

05/21/19
City Council Meeting

Handouts received after
agenda posted

**City of Lemoore
Ethics, Whistleblowing
Brown Act & Public
Service:
Biennial Training 2019**

Part II

City of Lemoore

May 7, 2019

Presented by:
Jenell Van Bindsbergen

LS

JENELL VAN BINDSBERGEN

PARTNER

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EDUCATION

J.D., San Joaquin College of Law

B.A., California State University, Fresno

PRACTICE AREAS

Litigation

Labor & Employment

LOCAL GOVERNMENT BAR ADMISSION

California

OVERVIEW

Jenell Van Bindsbergen is a Partner in Lozano Smith's Fresno office and co-chair of the firm's Local Government Practice Group. In addition to local government and labor and employment issues, she is also experienced with matters relating to the Americans with Disabilities Act, Family and Medical Leave Act, Pitchess motions, OSHA matters, code enforcement, harassment, and discrimination issues, layoffs, administrative and court trials for certificated, civil service and classified dismissals, public safety and grievance issues.

Ms. Van Bindsbergen has practiced law on behalf of public agencies for more than 20 years. She is an experienced litigator on behalf of public agencies and has 20 years of experience representing Fresno County area cities. She provides a full range of legal advice and services in all aspects of municipal, finance and public agency law. She represents both municipal agencies and school districts in personnel and safety compliance litigation.

In addition to attending city council meetings and advising city councils with regard to legal matters affecting their cities, Ms. Van Bindsbergen has worked with police departments on Pitchess motions, POBR/FOBR issues, records, personnel matters, policy updates, search warrants and other code enforcement issues. Ms. Van Bindsbergen has represented police and fire departments on personnel matters including litigation, implementation of personnel policies, bids for departmental purchases, and implementation of the Police Officer Bill of Rights and Fire Fighter Procedural Bill of Rights

SIGNIFICANT CASES

- > In *Govan v. City of Clovis*, Lozano Smith successfully obtained dismissal of several constitutional and other statutory claims asserted by a plaintiff business operator against the City of Clovis individual City police officers, where the plaintiff challenged the City of Clovis' sign ordinance and its enforcement.



- > In *City of Clovis Police Department v. The Superior Court of Fresno County Appellate Division*, California Court of Appeal Case No. F07085, Lozano Smith successfully defended the City after a defendant appealed a ruling from the trial court denying an in camera review for failure to meet the standards required under California Evidence Code section 1043 and Pitchess. Following approval of the Defendants appeal by the Superior Court Appellate Division, Lozano Smith filed a writ of mandate with the 5th District Appellate Court, on behalf of the City, alleging various procedural errors and misapplication of the law. The 5th District Court found good cause to vacate the Superior Court Appellate Division Order.

ADDITIONAL EXPERIENCE

She has organized and litigated many cases including preparation of complaints, answers, correspondence, mediation/arbitration, summary judgments, motions and all phases of discovery, interaction with clients and co-counsel, statute calendaring, trial preparation and trial. Ms. Van Bindsbergen has also represented various cities and school districts in matters of ADA, FMLA/EFRA and other personnel matters.

ADMISSIONS AND AFFILIATIONS

She is admitted to practice before the U.S. District Court, Northern, Eastern and Central Districts. Ms. Van Bindsbergen is a member of the League of California Cities and the International Association of Chiefs of Police

WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Bakersfield, Fresno, Los Angeles, Mission Viejo, Monterey, Sacramento, San Diego and Walnut Creek.

AREAS OF EXPERTISE


- Charter Schools
- Community Colleges
- Facilities and Business
- Labor and Employment
- Litigation
- Local Government / Municipal Law
- Public Finance
- Public Safety
- Special Education
- Students
- Technology and Innovation

COST CONTROL is always a huge issue in education and an area we have mastered. We recognize and understand the financial restraints placed on those in education and work tirelessly to provide the very best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you up-to-date on changing laws affecting education. In addition, we offer extensive workshops and legal seminars which provide the tools needed to minimize liability, thus reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice for each of our offices statewide. Client calls are systematically returned within 24 hours and often sooner when required.

DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.

Required Topics



- PART II
 - Personal Financial Gain
 - Personal Advantages and Perks


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PART II

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10 Rules of Public Service



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10 Rules of Public Service

1. Approach your job as a service to the public.
2. Promise only good, fair, and honest service.
3. Pay for your own lunch.
4. Buy your own tickets to events.
5. Accept gifts from friends and family. Return gifts from others.
6. Ask the City to pay for your business travel expenses.
7. Do personal business outside of workplace.
8. Be open and transparent.
9. Be honest and fair in all your dealings.
10. Always do the right thing even when no one is watching.

