SECTION TWO

SUCCESS IN PUBLIC SERVICE
(Institute for Local Government, 2006)

INSTITUTE FOR LOCAL GOVERNMENT

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Success in Public Service: What You Need to Know *Before* You Are Appointed or Elected

As a person seeking public office, you are about to embark upon a challenging and rewarding journey. This is particularly true at the local level – where government and the public intersect most directly. Public service affords you the opportunity to address real community problems and to help shape your community's future.

Whether you are motivated by an interest in a particular policy issue or by a desire to give something back, the rewards of working with others to improve your community will be many. But it won't be easy. Public service also requires courage and personal sacrifice. You will be asked to make difficult and sometimes unpopular decisions. Your actions will be scrutinized as never before and the law is likely to affect what you can do or not do to a greater extent than you are used to—particularly as it relates to ethics.

This pamphlet answers three questions:

1. What are the basic principles of public service ethics laws?
2. How can I determine the impact of these laws on me?
3. Where can I get additional help and support if I still have questions?

The goal is to provide a general overview of ethics laws that apply to public service, as well as practical tips on how to assess how these laws might affect you and your service. The emphasis is on what you need to know *before* you are elected or appointed, so you can make an informed decision whether public service is right for you at this time.

About the Institute for Local Government

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and California State Association of Counties. Its mission is to provide practical resources to local officials to assist them in their service to their communities. For more about the Institute's work, please visit www.ca-ilg.org.

The Institute is grateful to Andrew Massey and Susan Catron for their help with this pamphlet. The pamphlet was Andrew's brainchild while he was a student at UC Hastings College of the Law participating in the Public Law Research Institute Program; Susan's communications skills materially assisted in the effort while she was a student in Sacramento State University's Masters in Public Policy Program.

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Introduction to Ethics Laws

Election or appointment to local public office brings with it a number of important obligations. Public officials commit to spending significant amounts of time in service to their communities; they also assume a responsibility to work for the betterment of their communities.

With public service also comes a number of important obligations under federal, state and local ethics laws. Ethics laws impose rules on the manner in which public officials conduct themselves. These ethical obligations exist to reinforce and uphold the trust the public places in the hands of those who wield the power of government. As such, these obligations affect a wide range of public officials.

An overarching goal of ethics laws is to maximize the likelihood that a public agency's decisions are based solely on what best serves the public interests. Ethics laws frequently strive to avoid even the *appearance* of impropriety, as well as actual improprieties. Moreover, many of the penalties for violating these laws are quite severe.

Keep in mind as well that the laws represent the *floor* for public officials' conduct. If you seek public office, you are encouraged to set your sights well above the minimum standards of the law and the public is likely to expect you to do so too. In addition, a number of agencies have adopted ethics codes that supplement ethics laws by stressing the values in public service.

Becoming fully informed of public officials' obligations under the ethics laws *before* you seek or assume office helps you determine whether public service is right for you. Count on spending a fair amount of time and energy after you assume public office in becoming even more informed about how these laws will affect your service, as well as in complying with the law.

✓ Key Concepts

The goal of ethics laws is to maximize the likelihood that public agency decisions are made solely with the public's interests in mind. Ethics laws create a *floor* for public officials' conduct, not a ceiling.

Mandatory Ethics Education for Local Officials

State law requires most local elected and appointed officials to attend ethics training. The basic requirement is two hours every two years.

Finding and participating in such training activities is one way to get more information about public service ethics laws and principles even before entering public service. To learn more, visit the Institute's website: www.ca-ilg.org/ab1234compliance.

1 What Kinds of Things Do Ethics Laws Cover?

Ethics laws fall into four general categories:

1) **Personal Financial Gain.** Personal gain and public office don't mix.

2) **Perks.** The law generally frowns on special perks for officeholders.

3) **Transparency.** The public has a right to know a great deal about public officials and their decision-making processes.

4) **Fair Processes.** Public officials are expected to be fair in their decision-making, particularly under certain circumstances; this sometimes can limit one's role as an advocate.

Each area of ethics laws is briefly described below, along with some questions for those seeking public office to consider.

Financial Gain Appearing to Influence Decisions

The notion behind laws prohibiting private financial gain is that public officials' economic interests cannot even *appear* to influence their governmental decisions. For example, public officials usually:

- Must disqualify themselves from decisions that may affect (positively or negatively) their economic interests; relevant kinds of economic interests include real property, sources of income (such as employers, customers and clients) and investments.

- Are forbidden from being on "both sides" of a contract (e.g. lessor and lessee)when the contract comes before their agency for decision.

- May not acquire interests in property within redevelopment areas over which they have decision-making influence.

In addition, promising to take a certain governmental action in exchange for a benefit (including money, gifts or campaign contributions) is a crime, with severe penalties.

Questions to consider:

⇒ Will the nature or extent of your—or your family's--economic interests significantly limit when you can legally participate in the agency's decision-making processes?

⇒ Will holding public office inhibit your business or investment activities in a way that is too financially burdensome?

⇒ Do you presently or would you like to in the future do business with the agency?

⇒ Are you seeking office to influence public agency decisions relating to property near your home or business?

If the answer to any of these questions might be "yes," get more information on the financial interest ethics laws so you can determine how they will affect you.

Personal Advantages and Perks Relating to Office

The law strictly limits the degree to which an officeholder can receive benefits relating (or appearing to relate) to his or her status as a public official. Generally speaking, public officials:

- Receive limited (sometimes no) compensation and expense reimbursement for their public service activities.
- Must disclose all gifts (including meals, sporting events, concerts and travel) received of $50 or more and may not receive gifts aggregating over a certain amount from a single source in a given year. (Note: local regulations may be more restrictive.)
- Cannot be paid for speaking, writing an article or attending a conference.
- Cannot receive loans over $250 from those within the agency or those who do business with the agency.
- Face severe penalties if they use public resources (this includes agency staff time and equipment) for either personal or political purposes.

Questions to consider:

⇒ With whom do you regularly exchange hospitality and gifts? Will you or they view disclosing or limiting these gifts as a problem?

⇒ Will the limited compensation and expense reimbursement impose a financial burden on you?

Why It's Smart to Plan Ahead

Understanding public service ethics laws and principles can help you:

- ✓ Identify and address potential sources of problems before you commit to seeking public office.
- ✓ Make an informed decision about the particular office you seek.
- ✓ Make a positive difference in your community by maintaining your community's trust and confidence in your leadership.
- ✓ Avoid illegal or embarrassing situations that can be personally costly.

Different ethics laws apply in different ways, depending on whether a person is elected or appointed, the local laws that apply, the kinds of decisions the public official must make, and his/her particular activities and assets. Taking the time to acquaint yourself with the relevant laws can go a long way toward helping you avoid future headaches.

If the answer to any of these questions might be "yes," get more information on these ethics laws so you can determine how they will affect you.

Transparent Decision-making

The public trusts decision-making and other processes that it can observe. This means that you will likely be operating in more of a fishbowl as a public official than you are accustomed to as a private person. Public officials:

- Often must share information about their private financial interests.
- Must conduct the public's business in open and publicized meetings.
- Must allow public inspection of documents and records generated by public agencies.
- Must disclose information about their personal efforts to raise funds for good causes in the community (if $5000 or more from a single source in a year).

Questions to consider:

⇒ Do you feel comfortable making available to the public details about your private financial activities? Does your spouse, domestic partner or dependent child feel uncomfortable making many of these details available to the public?

⇒ Will you feel frustrated and unduly constrained by having to have all discussions with your fellow elected or appointed officials at open and publicized meetings?

⇒ Will you find the requirements that most records maintained by your agency—including e-mail communications-- be available to the public too intrusive?

⇒ Do you do a lot of fundraising for worthy causes? Are you uncomfortable having these activities become public knowledge?

If the answer to any of these questions might be "yes," get more information on the transparency laws so you can determine how they will affect you.

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Fair Processes

Finally, ethics laws are built on the notion that officeholders should make decisions without regard to who is affected and after fairly considering the facts and existing rules relating to an issue. To uphold the principles of fairness and impartiality, public officials:

- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings on appointed bodies – such as land use permits – involving campaign contributors.
- Cannot solicit campaign contributions of more than $250 while sitting on appointed bodies from permit applicants while an application is pending and for three months after a decision.
- Cannot participate in quasi-judicial proceedings (when they are applying agency policies to specific situations, such as permit entitlements) in which they have and/or have expressed strong personal or subject matter biases.
- Cannot participate in decisions that will affect their immediate family (defined as spouse/domestic partner or dependent children). (However, an appearance of impropriety may also prevent an officeholder from participating in decision affecting their parents, independent children and siblings.
- Cannot ask agency staff for campaign contributions and should not ask staff to support their candidacies.

