personal Ethics

Example

Principles of Personal Ethics include:

- Concern for the well-being of others
- Respect for the autonomy of others (to decide for themselves)
- Trustworthiness & honesty

Adapted from source publication of: University of British Columbia Centre for Applied Ethics

Personal Ethics vs. Professional/Govt. Ethics

Principles of Personal Ethics Cont'd.

- Willing to follow the law (with the exception of civil disobedience)
- Basic justice; being fair
- Refusing to take unfair advantage

Personal Ethics vs. Professional/Govt. Ethics

Principles of Personal Ethics Cont'd.

- Benevolence: doing good
- Preventing harm

Adapted from source publication of: **University of British Columbia Centre for Applied Ethics**

Personal Ethics vs. Professional/Govt. Ethics

Principles of Professional/Governmental Ethics

Example

Principles of Professional/Governmental Ethics include:

- Impartiality; objectivity
- Openness; full disclosure
- Confidentiality

Personal Ethics vs. Professional/Govt. Ethics

Principles of Professional/Governmental Ethics Cont'd.

- Due diligence/duty of care
- Fidelity to professional responsibilities (fiduciary duty)
- Avoiding potential or apparent conflict of interest

Governmental Ethics

Professional Ethics that apply to government officials are called “Governmental Ethics”

- Specific laws exist, and a violation may have administrative, civil, or, in some cases, criminal penalties.

Governmental Ethics

Regulated areas

Some important areas that are regulated by law are the areas of:

- Disclosure
- Conflict of Interest
- Open Meetings
- Operations
 - Use of Council personnel
 - Use of Council resources (funds, property, etc.)
 - Types of Council activities

Governmental Ethics

Disclosure/Transparency – Form 700

Purpose of the Form 700:

- Public officials' property and income that may be materially (importantly) affected by their official actions, such as voting decisions, should be reported to the public to avoid conflicts of interest.
(See Gov. Code 81002(c).)

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Disclosure/Transparency – Form 700

An individual public official must periodically report his or her property and income on the Form 700. The property and income are referred to as “economic interests.”

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Disclosure/Transparency – Form 700

- “Economic interests” include:
 - Sources of Income
 - Sources of Gifts
 - Real estate
 - Business investments or positions

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Disclosure/Transparency – Form 700 Tip

You are *not* required to report any of the below from a federal, state, or local government agency:

- Salary
- Reimbursement for expenses or per diem
- Social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner

This is known as the “government salary exception.”

(Gov. Code 82030(b)(2).)

Governmental Ethics

Disclosure/Transparency – Form 700 Tip

In addition, you are *not* required to report any of the below from a 501(c)(3) charitable nonprofit:

- Reimbursement for travel expenses and per diem
(Gov. Code 82030(b)(2).)

(You are required to report salary from a 501(c)(3) nonprofit.)

Governmental Ethics

Disclosure/Transparency – Form 700 Tip

- Travel payments paid for by someone other than a government agency may be a reportable gift.
- Whether a travel payment is subject to the gift limit depends a number of things including:
 - Who made the payment
 - Purpose of the travel(For other factors, see 2 Cal. Code Regs. §§18950 et seq or ask Legal Counsel)

Governmental Ethics

Gift Limit

- The gift limit is \$460 through December 31, 2016.
- You may be required to report a person or organization that has given you gifts over the year if the gifts add up to \$50 or more. Councilmembers have to pay attention to payments from anyone that works with developmental disabilities issues.

TIP:

- Best practice is to write down the gifts you receive

Governmental Ethics Disclosure/Transparency

- Conflict of Interest Code
 - Note: Every agency is required to adopt a conflict of interest code identifying the officials that make governmental decisions and have to file a Form 700. SCDD's conflict of interest code will be amended this year.

