

AB 1234 Self-Study Materials

Part I: Financial Interests and Perks

AB 1234 requires elected and appointed officials to take *two hours* of ethics training if they receive compensation for their service or are reimbursed for their expenses.¹ The ethics training requirement may also apply to agency employees designated by the agency's legislative body.²

There are many ways to satisfy this requirement, including in-person training and self-study activities. Moreover, like all ethics laws, AB 1234 is a floor, not a ceiling. Local officials can demonstrate their commitment to ethics in public service by going beyond AB 1234's minimum requirements.

This self-study exercise is eligible for *one hour* of AB 1234 self-study credit (or half of the minimum requirement). To claim self-study credit, log on to www.ca-ilg.org/AB1234selfstudy, print out and take the test, mail it to the address indicated with the \$37.50 processing fee. This fee covers grading the test, providing the correct answers (and explanations) and your proof of participation certificate.

Scope of This Self-Study Exercise

These materials cover the first two areas of ethics training required by AB 1234:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws); and
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources and prohibitions against gifts of public funds.³

It also covers ethics principles related to these laws and ethics in public service in general.

Self-study materials that cover governmental transparency and fair process laws may be found here: www.ca-ilg.org/post/ab-1234-self-study.

Note that public service ethics laws are extraordinarily complex. The learning objective of both self-study and in-person AB 1234 training courses is to familiarize local officials with when they need to consult agency counsel, the Attorney General or the Fair Political Practices Commission about a given situation or course of action.

Moreover, the ethics laws and training requirements of AB 1234 are both *minimum* standards. Just because a course of action is legal doesn't mean that it is ethical or that the public or media will perceive it to be so. Local officials are strongly encouraged to go beyond the minimum standards set forth in the law and participate in additional educational activities relating to their legal and ethical obligations as public servants.

Financial Gain

Key Concepts

The principle underlying the financial gain laws is that the possibility of personal financial gain or loss cannot be a factor in your decisions as a public official. The laws in this area are designed to promote the general

ethical values of *responsibility* and *trustworthiness*. Public servants have a responsibility to act always in the public's interest, and the public needs to be able to trust that they will.

Key Laws

The following laws are designed to avoid both the reality and the appearance of personal financial gain influencing public servants' actions.

- **Bribery.** Requesting, receiving or agreeing to receive money in exchange for an official action is a crime. Under the state's criminal laws, a "bribe" includes anything of value; it also includes receiving "advantages." ⁴The advantage can be a future one and need not involve the payment of money.⁵
- **Disqualification Based on Financial Interests.** A public official may not make, participate in or influence a governmental decision that will have a foreseeable and material financial effect on the official, the official's immediate family or any of the official's economic interests.⁶ Note the breadth of the prohibition: it does not just apply to voting, but the entire process leading up to voting.
- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.⁷ The law is very strict on this point. Such contracts are void—meaning that the public agency will not have to pay the official for the benefits provided to the agency under the contract.⁸ Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract.
- **Helping Prospective Employers.** A public official may not influence agency decisions when the interests of a prospective employer are at stake.⁹ This situation arises when someone is negotiating or has "any arrangement" concerning prospective employment with someone with business before the agency.
- **Revolving Door.** Elected officials and top-level managers cannot represent individuals or entities before their agencies for one-year after leaving office.¹⁰

Note that some local agencies have adopted even more restrictive prohibitions.

The “Leave the Room” Requirement

If you are disqualified from participating on a specific agenda item under the conflict of interest rules established by the Political Reform Act, you must:¹¹

- At the meeting, publicly identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public.
- Not attempt to influence the decision in any way (this includes pre-meeting discussions with staff or colleagues).
- Refrain from discussing or voting on the matter (you should ask the item to be considered separately if it is on the consent calendar).
- Leave the room until after the discussion, vote and any other disposition of the matter, unless the matter is on the consent calendar.

There are limited exceptions that allow a disqualified official to remain in the room and participate in the discussion as a member of the public when one’s “personal interests” are at stake. Consult with your agency attorney about what kinds of personal interests qualify.

Consequences of Missteps

The consequences of violating these requirements can be severe. They include criminal felony or misdemeanor prosecutions. Conviction can involve substantial fines, jail time and loss of office. Civil fines can also add up. For example, the administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation. In most instances, officials targeted for civil enforcement actions will pay tens of thousands of dollars in defense costs, significantly more in criminal cases.