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Interactive Presentation!

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2. Go to: pollev.com/lozanosmith

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PHONES
UP

How would you define corruption (using one to two words)?

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PHONES
DOWN

Public Corruption

corruption
noun cor-rupt-ion \kə-'rəp-shən\

Definition: Dishonest or illegal behavior especially by powerful people (e.g., government officials or police officers); inducement to wrong by improper or unlawful means (e.g., bribery).

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"An In-Depth Look at Public Corruption in California"



- August 2014 Report from United States Common Sense.
- On average, approximately 1000 public officials nationwide are convicted of corruption every year.
- Out of 70 California corruption cases studied, money was involved in over half, and the quest for power in all of them

"An In-Depth Look at Public Corruption in California"

Highlights:

- Bribery & monetary misconduct most common (54% of cases)
- Average of 1.99 years between crime and indictment
- Crime lasted on average 3.01 years
- Police corruption involved in 21% of cases
- 29% involved highly-ranked officials, including mayors
- Return to public office: 9 yes, 53 no, 8 unknowns

California Case Study



**FBI INQUIRY CONTINUES TO
UNEARTH CORRUPTION**
FORMER MAYOR SAYS HE'S DONE NOTHING WRONG

**CLOVIS CITY COUNCIL MEMBER HAS
BEEN TARGET OF FBI INVESTIGATION**

**FREEZE PROPOSED ON CLOVIS
PROJECTS TIED TO FBI INQUIRY**

**CLOVIS COUNCIL MEMBER NAMED IN
CORRUPTION INQUIRY**

**LOBBYIST ADMITS HELPING
CLOVIS LEADER EXTORT FUNDS**

Case Study: Operation Rezone

- 1994 Clovis Council members charged under federal law with tying campaign contributions to favorable votes on land use decisions (rezone).
- Developer was cooperating/wearing wires during conversations.

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Case Study: Operation Rezone

- Guilty pleas and jail time.
- Financial ruin.
- City embarrassment.
- Undo actions.

Star Pressed From
FresnoBee

**Clovis City Council Reverses
Votes on Fortune's Projects
Move Returns Parcels to
Their Previous Allowed Use.**

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California Case Study



Inland Empire, CA

"Arraignments delayed for 3 Beaumont corruption case"

- Gail Wasson, *The Press-Enterprise*, May 18, 2016

"Six Jailed in \$43 Million Beaumont Public Corruption Case"

- Renee Schiavone, *Patch*, May 18, 2016

"All seven former Beaumont officials plead not guilty in corruption case"

- David Daniels, *Press-Enterprise*, August 20, 2016

"Momentum for Inland Empire corruption cases still strong"

- Joe Nelson, *The Sun*, April 26, 2016

"Beaumont Assets may be frozen or seized"

- Richard N. DeMille, *Press-Enterprise*, May 20, 2016



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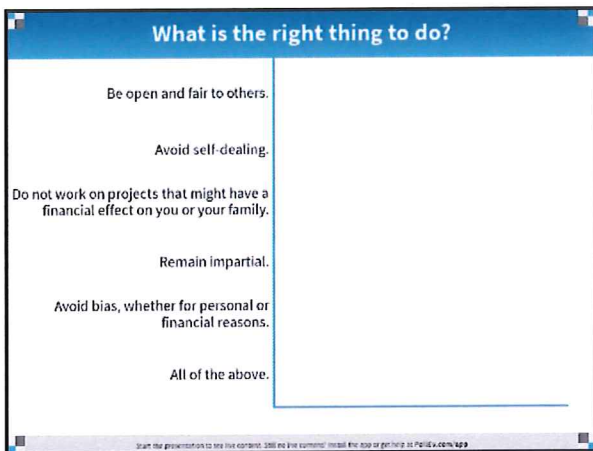
Inland Empire, CA