A Note about Holding Multiple Offices

If you already hold a public office and accept a second one that would subject you to conflicting loyalties or involve overlapping jurisdictions (as defined by the law), you automatically vacate the first office. Attorneys refer to this as an "incompatible office" problem.

Questions to consider:

⇒ Will the nature of your family members' interests present a potential conflict?

⇒ Do you currently hold public office whose jurisdiction overlaps with the jurisdiction of the agency in which you want to serve?

⇒ Do you plan on making statements in your campaign that may cause you to be disqualified from participating in decisions you or your supporters care deeply about because of bias?

If the answer to any of these questions might be "yes," get more information on the fairness ethics laws so you can determine how they will affect you.

✓ Key Concepts

Ethics laws are complex and could have a significant effect on what you can and cannot do in public service and your private life. Thinking about these impacts in advance helps you determine whether public service is right for you at this time in your life.

2 How Can I Determine the Impact of These Laws on Me?

These laws are extraordinarily complex. There are several steps you can take to make a preliminary assessment of how these laws will affect you, based on your activities and assets. Although going through these steps is no substitute for legal advice, doing so will give you a better sense of whether it is realistic for you to serve and whether you need to seek additional assistance.

STEP 1: Understand the duties and roles of the office you seek.

Understanding the position you are seeking makes sense for all kinds of reasons, of course. Most importantly, such an understanding will help you determine whether you will find public service personally satisfying. It can also help you understand how the ethics laws might affect your service in that position.

Research strategies include:

- If you are applying for an appointive position, the appointing agency will typically have a description of what the appointed body does. Check out the agency's website or contact either the clerk's or administrator's office.
- If you are running for an elected position, the agency's website can give one a good sense of what the agency's responsibilities are. Elected officials are usually responsible for providing policy direction to paid, professional agency staff, as well as making budgetary decisions and hiring top staff members. The agency's charter and ordinances are other sources of information, as are associations of local agencies like the one in which you wish to serve; examples include the California Special Districts Association (www.csda.net), the California State Association of Counties (www.csac.counties.org), and the League of California Cities (www.cacities.org).
- Review meeting agendas. Many agencies post these on their websites; if not, check with the agency's custodian of records (typically the clerk).
- Attend meetings of the body to gain a deeper appreciation of what the position involves. Some public body meetings are also televised; check the local public-access channel for your cable television provider.
- Talk to those who already serve in the position you seek. Find out what kinds of responsibilities the position involves and what kinds of decisions they make. Ask questions about time commitments (remember attending meetings typically involves preparation time in reviewing agenda materials), including service on collateral decision-making bodies (sub-committees, joint powers agencies, regional bodies, statewide associations and so on). Individuals who have similar professional, investment, business or other interests can be particularly helpful in understanding what kinds of potential conflicts-of-interest or other ethics law issues arise.

STEP 2: Think About How These Responsibilities Might Intersect with Your Professional, Business, Family, Investment and Personal Interests

Here are some strategies:

⇒ Review a copy of a Statement of Economic Interests (Form 700), which is available online from the Fair Political Practices Commission. It will give you a good sense of the kinds of activities and assets you may have to disclose, as well as those which may form the basis for a disqualifying conflict of interest.

⇒ Disclosure obligations vary somewhat by the office you are seeking, but generally disclosure requirements include business interests, investments and real property interests, and exclude bank accounts and some loans. For more information, see "Your Duty To File: A Basic Overview of State Economic Disclosure Law And Reporting Requirements For Public Officials" available from the Fair Political Practices Commission. (See reference list on pages 11-12 for information on how to obtain a copy.)

⇒ Think about your work activities. Do you or your company presently do business with your agency (or is there a desire to do business in the future)? Is where you work extensively regulated by the entity on which you wish to serve? Is your business located in the heart of a downtown revitalization effort that will be a major focus of the agency's effort?

⇒ Is your home or other property close to a problem that you want to address once you get into office?

⇒ Remember that the conflict of interest rules typically extend to assets, income and liabilities of your spouse or domestic partner, as well as those of dependent children. Does your spouse (or do you) work for the organization in which you seek a position, or an organization that receives funding from your agency? Is there a possibility that family members might want to work for the agency and their ability to do so might be affected by conflict-of-interest and/or anti-nepotism rules?