There can also be other kinds of negative consequences. For example, if an official violates proscriptions against self-dealing relating to contracts, the official may have to refund amounts paid under the contract. If a decision is tainted by the participation of someone who should have disqualified him or herself, the decision is subject to invalidation.

Financial Interests Affected by an Agency Decision:

When to Seek an Attorney's Advice

Talk with your agency attorney when 1) an action by your public agency 2) may affect (positively or negatively 3) any of the following:

Income. Any source of income of \$500 or more (including promised income) during the prior 12 months for you or spouse/domestic partner.

Real Property. A direct or indirect interest in real property of \$2,000 or more that you or your immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase, especially when any of these are located within 500 feet of the subject of your decision.

Personal Finances. Your or your immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.

Gift Giver. A giver of a gift of \$520 (for 2021-22) or more to you in the prior 12 months, including promised gifts.

Lender/Guarantor. A source of a loan (including a loan guarantor) to you.

Contract. You or a member of your family would have an interest (direct or indirect) in a contract with the agency.

Business Management or Employment. An entity for which you serve as a director, officer, partner, trustee, employee, or manager.

Business Investment. An interest in a business in which you or your immediate family (spouse/ domestic partner and dependent children) have a direct or indirect investment worth \$2,000 or more.

Related Business Entity. An interest a business that is the parent, subsidiary or is otherwise related to a business if you:

- Have a direct or indirect investment worth \$2,000 or more; or
- Are a director, officer, partner, trustee, employee, or manager.

Business Entity Owning Property. A direct or indirect ownership interest in a business entity or trust of yours that owns real property.

Campaign Contributor. A campaign contributor of yours (if you are sitting on an appointed decision-making body).

Other Personal Interests and Biases. You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could prevent you from making a fair decision.

What Will Happen Next? Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in. Keep in mind the attorney's duty is to promote compliance with the ethics laws, not try to find ways around them.

Personal Advantages and Perks

Key Concepts

The principle underlying the “no perks” laws is that one’s status as a public servant and one’s access to public resources should not afford special privileges. There are two categories of “no perk” laws. One relates to perks that others provide public officials (for example, gifts). The other involves advantages that officeholders provide themselves (for example, use of public resources).

The laws in this area are designed to promote the general ethical values of *fairness*, *responsibility* and *trustworthiness*. For example, receipt of perks from others undermines the public’s trust that decision-makers are treating everyone who comes before them fairly and making decisions solely in the public’s interests.

When officeholders give themselves perks, the public’s trust that these officeholders are being careful and public-minded stewards of taxpayer resources is undermined. To the extent that some of these perks involve political advantages, they undermine the fairness of campaigns and elections.

Key Laws

Generally speaking, the “no perks” laws bar some transactions and require disclosure of others. The laws are complex and the following will help you “spot” the issue so you can consult agency counsel for further information about the rules in a given instance.

- **Loans.** Officials cannot receive loans from those within the agency¹² or with whom the agency contracts (except for bank or credit card indebtedness made in the regular course of the company’s business).¹³ Personal loans over \$500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).¹⁴
- **Gifts.** With certain exceptions, a public official must disclose most gifts of \$50 or more on his or her Statement of Economic Interests and may not receive gifts from any one source that totals over \$520 in a single year (for 2021-22).¹⁵ Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.¹⁶
- **Travel Expenses from Non-Transportation Companies.** Gifts of travel expenses (for example, airfare, lodging, meals and entertainment) from non-transportation companies are generally subject to the gift rules and must be reported on one’s Statement of Economic Interests as such.
- **Travel Passes from Transportation Companies.** State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.¹⁷ The penalty for violating the prohibition against accepting travel passes from transportation companies is severe--an immediate forfeiture of office.¹⁸
- **Receiving Gratuities or Rewards.** It is a crime to receive any kind of gratuity or reward for performing one’s duties.¹⁹
- **Honoraria.** State law regulates the degree to which public officials may receive payments for giving a speech, writing an article or attending a public or private conference, convention, meeting, social event, meal or similar gathering.²⁰ Generally such payments—which are known as honoraria--are prohibited. The notion is such communications are part of a public official’s service.