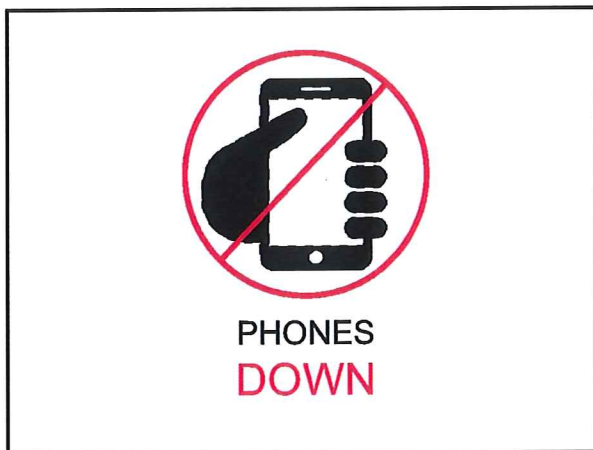
- For 6 years, the FBI and District Attorney investigated local public agencies in Riverside and San Bernardino Counties.
- City of Beaumont: Former City Manager, Police Chief, Public Works Director, City Attorney, Economic Development Director, Finance Director, and City Planner all indicted for embezzlement and misappropriation of public funds.
- Vehicles of corruption included:
 - Bond refinancing
 - No-interest loans
 - Misappropriation of transportation development impact fees

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What If a Red Flag Is raised?



- Stop and confer: Supervisor, City Attorney's office, online resources, FPPC, etc.
- Often, a conflict of interest is not readily apparent.
- There are hundreds of constantly changing rules that apply. Know when to ask questions.

Personal Financial Gain

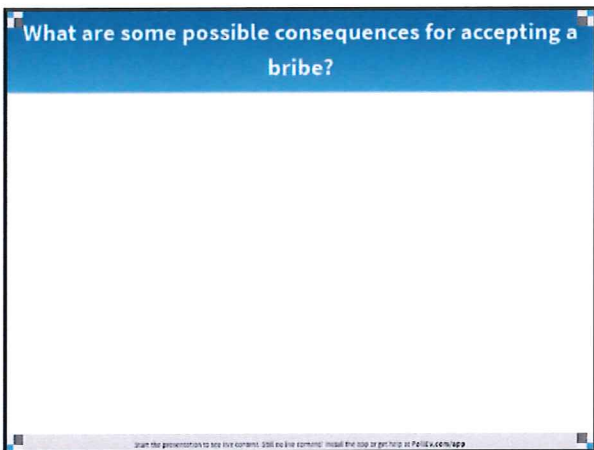


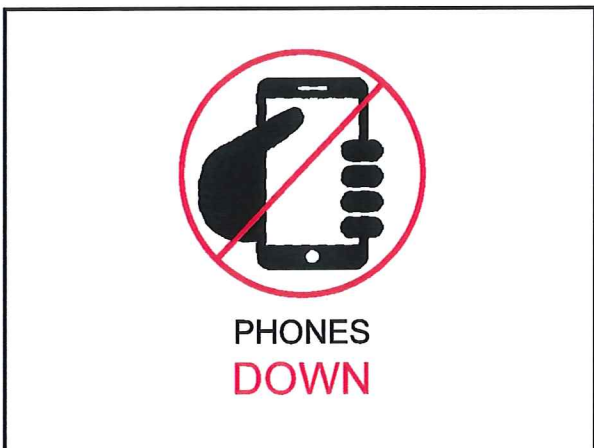
Personal Financial Gain

Bribery

Public officials may not solicit, receive or agree to receive a benefit in exchange for their official actions.







California Case Study

"South El Monte Mayor pleads guilty to bribery"

California Newsday, August 2, 2010

"South El Monte Mayor resigns"

California Newsday, August 11, 2010

"State audit underway as Ex-South El Monte Mayor pleads guilty to bribery"

California Newsday, September 5, 2010



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Personal Financial Gain

• South El Monte

- Mayor plead guilty to accepting \$45,000 in bribes from a city contractor in exchange for the approval of City contracts.
- Up to 10 years in federal prison.
- Pending comprehensive State audit of City records at City expense.

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Personal Financial Gain

California Political Reform Act 1974

"Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

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Personal Financial Gain

General Rule

You may not make, participate in making, or use official position to influence a governmental decision if the decision could have a reasonably foreseeable material financial effect on the official, immediate family, or any financial interest.

Personal Financial Gain

"General Public" Exception

- *General rule:* No conflict where financial effect is indistinguishable from the public generally.
- *Examples:* Utility rates applied equally; City-wide license fees; limited neighborhood effects (e.g., traffic controls, nuisance regulations); all renters.

Personal Financial Gain

The Fair Political Practices Commission

- Administers and enforces the Political Reform Act.
- Consultants are available to provide telephone or written advice.
- Only written advice can be relied on in civil or criminal prosecution.



Personal Financial Gain

Materiality Standards

- Looking for impacted financial interests in:
 - Business entities;
 - Sources of income;
 - Gifts;
 - Official or immediate family's personal finances; and
 - Real property.