⇒ Consider other family and personal relationships as well. Even though these may not form the basis of a legal conflict of interest, such relationships can nonetheless create questions in the community about whether you are truly putting the community's (as opposed to your friends' and family's) interests first.

⇒ Social relationships will also be affected by your public service. If your golf, bridge or gourmet group typically includes people who will be serving on the same body as you, the media and others are likely to question whether you are discussing agency business outside an open and publicized meeting. The same thing may occur if you serve on community boards together, work at the same place, or participate in the same service clubs.

⇒ Similarly, how you socialize and travel may be affected. If you routinely vacation or receive sporting event tickets or similar gestures from those with business before your decision-making body, you may need to include those activities on your disclosure forms. In some instances, such gestures may be subject to dollar value limits or disqualify you from participating in decisions affecting those individuals. Legal issues aside, consider the public's perception of the effect of such activities on your inclination to put the public's interests first in your decision-making.

These are just a few of the kinds of questions that are helpful to ask yourself as you consider public service.

STEP 3: Determine Whether You Would Benefit from More Information on How the Law Would Affect Your Public Service

If the answers to the above questions suggest you would face either legal or ethical issues as a public servant, check out the resources for further reference on the following pages. Consult an attorney knowledgeable about public sector ethics laws.

- Talk with the agency attorney. Keep in mind, however, that he or she is not providing information to you as part of an attorney-client relationship and your conversation will not be confidential. Because of this, the agency attorney may feel most comfortable referring you to resources for further information or to attorneys who can help you. Help may also be available from an agency ethics commission or officer.

- If your issue arises under the Political Reform Act, the Fair Political Practices Commission may be able to offer advice. Check out the FPPC's website to get a sense of the agency's jurisdiction and contact information.

  Fair Political Practices Commission
  (866) ASK-FPPC (Toll-free) or (916) 322-5660
  www.fppc.ca.gov

- Go to www.cacities.org/munilink. In the "Find a Vendor" area, select category "Attorneys & Legal Services" and click on the "Search" button. In the "Legal Specialty" menu, select the specialty that you want more information about. Ethics-related specialties include "Campaign Regulation," "Conflict of Interest" and "Nature & Limitations on Elected & Appointed Officials."

- There is an association of attorneys who practice what is known as "political law" that includes some aspects of ethics law.

  California Political Attorneys Association
  www.cpaaonline.com
  E-mail: info@cpaaonline.com

  Similarly, the professional association for attorneys in California provides attorney referral services and maintains a list of approved attorney referral services

  The State Bar of California
  San Francisco (Main Office)
  (415) 538-2000 or (213) 765-1000 (LA office)
  http://calbar.ca.gov (Click on "Public Services" followed by "Finding an attorney for legal advice.")

✓ Key Concepts

There are a number of questions you can ask yourself to determine whether public service is right for you in terms of both your personal objectives and your financial situation. This is a preliminary list. If the answers to these questions cause concern, get additional information.

A Note about Campaign Ethics Laws and Principles

Even the act of running for public office involves compliance with a variety of laws, including fairly complex campaign disclosure laws. The Fair Political Practices Commission offers a number of fact sheets and other resources to help candidates understand these requirements. Visit the publications page at www.fppc.ca.gov for more information about these laws.

Selecting a campaign treasurer with care is critical. The individual has important responsibilities and liabilities under the law. Select someone with an aptitude for careful financial record-keeping as well as patience for understanding and complying with complex requirements.

Check with your agency to determine whether there are local campaign laws you need to be aware of as well.

Some other tips:

⇒ Be alert for situations in which people try to link support for your candidacy with an action you will take as a public official. It is a crime to link any action you will take as a public official with receiving campaign contributions or other benefits.

⇒ Also be careful about taking positions on issues that may come before the agency in which you will be acting in a "quasi-judicial" capacity. An example is when decision-makers are applying agency policies to specific situations, such as permit entitlements. If you have expressed a strong opinion that indicates that you cannot be fair and open-minded at the hearing, there may be an effort to disqualify you from participating (or to invalidate the decision in which you participated) because of bias.

Interested in setting a higher tone for your campaign activities in general? The Institute's website offers a host of resources on campaigning both ethically and effectively at www.ca-ilg.org/campaignethics.

3 Where Can I Get More Information and Assistance?

This pamphlet is only intended to provide an overview of the areas of ethics law for which you should prepare yourself as a candidate; it does not attempt to delve into the many complexities and situation-specific rules that may apply to your personal situation. The following resources can help you learn more about these issues.