Governmental Ethics

Conflict of Interest

- A public official must perform his or her duties with only the public's well-being in mind. No man can faithfully serve two masters. (See *Thomson v. Call* (1985) 38 Cal.3d 633; 89 Ops. Cal. Atty. Gen. 258 (2006).)
 - Perform duties
 - Public's well-being only
 - Cannot serve a "master" except for the public

Governmental Ethics

Conflict of Interest

Significant authorities:

- State of California

- Government Code (§§ 87100 et seq., §§ 1090 et seq.)
- Common law doctrine

- Federal Government

- DD Act

- Note that the DD Act prohibits not only actual conflicts of interests based on financial affects. DD Act also prohibits the *appearance* of a conflict of interest. (See DD Act § 124(c)(5)(D).)

Governmental Ethics

Conflict of Interest

- One type of a conflict of interest occurs when:

It is reasonably foreseeable that a Council decision financially affects you (i.e., one of your economic interests) in a way that is considered “material” or important under the law. (See Gov. Code § 87103.)

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Conflict of Interest – Political Reform Act

In other words -

- When you can reasonably expect that a Council decision will affect you by a dollar amount listed in the regulations
- This includes an effect on any of your economic interests

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Conflict of Interest – Section 1090

- Government Code Section 1090 deals specifically with conflicts of interest involving contracts, including grants.
- In general, any contract made in violation of Section 1090 is void and cannot be enforced.
- There are criminal penalties for *willful* violation:
 - Fine or imprisonment for up to 3 years
 - Lifetime ban on holding office

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Conflict of Interest

Things to Remember:

- A decision before you as a Council member can create a conflict of interest
- Contract/grant decisions require careful consideration
- Also note that you can have a conflict of interest by holding two different or “incompatible offices”

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Conflict of Interest

Things to Remember (Cont'd.) :

- It's important to be aware of your economic interests
- It's ok to ask questions!

Governmental Ethics

State Agency Operations – Examples of Authorities

Specific rules regulate the following areas:

Use of Council Personnel

- California Constitution
- Government Code
- CalHR Personnel Management Liaison Memos, regulations
- SPB Rulings
- (Bargaining Unit Agreements, Classification and Pay Scales)

Use of Council Resources (Examples: Gift of public funds, travel reimbursements, contracting)

- Government Code
- DGS Management Memos
- State Controllers Office Letters
- Federal Law: U.S. Office of Management & Budget circulars, regulations, HHS Department Appeals Board rulings

Types & Manner of Council Activities (Examples: Political, lobbying activity)

- Government Code
- Court Cases: *Stanson v. Mott*
- Federal Law: DD Act

See Gov. Code §19990

Governmental Ethics

Open meetings – Bagley Keene Act

Purpose of Bagley Keene Act:

- It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

Gov. Code § 11120

Governmental Ethics

Open meetings – Bagley Keene Act

Duties:

- To give adequate notice of meetings to be held
- To provide an opportunity for public comment
- To conduct meetings in open session (except for authorized closed sessions) in order for the public to be informed

Bagley Keene

Serial meetings

The Bagley Keene Act prohibits:

- A majority of (16 or more for the Council) members from participating in a series of communications of any kind, directly or through intermediaries (other people), to discuss, deliberate, or take action on any item of Council business. (See Gov. Code § 11122.5(b)(1).)

Governmental Ethics

Open meetings – Bagley Keene Act

IMPORTANT:

- Bagley-Keene Act rules also apply to committee discussions
- A majority of a committee could be as few as 3 people
- Discussions outside of Council meetings could break Bagley-Keene Act rules
- Emails and text messages count!

Bagley Keene

Serial meetings

A “serial meeting” is a series of communications where each single communication involves less than a quorum of the Council (for example, only 1 or 2 members), but which taken as a whole involves a *majority* (16 members) of the Council.

Bagley Keene

“Chain” of Communications Serial Meeting

A discussion between one member and only one other member at any one time can create Bagley-Keene issues by adding up to multiple communications linking many members. A meeting occurs when the communication reaches 16 Council members.



Bagley Keene

“Hub and Spoke” Communications Serial Meeting

A series of private conversations between one individual and a number of members can easily create a serial meeting.



Bagley Keene

Serial meetings

- Is this a problem?



Governmental ethics:
SCCD Councilmember authorities & responsibilities

- Rules governing every imagined activity
- Getting “back to the basics”

Governmental ethics:
SCCD Councilmember authorities & responsibilities

Questions