Personal Financial Gain

Types of Economic Interests



Personal Financial Gain

Business Entities

- *New "Catch-all" Test:* Even if the business entity is not the subject of a governmental decision, the effect is material "if a prudent person with sufficient information would find it reasonably foreseeable that the decision's financial effect would contribute to a change" in the value of the business entity or stock.

Personal Financial Gain

Source of Income

- Look to income from the sale of goods and services, including a salary; income from the sale of personal or real property.
- *Nexus Test*: "the official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision."

Personal Financial Gain

Source of Gifts

(\$500 or more)

- This section cross-references other materiality standards (business, real property).
- New standard where the source is a nonprofit. Materiality will exist "if the nonprofit will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property."

Personal Financial Gain

Real Property

- As of March 22, 2019
 - Materiality standards –
 - Within 500-feet of officials property - presumption of material impact
 - 500-feet to 1000 (Need to review factors)
 - More than 1000 – presumption no material impact
 - *However, always look at the facts and ask: Would a reasonable person believe that it is reasonably foreseeable the decision would influence the market value of the official's property.*

Personal Financial Gain

Real Property

500-feet to 1000 factors

a decision will have a material impact on the official's property interest if:

- it would change the parcel's development potential, income-producing potential, highest and best use, market value, or, if it would change the parcel's "character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality."

California Case Study

"Port Hueneme councilman fined by state commission"

sanjonews.com August 2011



Personal Financial Gain – Real Property

• Port Hueneme

- FPPC fined councilman \$3,000 because he did not recuse himself from vote allowing for \$370,000 and \$762,000 in upgrades for Hueneme Beach Park and Moranda Park. His house is within 500 feet of the parks.
- Councilman argued that the improvements were minimal and that the 500-foot rule had become more of a "guideline" in recent years.

Personal Financial Gain

If You Are Disqualified:

1. Do not participate
2. Do not discuss or influence (staff or colleagues)
3. Identify *precise* nature of conflict at meeting
4. Leave room (unless matter on consent)



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Personal Financial Gain

Special Rules for Contracts

- Public officers may not be financially interested in a contract.
- Applies to both oral and written contracts.
- A legislative body cannot enter into a contract if a member has a financial interest in the contract.

Limited Exception: "Rule of Necessity" (essential goods or services).

➤ Abstention required

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Case Study: The Travel Store

- Elected official in travel agency business.
- Voted on consent calendar to approve payments to her travel agency (\$28,481 total).
- Failed to disclose on SEI.
- Possible fine under PRA: \$76,000 (ultimate fine: \$29,000).

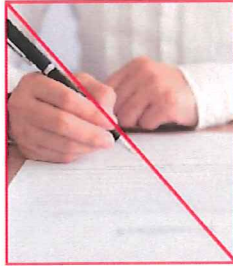


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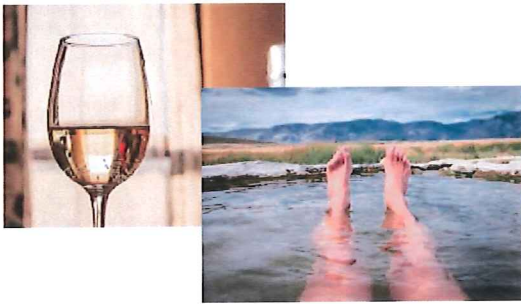
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Harsh Penalties and Remedies

- Contract is void and unenforceable.
- Criminal, civil, and administrative sanctions.
- With conviction, public official is forever banned from holding any office.



Personal Advantages and Perks



Personal Advantages and Perks

Two Kinds of Perk Rules

1. Perks that others offer you (*i.e.*, gifts).
2. Perks that you give yourself (*i.e.*, use of public resources).



Perks Others Offer

THE FRESNO BEE • LOCAL & STATE • THURSDAY, OCTOBER 5, 2006

Colma official accused of illegally accepting gifts

COLMA — A City Council member running for re-election was indicted for allegedly accepting gifts from a cardroom owner, then voting on matters that benefited the business.

Council Member Phillip Lum Jr., 55, is charged with conspiracy and mail fraud. Lum allegedly took multiple vacations to the Philippines paid for by the Lucky Chances Casino, failed to report those trips as required by law and voted on issues affecting the cardroom, according to the federal indictment unsealed Tuesday.

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Personal Advantages and Perks

Gifts from Others to Officials

- Gifts do not always have bows, and can include meals, tickets to events, and travel expenses.
- Elected officials and executive heads of public agencies, as well as those with significant decision-making authority must be aware of gifts from all sources.
- For all others, be aware of gifts from sources that do business with the City.