- **Personal Use of Public Resources.** State law forbids public officials from using public resources for personal purposes.²¹ “Public resources” include such things as 1) staff time, 2) office equipment (telephones, fax machines, photocopiers, and computers), and 3) office supplies (stationery, stamps, and other items). “Personal” use of public resources includes activities that are for personal enjoyment, private gain or advantage.²² For example, asking a staff member to pick up your laundry or kids from daycare would be a violation. “Use” means the use of public resources that is substantial enough to result in a gain or advantage for the user and a loss to the local agency that can be estimated as a monetary value.²³
- **Expense Reimbursement.** The general rule is that local agency officials may only be reimbursed for actual and necessary expenses.²⁴ Cities, counties, and special districts that reimburse their elected and appointed officials must adopt expense reimbursement policies that specify the kinds of activities that will be reimbursable.²⁵ Local agencies must use expense report forms and all expenses must be documented with receipts.²⁶ These documents are public records subject to disclosure.²⁷
- **Limits on Public Official Compensation.** Typically, there is a legal limit on elected public official compensation levels, either in state or local law public officials, particularly elected ones, may only collect and retain such compensation that the law allows.²⁸ As protectors of the public purse, courts generally take a strict approach to public official compensation limits.²⁹

City and county officials typically receive a monthly salary for their service. Special district directors tend to be compensated by a daily stipend. With certain exceptions, this stipend compensates such directors for:

- A meeting of any “legislative body” as defined by the Brown Act
- A meeting of an advisory body
- Conference attendance or educational activities, including ethics training³⁰

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.³¹

- **Use of Public Resources for Political Purposes.** The same statutes that prohibit the use of public resources for personal benefit also prohibit the use of such resources for campaign purposes.³² The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures.
- **Mass Mailings at Public Expense.** State law forbids sending mass mailings at public expense.³³ State law defines “mass mailings” as including mailings that “feature an elected officer” by including their photograph or signature, or by singling out the officer by a manner in which their name appears in the document.³⁴
- **Gifts of Public Resources or Funds.** California’s constitution forbids gifts of public funds. This prohibits, for example, paying for spouses, partners or family members to accompany public officials.³⁵ It can also be an issue when a public agency contemplates charitable contributions.³⁶

- **Soliciting Political Support from Agency Employees.** Soliciting campaign funds from agency officers or employees is also unlawful,³⁷ as is conditioning employment decisions on support of a person's candidacy.³⁸ Compensation decisions may not be tied to political support.³⁹
- Speak with your agency counsel about the specifics of these requirements as they may apply to your situation.

Consequences of Missteps

The consequences of violating the “no-perk” laws can also be severe. For example, the prohibitions against the personal use of public resources are punishable by a \$1,000 per day fine plus three times the value of the resource used.⁴⁰ Criminal penalties include a two to four year prison term and disqualification from office.⁴¹ Prosecution under the federal income tax evasion laws is also a possibility.⁴² Again, this does not include the costs of hiring defense lawyers, which can add up to tens of thousands of dollars, if not more.

Beyond the Minimum in Understanding Public Service Ethics

Like all ethics laws, AB 1234 sets minimum standards. The enforcement mechanism for complying with AB 1234's requirements relies on public scrutiny and media attention. Records of officials' compliance with AB 1234 (proof of participation certificates) are public records and must be maintained for at least five years.⁴³

In addition to maintaining records on compliance with the minimum standards imposed by AB 1234, local agencies may also want to maintain records of any training and study local agency officials engaged in above and beyond AB 1234's minimum requirements. This will enable those inquiring to ascertain the agency's and individual's full scope of commitment to understanding the ethical and legal obligations associated with public service.

Beyond the Law

Understanding and complying with public service ethics laws is a challenge. But the public expects even more of its public servants. Rather than making decisions purely on the fly, how can public officials maximize the likelihood that they will meet or exceed the public's expectations for ethical conduct?

To be considered successful as a public servant, one is encouraged to think in terms of ethical values not minimum standards. Some key values relating to public service include responsibility, trustworthiness, respect and fairness. Assess decisions you have to make against these standards.

In addition, you can ask yourself these kinds of questions:

- What decision, behavior or course of action will best promote the public's trust in my leadership and that of my agency?

- Would I want to read about a certain course of action on the front page of my local newspaper?
- How do I want to be remembered as a public official? What would make my family and parents proud as a legacy?

For example, even if you are not legally required to disqualify yourself from participating in a decision, you may want to voluntarily abstain from participating if you believe the public could reasonably question whether you could put personal relationships and interests aside in making a given decision.