Personal Financial Gain

Fair Political Practices Commission

Can I Vote? A Basic Overview of Public Officials' Obligations under the Political Reform Act's Conflict-of-Interest Rules (revised 7/05) (www.fppc.ca.gov/index.html?id=37)

Attorney General

Conflicts of Interest **(2004).** Provides information to assist government officials in complying with California's conflict-of-interest laws and to assist the public and news media in understanding and monitoring situations that may give rise to conflicts of interest (http://ag.ca.gov/publications/coi_2004.pdf).

Institute for Local Government

Key Ethics Law Principles for Public Servants **(2005).** Contains a conflict of interest checklist on the back that alerts local officials to situations triggering a need to consult with their agency counsel on ethics legal issues (www.ca-ilg.org/ethicsprinciples).

Personal Advantages & Perks

Fair Political Practices Commission

Limitations and Restrictions on Gifts, Honoraria, Travel and Loans for Local Elected Officers & Candidates for Local Elective Offices, Local Officials Specified in § 87200, Judicial Candidates, Designated Employees of Local Government Agencies *(revised 08/05)* (www.fppc.ca.gov/factsheets/giftlocal.pdf)

Travel Guide for California Officials & Candidates (www.fppc.ca.gov/index.html?id=32)

Institute for Local Government

Of Cookie Jars and Fishbowls: A Public Official's Guide to Use of Public Resources **(2004).** This guide explores ethical and legal considerations that bear on spending decisions, including such issues as travel reimbursement and personal use of agency resources. It also features a sample expense policy for local agencies to consider adopting (www.ca-ilg.org/fishbowl).

Government Transparency

Fair Political Practices Commission

Your Duty to File: A Basic Overview of State Economic Disclosure Law
(www.fppc.ca.gov/library/seibook9-04.pdf)

Form 700 Instructions
(www.fppc.ca.gov/index.html?id=36)

Attorney General

***Public Records Act Summary* (2004).** Provides an explanation and summary of the California Public Records Act for access to governmental information (http://ag.ca.gov/publications/summary_public_records_act.pdf).

***The Brown Act: Open Meetings For Local Legislative Bodies* (2003).** Provides a brief overview of the main provisions of the Ralph M. Brown Act, which govern open meetings for local legislative bodies. This pamphlet is intended to assist local legislative bodies in complying with California's open meeting laws and to assist those who monitor the performance of legislative bodies (http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf).

Institute for Local Government

***The ABCs of Open Government Laws* (2005).** This pamphlet explains the key provisions of the Brown Act and the Public Records Act (www.ca-ilg.org/abc).

Fair Processes

Fair Political Practices Commission

Campaign Contributions May Cause Conflicts for Appointees and Commissioners
(www.fppc.ca.gov/index.html?id=103)

General

Fair Political Practices Commission

How Do I Get Advice from the FPPC?
(www.fppc.ca.gov/pdf/advice.pdf)

Institute for Local Government

***A Local Official's Reference on Ethics Laws* (2005).** This guide summarizes key ethics law provisions relevant to public service, including financial interests, gifts and travel, use of public resources, governmental transparency and bias (www.ca-ilg.org/elr).

***Doing the Right Thing: Putting Ethics Principles into Practice in Public Service* (2006).** This pamphlet addresses AB 1234's "principles" requirement by explaining such things as the role that values and public perception plays in public service ethics. Among other things, the pamphlet is designed to be a handout at AB 1234 training sessions (www.ca-ilg.org/rightthing).

***Ethics Law Compliance Best Practices* (2005).** Interested in maximizing compliance with ethics laws? This checklist enables local agency officials to engage in a self-assessment of the agency's current compliance practices (www.ca-ilg.org/bestpractices).

***Everyday Ethics for Local Officials: Finding Your Way* (2005).** This booklet provides a framework for analyzing ethical dilemmas and then offers a series of analyses of the legal and ethical dimensions of commonly-encountered dilemmas (www.ca-ilg.org/everydayethics).

***Walking the Line: What to Do if You Suspect an Ethics Problem* (2005).** This pamphlet answers the most frequently-posed question to the Institute with an eight-step process. The pamphlet also has a comprehensive charts relating to ethics laws and the consequences for violating such laws (www.ca-ilg.org/whatodo)

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