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Personal Advantages and Perks

Gift filers report **\$50 and up** single source calendar year – cumulative.

Gift filers limited to **\$500** single source per calendar year

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Personal Advantages and Perks

Honoraria Ban

(Gift Filers)

- Payments for speaking, writing or attending events
- Such communications are part of the public official's service

Consequences/Penalties:

- Up to \$5,000 per violation

Personal Advantages and Perks

Gifts from Others to City

- Must be used for official City business
- City Manager must control who uses the gift
- Must complete FPPC Form 801



Personal Advantages and Perks

Gifts from City to Officials

- Considered reportable gifts to the official unless food, beverage, etc., of nominal value or lawful expenditure of public funds.
- Gift rules apply to City raffles unless an employee donates gift or gift is paid for by City (except tickets).
- Gift exchanges okay as long as gifts of similar value.

Personal Advantages and Perks

Tickets and Passes

- Gift rules apply to event tickets and passes, even if provided to the City and passed through to the official.
- Includes admission to events the City operates.
- Within 45 days of distribution, City must complete and post FPPC Form 802



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Personal Advantages and Perks

Gifts from Family & Friends

- Gifts from spouses, children, parents, grandparents, grandchildren, siblings, in-laws, aunts, uncles, nieces and nephews, first cousins, are not "gifts," unless intermediary for someone else.
- Gifts among friends exchanged at holidays, birthdays, or similar occasions if not substantially disproportionate value
- Wedding gifts must be reported at 50% value, but there is no limit on the amount.
- Exception for bereavement offerings, acts of neighborliness, dating relationships, acts of human compassion.

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Personal Advantages and Perks

Travel Payments from Others to City

- Must be made directly to City or coordinated with City.
- Must be for official City business, as defined, but confer no personal benefit.
- Must be consistent with City's Travel Reimbursement Policy.



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Personal Advantages and Perks

Travel Payments from Others to Officials

- A payment for travel *reasonably related to a governmental purpose* is reportable but not subject to the gift limitation or honoraria ban under two circumstances:
 - In connection with a speech given by the official; limited to the days immediately preceding and immediately following, and travel within the United States;
 - or
 - Payment is by a government agency.

Personal Advantages and Perks

Use of City Resources

- **Rule:**
 - Personal use of public resources prohibited (including staff time and agency equipment).
 - Political use of public resources also prohibited, includes support or opposition of candidates or local ballot measures.
- **Purpose:** To restrict incumbent's advantages.
- **Mass Mailing Restriction:** May not use public funds to send 200 or more mass mailers containing the name or picture of elected official, except under very limited exceptions.

Personal Advantages and Perks

Authorized Expenditures

- Pursuant to City reimbursement policy
- May only be for actual and necessary expenses
- Know City policy and limits
 - Rates for food, lodging, and transportation
 - The importance of documentation

Personal Advantages and Perks

Misuse of Public Funds

- When not authorized or for a public purpose.
- Occurs when personal benefit is not merely incidental.



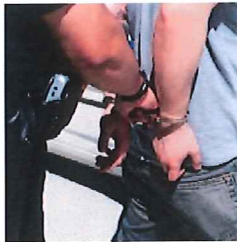
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Personal Advantages and Perks

Consequences of Violations

- Civil penalties: \$1,000/day fine plus 3X value of resource used.
- Criminal penalties: 2-4 year prison term plus disqualification from office.
- Can also have income tax implications.
- Costs for hiring defense lawyers.



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Case Study: Sacramento Suburban Water District

- Staff and directors misusing public resources.
- Investigative report by *Sacramento Bee*.
 - Use of agency credit card for personal purposes.
 - Misreporting of income.
 - Double-dipping on expense reimbursements.
- Legislative response: AB 1234

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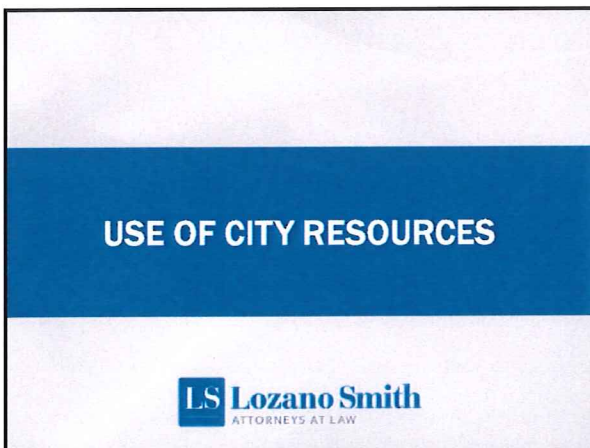
Personal Advantages and Perks

Best Practices



- Avoid perks **and** the temptation to justify them
 - Legally risky
 - Public relations headache







PHONES
UP

Scenario 1: Use of City Credit Card

- You have a City credit card, which normally you use only when you are on official travel. On Sunday, however, your daughter calls from college to tell you that she needs a new laptop because her old one was destroyed when she jumped into a mosh pit. (She refuses to give you any further details.) You quickly purchase a new one on-line for \$900, but since your credit card is at home, you use your City credit card, knowing you will pay the bill when you get it.

