INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session V: Ethics and the Public Law Practice

2000-2006: A California Ethics Odyssey

By JoAnne Speers
Executive Director, Institute for Local Government
General Counsel, League of California Cities

© 2006 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2006 Mid Year Seminar, held April 23-25, 2006 in Washington, DC. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

© 2006

“Odyssey:”

n 1: a long wandering and eventful journey;

n 2: An intellectual or spiritual quest.

© 2006

Contents

Page

Introduction and Overview 5

Act I: The Political Reform Act -- The King Kong of Ethics Laws 7

Act II: Field of Dreams -- If You Build an Ethics Resource Center, Will They Come?.....13

Act III: Get MET (Mandatory Ethics Training) 21

Act IV: (Juris) Doctor, Heal Thyself: 25

Epilogue: Toward a Culture of Ethics.....29

Attachments:

1. Doing the Right Thing Pamphlet 31

2. California City Attorneys Ethical Principles 37

3. Municipal Lawyers Top 10 Tips for Ethics Education.....47

© 2006

The good of the people is the chief law.
--Cicero

A man of honor should never forget what he is
because he sees what others are.
--Baltasar Gracian

Half of the harm that is done in this world is
due to people who want to feel important.
--T. S. Eliot

There's a big difference between what you have a right to do
and what is right to do.
-- Potter Stewart

You cannot reach good ends through evil means . . .
-- Martin Luther King, Jr.

© 2006

Introduction and Overview

California has some of the most extensive and complex ethics laws in the country. Yet, at the turn of the century, a number of local government officials found themselves in the news as the result of serious accusations of ethics law missteps. For the local agency counsel involved with these agencies, the situation was also difficult. Moreover, in certain circumstances, the accusation was that local agency counsel was to some degree part of the problem.

This paper shares the experiences of the California local government community in endeavoring to come to grips with these situations over the past six years: where we started in our efforts to understand our officials' missteps and some of the steps that have been taken to prevent future problems. This research included interviews with those who found themselves on the wrong sides of ethics-related prosecutions, as well as those who have either been involved with or studied situations that developed into scandals.

To be sure, there are some individuals who enter public service for the wrong reasons. There are limited opportunities to help such individuals avoid violating the law, except to try to impress on them the likelihood of getting caught and the consequences (financially and emotionally) of being prosecuted.

Yet it appears that there are otherwise well-intended individuals who get "caught up" in a milieu of either an ends-justify-the-means mindset or a culture of more base corruption. There is also a tendency to rationalize that improper practices are part and parcel with getting ahead in politics.

We set about developing a variety of resources to help local officials avoid these kinds of dynamics. We also concluded that we could do a more effective job in educating local officials on their legal and ethical obligations as public servants.

And, it turns out, others were thinking along similar lines. In 2005, the California Legislature mandated that local elected and appointed officials receive two hours of ethics education every two years.

The introspection did not stop with clients' ethical obligations. This paper also shares the experience of California's city attorneys in adopting a code of ethics for their profession.

The effort remains a work in progress and is by no means perfect. It is shared more as food for thought for others.

© 2006

© 2006

Act I: The Political Reform Act-- The King Kong of Ethics Laws

In the Beginning

Much like King Kong on his island, the dominant figure in California ethics is the Political Reform Act. In fact, one can argue, with the benefit of hindsight, that this dominance has had some unintended consequences.

Until 1974, California campaign and ethics laws were few, weak and largely ignored.[1] That year, voters adopted Proposition 9 by an overwhelming majority, which added the Political Reform Act to California's Government Code.[2]

The Act was fairly sweeping, undertaking to regulate nearly every aspect of the political process, including:

- Disclosure of political campaign contributions and spending by candidates and ballot measure committees.
- Disclosure and regulation of lobbyists' practices at the state level.
- Disclosure and disqualification requirements for state and local officials relating to their financial interests.

The Act also prohibited mass mailings at public expense[3] and regulated public officials' receipt of gifts, travel and honoraria.[4]

The Act created a new, independent state agency to administer, interpret and enforce its provisions.[5] In addition, the Act created private rights of enforcement.[6]

---

[1] *See* Fair Political Practices Commission website, http://www.fppc.ca.gov/index.html?id=57 . *See also* Cal. Gov't Code § 81001(h) (Political Reform Act finding that previous laws regulating political practices had suffered from inadequate enforcement).
[2] *See* California Secretary of State's website, http://www.ss.ca.gov/prd/about_the_division/history.htm
[3] The present version of the restriction was adopted by the voters in 1988. Cal. Gov't Code § 89001. *See also Watson v. California Fair Political Practices Commission*, 217 Cal. App. 3d 1059, 1074 (2d Dist. 1990), *rev. denied* 1990.
[4] *See, e.g.*, Cal. Gov't Code §§ 89503 (gift), 82028(b)(2) (travel is a form of gift), 89502 (honoraria).
[5] *See* Cal. Gov't Code § 82100 *et seq.*
[6] *See, e.g.*, Cal. Gov't Code § 91007(a).

© 2006

Principles Underlying the California Political Reform Act[7]

- State and local government serve all citizens equally, without regard to status or wealth;
- Public officials perform their duties impartially, without bias because of personal financial interests or the interests of financial supporters;
- Public officials disclose income and assets that could be affected by official actions and disqualify themselves from participating in decisions when they have conflicts of interest;
- