General Duties

- Duty to avoid conflicts, or even the appearance or possibility of a conflict
- Public officials and employees must perform their duties:
  - In an impartial manner;
  - Free from bias caused by own financial interests; or financial interests of supporters

Government Code § 1090

General Rule
- A public officer or employee may not make contracts in which he or she is financially interested.
§ 1090 Test

Is §1090 Violated?

1. Is the financial interest a statutory “non-interest”?
2. Is the financial interest a statutory “remote interest”?
3. Does the “rule of necessity” apply?

The Rule of Necessity

- If a conflict exists, an agency may enter into a contract if the rule of necessity applies, i.e.:
  1. The contracting agent is the sole source for an essential supply or service; or
  2. An officer of the agency can carry out essential duties of the office when he/she is the only one who may legally act.

Effect of 1090 Conflict

- The legislative body is precluded from making the contract
- Abstaining is insufficient to alleviate a conflict
- Does not matter if contract is fair or more advantageous
- No “good faith” defense
- If the contract is already made, it is void and unenforceable
Political Reform Act Gov’t. Code § 87100

General Rule
- No public official may make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

Political Reform Act Test

1. Are you a public official making, participating in making, or attempting to use your position to influence a decision?
   - Do you exercise discretion or judgment with regard to the decision?
2. If yes, do you have an economic interest in the decision?
3. If yes, is your interest directly or indirectly involved in decision?
4. If direct, is your interest material?

Political Reform Act Analysis (cont.)

5. If material, is it reasonably foreseeable that the decision will have a material effect on your economic interest?
6. If foreseeable, is the effect distinguishable from effect on public generally?
7. If not, is your official participation nonetheless required?

If no → CONFLICT
**What do you do when a conflict exists?**

- Member of board, council, or commission must:
  1. Publicly identify, in detail, the financial interest
     - Unless closed session which only requires general disclosure of a conflict during a public meeting
  2. Leave the room/refrain from participating
  3. Disqualified officer may speak during time general public speaks on the issue if the conflicting interest is a personal economic interest
  4. Disqualified officer not counted in quorum
  5. Employees/Officials-No clear requirements, but should advise Manager/City Attorney immediately

**Limitations on the Receipt of Gifts – Govt. Code §§ 89503, 89506**

- A "gift" is any payment or benefit that:
  1. confers a personal benefit for which the official/employee/recipient does not provide goods or services of equal or greater value (including rebate/discount);
  2. is not offered in the regular course of business; to members of the public

**Does the Gift Limit Apply to You?**

- Elected state or local officers or candidates
- City Managers, City Attorneys, Public Officials who manage public investments (Govt. Code § 87200)
- “Designated employees” who are identified by an agency’s conflict of interest code
  - Each agency must have a conflict of interest code.
<table>
<thead>
<tr>
<th>Limitations on the Receipt of Gifts – Govt. Code §§ 89503, 89506</th>
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<tbody>
<tr>
<td>• Officials and candidates: 1) cannot accept any gift(s) from one source worth more than $420 in a single calendar year if required to report receiving gifts from that source. 2) are disqualified from participating in decisions involving the source of gift(s) of $420 or more in previous 12-month period</td>
</tr>
<tr>
<td>• Gifts aggregating $50 or more in a calendar year must be reported on Form 700</td>
</tr>
<tr>
<td>• Agency’s conflict of interest code may provide further information regarding disclosure of gifts</td>
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<th>Limitations on the Receipt of Gifts; Reg. 18944</th>
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<tr>
<td>Gifts to Family Members (Effective February 10, 2009)</td>
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<tr>
<td>• If the family member of a covered official receives a gift from a donor involved in a government decision the official is participating in, it will be considered a gift to the official unless the donor has an established working, social or similar relationship with the family member.</td>
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<th>Receipt of Gifts-Tickets and Passes (Reg. 18944.1)</th>
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<tr>
<td>• Covers “admission to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose.”</td>
</tr>
<tr>
<td>• The ticket is not a gift if provided to official by source other than agency to perform a ceremonial role or function on the agency’s behalf</td>
</tr>
<tr>
<td>• Agencies must adopt and post written policies regarding the distribution and reporting of such tickets to its officials</td>
</tr>
</tbody>
</table>
Exceptions to the Gift Limitations

• Exempt from Value Limitation but May Be Disclosed on Form 700:
  – Wedding gifts (half of value attributed to each spouse); and
  – Prizes that result from a bona fide competition not related to official status.

Exceptions to the Gift Limitations

• Exempt from Both Value Limitation and Disclosure Requirement (Form 700):
  – Gifts returned within 30 days of receipt to the donor or delivered to §501(c)(3) organization or government agency without claiming a deduction for tax purposes;
  – Gifts from close relatives (spouse, children, siblings, grandparents, aunts, uncles);
  – Unused tickets;
  – Informational materials (free or discounted admission to informational conferences);

Exceptions to the Gift Limitations (cont.)