QUESTION: Since this is no cost to the City, it's ok, right?

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Scenario 1: Since this is no cost to the City, it's ok, right?

It is ok as long as you pay the credit card bill on time.	No, it is not ok, but will likely not be investigated because of the low dollar value	No, the credit card may not be used for any personal expenses.
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Scenario 1

CORRECT ANSWER: #3.

- Per City Policy, the credit card may only be used for business-related expenses while performing official duty.
- Also unlawful use of City resources.

Scenario 2: Assistance with Non-Profit Event

- Joe is an officer in the local fraternal lodge in town and a management member of the Police Department. Each year the lodge puts on a bar event in connection with the community pig flying festival and the proceeds are used exclusively for local charities and needs within the community. Joe receives no personal compensation in connection with this event. The fraternal lodge expects Joe to use his City connections to help make the event a success.

QUESTION: What should Joe do?

Scenario 2: What should Joe do?

Make all the necessary arrangements with the City and insure that the event will go off smoothly. Appoint someone else to make all the arrangements. Just not worry about it.

Scenario 2

CORRECT ANSWER: ?

- Joe does not have a financial conflict since he is an officer for a non-profit company and receives no compensation. However, he needs to watch for an unlawful use of City resources (staff time, use of City facilities and equipment). He should also look for the appearance of impropriety and ethics principles may apply even if no legal conflict.

GIFTS AND SIMILAR PERKS

Scenario 3: Receipt of Gift Baskets

- During the holiday season, some vendors provide gifts to the City for whom they do business or would like to do business. An engineering firm has provided 10 employees gift baskets valued at \$75.00 each.

QUESTION: Can the employees accept the gift?

Scenario 3: Can the employees accept the gift?

<p>Yes, the basket would look beautiful under your tree.</p>	<p>No, it is not ok, but everyone does it and it is an accepted norm.</p>	<p>No, the employee may not accept the gift.</p>
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If you are the presenter, please use the content. Still not clear? Contact the app or get help at help@pellicy.com

Scenario 3

CORRECT ANSWER: #3.

- No, the employee may not accept the gift. City policy prohibits receipt of such gifts. For employees required to report gifts, such gifts would also be reportable since they exceed \$50.

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Scenario 4: Discounted Carpet Through Developer Account

- Nancy is an employee of the Planning Division. At a social function Nancy's husband Jim meets Frank, a local developer and tells Frank that they are shopping for new carpet. Frank gives Jim one of his business cards and says show it to the salesman at the "Thread Bare Carpet Store" which is known to have the best deals in town any way and tell the salesman you would like to get the company discount. The developer doesn't receive any money from Nancy or Jim, spend any money on Nancy or Jim, or even provide the store any personal direction.

QUESTION: Should Nancy take advantage of the discount?

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Scenario 4: Should Nancy take advantage of the discount?

<p>Yes, Nancy should present the card to the sales man at the Thread Bare Store and see if she can get a better price than the last one that got quoted.</p>	<p>No, Nancy should drop the card in the trash and continue ahead with shopping and negotiating price including the Thread Bare Carpet Store.</p>	<p>Nancy should continue to shop for carpet but avoid the Thread Bare Carpet store, even if she has to pay more somewhere else.</p>
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Scenario 4

CORRECT ANSWER: # 2.

- The value of the discount likely meets the threshold for having a personal financial effect on Nancy. If Nancy accepts the discount she will be disqualified from working on any projects involving the developer. Nancy can continue to negotiate with Thread Bare on terms available to the public generally.

Note: To avoid even the appearance of impropriety, Nancy may wish to return the card to the Developer.

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Scenario 5: Upgraded Amenities with Purchase of New Home

- David works in the Finance Department. In the process of talking with a home builder David tells the builder that his family is purchasing one of his homes. As it turns out this is the least expensive new home for sale in town and when this tract is built out prices are sure to go up way beyond what David's City income would qualify him for. The builder casually says that he had some custom up-graded cabinets that were ordered for a similar house and were double shipped and he will be installing them in one of his homes anyway, when he says I'll make sure they end up in your home.