Conclusion

Former British Prime Minister Benjamin Disraeli once observed “...that all power is a trust; that we are accountable for its exercise.” As extensive and complicated as they are, the above rules relating to public service ethics are a reflection of that overarching quest for accountability and trust.

For more information on these rules, go to www.ca-ilg.org/ethicslaws. For more information on ethics principles, please visit www.ca-ilg.org/ethicsprinciples.

Disclaimer: Open meeting practices continue to evolve as the COVID-19 crisis continues and agencies use a wide range of technology to meet their needs. The information provided in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. ILG urges you to consult with your own legal advisor before taking any action based on this information.

References

- ¹ Cal. Gov't Code § 53235(a), (b).
- ² Cal. Gov't Code § 53234(c).
- ³ Cal. Gov't Code § 53235(a), (b).
- ⁴ Cal. Penal Code § 7
- ⁵ Id. See also *People v. Anderson*, 75 Cal. App. 365 (1925).
- ⁶ See Cal. Gov't Code §§ 87100 and following.
- ⁷ Cal. Gov't Code § 1090.
- ⁸ Cal. Gov't Code § 1092. *Thomson v. Call*, 38 Cal. 3d 633, 646 (1985)
- ⁹ Cal. Gov't Code § 87407.
- ¹⁰ See Cal. Gov't Code § 87406.3.
- ¹¹ See Cal. Gov't Code § 87105.
- ¹² See Cal. Gov't Code § 87460(a), (b).
- ¹³ See Cal. Gov't Code § 87460(c), (d).
- ¹⁴ See Cal. Gov't Code § 87461.
- ¹⁵ Cal. Gov't Code §§ 87200, 87207, 89503; 2 Cal. Code Regs. § 18940.2 (The gift limit is modified every two years to reflect changes in the Consumer Price Index; the \$520 (2021-22)
- ¹⁶ Cal. Gov't Code § 82028(a).
- ¹⁷ See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this State . . .”).
- ¹⁸ See Cal. Const. art. XII, § 7 (“ . . . acceptance of a pass or discount by a public officer . . . shall work a forfeiture of that office . . .”).
- ¹⁹ Cal. Penal Code § 70.
- ²⁰ See Cal. Gov't Code § 89501 (definition of honoraria).
- ²¹ See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ²² Cal. Gov't Code § 8314(b)(1).
- ²³ Cal. Gov't Code § 8314(b)(4).

²⁴ Cal. Gov't Code § 36514.5.

²⁵ Cal. Gov't Code § 53232.2(b).

²⁶ Cal. Gov't Code § 53232.3.

²⁷ Cal. Gov't Code § 53232.3(e).

²⁸ For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1. See also Cal. Educ. Code §§ 1090 (county board of education compensation), 35120 (school board member compensation), 72425 (community college board member compensation).

²⁹ *Id.*

³⁰ Cal. Gov't Code § 53232.1(a).

³¹ Cal. Gov't Code § 53232.1(b).

³² Cal. Penal Code § 424; *People v. Battin*, 77 Cal. App. 3d 635 (1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superseded on other grounds by *People v. Conner*, 34 Cal. 3d 141 (1983). See also Cal. Gov't Code § 8314 ("Campaign activity" means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. 'Campaign activity' does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls and visitors to private political entities.").

³³ See Cal. Gov't Code § 89001.

³⁴ See Cal. Gov't Code 89002

³⁵ 75 Cal. Op. Att'y Gen. 20 (1992) (finding paying a spouse's expenses to a conference violates both Government Code section 1090 and constitutional prohibitions against gifts of public funds). See also 65 Cal. Op. Att'y Gen. 517, 521 (1982) (finding Government Code section 36514.5 does not authorize reimbursement of the expenses of any person other than a member of the city council). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 869-870 (1975). (unauthorized reimbursement is illegal gift).

³⁶ See generally McQuillin, *Municipal Corporations*, § 39.25 (3d rev. ed. 1988) ("Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.")

³⁷ See Cal. Gov't Code § 3205 (except for those communications to a significant segment of the public that happens to include fellow public officials and employees).

³⁸ See Cal. Gov't Code § 3204, which reads as follows: No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

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⁴⁰ Cal. Gov't Code § 8314(c)(1).

⁴¹ Cal. Penal Code § 424.

⁴² See 26 U.S.C. §§ 7201, 7203.

⁴³ Cal. Gov't Code § 53235.2.