• Exempt from Both Value Limitation and Disclosure Requirement (Form 700):
  – Personalized plaques with a value of less than $250;
  – Hospitality in a friend’s home;
  – Tickets to campaign events or fundraiser for a §501(c)(3) organization;
  – Bona fide campaign contributions;
  – Gifts exchanged with another in connection with birthdays, holidays, or similar events if gifts not disproportionate in value.
Penalties for Violation

- Giver and receiver are liable up to three times the amount of the unlawful gift.
- Administrative sanctions, including fines of up to $5,000 per violation.

CSMFO Code of Ethics

- Demonstrate highest ideals of honor and integrity
- Be accountable for your responsibilities
- Exercise prudence and integrity in management of funds
- Present financial statements and information fairly
- Maintain competence of self and staff

Confidence in Leaders
“Ethics - What Would You Do?”
CSMFO 2011 Annual Conference / February 2011
Presented By: Cepideh Roufougar, Esq., Liebert Cassidy Whitmore and Jan Perkins, ICMA Senior Advisor Partner, Management Partners, Inc.

“Is a City Manager Worth $800,000?”
Bell, California
July 15, 2010….LA times headline

- Blogs, Bloomberg News, Reuters, Associated Press, NPR, MSNBC, Fox
- Las Vegas Review-Journal (Editorial)
- LA Weekly, Washington Post
- ABC News, CBS evening news with Katie Couric
- The Early Show, NBC evening news

7 Investigations Underway in Bell

- L.A. County district attorney’s office
- U.S. Justice Department
- California attorney general’s office
- California controller’s office
- Federal Securities and Exchange Commission
- California Department of Corporations
- L.A. County auditor’s office

“Charges filed against city of Asheville human resources workers”
(misuse of Flexible Spending Accounts)

“The city HR Director and 3 other department employees face felony charges in a fraud investigation…The director faces 1 felony obstruction of justice charge for allegedly providing false information to police investigating possible fraud in the department. The others are charged with obtaining property by false pretenses.”
ICMA Tenet 13 (Don’t be stupid)

- Lying
- Falsifying records
- Breaking your promise
- Failure to “come clean” after the first mistake
- Careless e-mail
- Taking gifts
- Surfing porn sites using a city laptop
- Taking unapproved compensation and bennies
- Misuse of City credit cards
- Falsifying your credentials

Ethical Dilemmas
What would you do?

Donations for “Charity”

You are the Assistant Finance Director. You just heard that Building Department employees are organizing a charity event. They are asking developers, builders and lobbyists to donate. So far, they’ve gotten commitments from several companies to donate as much as $3,750 donated each. You learn that most of the people planning to attend the party will be Building Department employees.
“Ethics - What Would You Do?”
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Gifts: There is Always Free Cheese in a Mousetrap

Only a little...
You are the Deputy Finance Director. One of your accountants has been under a great deal of pressure and has taken more personal loans than he can handle. Trying to be supportive, you have talked to him about consolidating his loans. Another one of your accountants has approached you to discuss an accounting problem. The more you hear, the more concerned you become about possible impropriety. You begin to look into the matter quietly and become convinced that the employee has embezzled city funds. So far, only a small amount of money appears to be involved. You’d like to confront the employee and give him a chance to pay back the money. You would like to keep the problem out of the press. What do you do? Why?

A better benefit than expected
You are the Finance Director. The management team just finished negotiations with the City Manager and HR Director for an added benefit. They asked that when a management team member retires, if they have at least 5 years of service, they would get full retiree medical paid. When the staff report was written by the HR Director and sent to the Council for approval, you were surprised to see that the minimum number of years had been reduced to 3. Two months later, the City Manager announced his retirement. He had been there just 3 years and was now eligible for the new benefit. What do you do? Why?
Ethical Warning Signs

- “Don’t tell me, I don’t want to know…”
- “It’s okay if I don’t gain personally…”
- “Technically, it’s legal…”
- “Everybody does it…”
- “Yes, but…”
- “This won’t affect my work…”

Ways You Can Foster An Ethical Culture

1. Lead by example
2. Have good internal policies and enforce them
3. Conduct training

1. Lead by Example

- You are always being “watched”
- You set the “organizational tone”
- You can take action to champion ethical behavior
Your standards?

2. Have Good Internal Policies and Enforce Them

Policies That Can Help

- Regulations on outside employment
- Conflicts of interest
- How and when political activity is ok
- Limitations on accepting gifts
- Merit based hiring
- Credit card usage
- Use of city vehicles, computers, cell phones
- Social media
3. Conduct Training

- Offer opportunities to discuss ethical situations
- Provide counsel and advice
- Be consistent in enforcement actions and messages
- Create a safe reporting mechanism
- Recognize and commend concerns: Don’t shoot the messenger!

When An Ethical Problem Comes to Light, Be Ready to Answer……

- What did you know?
- When did you know it?
- What did you do about it?

Resources for Fostering an Ethical Culture

- Institute of Local Government/League of California Cities
- California Municipal Finance Officers Association
- International City/County Management Association
Moral Courage

“At least once in your lifetime take a risk for a principle you believe in, even if it brings you up against your bosses.”

Daniel Schorr

Thank you.

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