QUESTION: What should David do?

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Scenario 5: What should David do?

<p>Thank the builder for his generous offer and be relieved that he is getting a good deal that is really not costing the builder anymore to provide.</p>	<p>Immediately decline the offer and take what ever gets put in the house in the way of cabinets without any further discussion.</p>	<p>Accept the offer and figure out the added value and declare the value in the conflict of interest form.</p>
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Thank the generous builder for his content. Still no free content! Install the app or get help at Pillitx.com/app

Scenario 5

CORRECT ANSWER: # 2.

- The value of the cabinets will exceed the gift limit of \$470 and David will be prohibited from participating in any decisions involving the developer.
- Acceptance of the cabinets may also violate the City's gratuity/gift policy.

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PROSPECTIVE EMPLOYMENT

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Scenario 6: Employee Job Search

- Jim is a public utilities supervisor. He is responsible for overseeing the City's recycling operations including contracts with private vendors. ABC Recycling Company has a contract with the City to provide recycling services. ABC is impressed with Jim's work and would like him to apply for the position of president of regional operations. No interviews or offers have been made but Jim would like to be considered for the position. Contract renewal negotiations with ABC are up for consideration in three months.

QUESTION: May Jim negotiate and accept a job with ABC?

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Scenario 6: May Jim negotiate and accept a job with ABC?

Yes, Jim may interview with ABC and accept an offer of employment provided the negotiations are completed and offer is accepted before the ABC contract renewal for three months.

No, Jim should not interview and refuse any offer of employment unless his recycling management responsibilities are transferred to someone else.

Jim may submit a resume and application to ABC but may not negotiate or accept any offers of employment while he is employed with the City.

Start the presentation to see the options. Click on the options to make the app or get help at P016.x.com/1629

Scenario 6

CORRECT ANSWER: # 2 or # 3.

- Local officials may not make, participate, or influence any decision directly relating to a prospective employer while they are negotiating employment or after they have reached an employment arrangement. (Sec. 87407.) Submitting a resume without more is probably not considered negotiations.

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MATERIAL FINANCIAL EFFECT AND BIAS



Scenario 7: Planning Commission Consideration Of Cup

- The Planning Commission is considering a CUP for a liquor store that will sell alcohol. John is a Planning Commissioner who owns a tutoring business in the same shopping center 3 stores away. John is also friends with an ABC investigator. When John learns of the proposal after the matter is agendaized for the Planning Commission's consideration, John has a concern that the liquor store is too close to his business because his business is frequented by young children. John also knows from his friend that the applicant has previously been investigated for selling alcohol to minors in other cities where the applicant does business. His friend also told John that the applicant has pending city code violations in the other city.

QUESTION: How should John proceed?



Scenario 7: How should John proceed?

Review the staff report, call staff with any questions, tell the commission about his concerns with the location of the business and the applicant, but abstain during voting on the matter.

Refrain from all participation in the matter, including the deliberations.

Prior to the Commission's consideration of the matter, identify on the record that he has a financial interest because he owns a business within 500 feet and remove himself from the room while the matter is considered.

Visit the presentation to see the content. Tell us the content! Visit the site to get help at PACIL.com/qa

Scenario 7

CORRECT ANSWER: # 2 and # 3.

- A land use decision within 500 feet of property owned or leased by the official is presumed to have a material financial effect. The Planning Commissioner may still speak as a member of the public to express his concerns.

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Scenario 8: Council Member Contact with Neighborhood Association

- Susan is a council member. She had concerns about a project in an environmentally sensitive area. She met with members of a neighborhood association opposed to the project and discussed the project with them. The project came to the Council for consideration of discretionary permits. The neighborhood association came to the meeting and opposed the project.

QUESTION: What should Susan do during the public hearing?

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Scenario 8: What should Susan do during the public hearing?

Introduce the neighborhood association and ask them to speak in opposition to the project. Note her contacts with the neighborhood association on the record but express her belief that she can be impartial and therefore participate as usual in the decision-making process. Recuse herself from participating in the proceedings because of her prior contact with the neighborhood association and pre-conceived opposition to the project.

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Scenario 8

CORRECT ANSWER: # 3.

- Although there is no financial conflict of interest, Susan's pre-conceived position and contact with the neighborhood association could be deemed to deprive the applicant of a fair hearing under common law bias/ due process principles. Query whether project applicants need to raise the bias issue. (Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470.)





PHONES
DOWN

What's New for 2019?



- Basic principles still apply.
- May now be more cause to seek FPPC advice on certain issues.



Additional Resources

- Institute for Local Government
www.ca-ilg.org
- California Fair Political Practices Commission
www.fppc.ca.gov
- California Attorney General
www.oag.ca.gov/publications



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Questions



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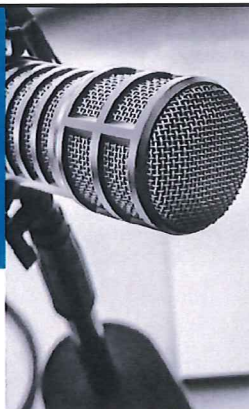
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For more information, questions and
comments about the presentation,
please feel free to contact:

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Or any of the attorneys in
one of our 8 offices.

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Raquel White

**Central
Regional Compliance
Manager**

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Community Round Table

Do you have ideas and concerns that you would like to discuss with the City Manager? If so, this is your chance! Register to attend the Community Round Table Meeting.



Date: May 30, 2019

Time: 5:30 PM to 6:30 PM

**Location: CMC Large Conference
Room, 711 W. Cinnamon Dr.**

**Contact Heather Bonilla at (559) 924-6700
or hbonilla@lemoore.com to reserve your
spot!**



City of Lemoore

Presentation of the June 30, 2018 Financial Statement Audit to the City Council

May 21, 2019

Fausto Hinojosa, CPA CFE



PRICE PAIGE & COMPANY
Accountancy Corporation

AGENDA

- About the Firm
- Audit Process
- Audit Areas of Emphasis
- Auditors Reports
- Key Financial Statement Items
- Required Communications
- Discussion/Questions



PPC Background

- Founded in 1976 – 40 years
- Top 10 firm in Fresno and surrounding counties
 - Deep specialization in serving governments
 - Over 80 audits of municipalities, special districts, counties and nonprofit organizations
- PPC consists of 40 dedicated employees, including 14 CPA's



Engagement Management Team

- Fausto Hinojosa, CPA - Engagement Partner
- Josh Giosa, CPA – Audit Manager
- Anthony Gonzales, CPA – Senior Auditor
- This team of professionals has over 45 years of combined experience providing audit services



Audit Process

- Assess Risks of Error & Fraud
 - Obtain understanding of City operations
 - Internal Control
 - Effectively designed?
 - Placed in operation?
- Develop procedures to obtain evidence about financial statement balances/transactions



Audit Areas of Emphasis

- Cash
- Revenues and Receivables
- Expenses (including salaries)
- Current/Long-term liabilities
- Capital Assets
- Net Pension Liability
- Federal Compliance Audit



Auditors Report on Financial Statements

- Unmodified opinion (Clean Opinion)
- Audit performed in accordance with AICPA and Government Auditing Standards
- Financial statements are fairly presented in all material respects
- Significant accounting policies have been consistently applied
- Estimates are reasonable
- Disclosures are properly reflected in the financial statements



KEY FINANCIAL STATEMENT ITEMS



PRICE PAIGE & COMPANY
Accountancy Corporation

General Fund (Pg. 8)

- Assets - \$9.7M
- Liabilities - \$631K
- Fund Balance
 - Total - \$9M
 - Unassigned - \$6.4M



General Fund (Pg. 10)

- Revenues - \$10M
- Expenses - \$10.2M
- Loss - \$169k



Enterprise Funds (Pg. 15)

	Water	Sewer	Refuse	Golf
Revenues	5,708,314	3,782,247	3,050,488	1,120,043
Expenses	(4,679,779)	(3,455,385)	(3,140,580)	(1,204,322)
Nonoperating	467,023	81,333	18,469	(39,493)
Net income (loss)	1,495,558	408,195	(71,623)	(123,772)



Pension Liability (Pg. 4)

- Governmental - \$9M
- Enterprise - \$3.3M
- Total - \$12.3M



Pension Liability (Pg. 47)

- Discount Rate Sensitivity:
 - 6.15 - \$19.2M
 - 7.15 - \$12.3M (current rate)
 - 8.15 - \$6.7M



Government Auditing Standards Report

- Internal Control
 - Two material weaknesses
 - Year-End Closing Process
 - Journal Entries
- Compliance
 - No findings



Required Communications

- Significant Accounting Policies – no changes
- Significant Estimates
- Sensitive Disclosures
- Difficulties Encountered in Performing Audit
- Significant Audit Adjustments
- Disagreements with Management
- Fraud and Illegal Acts

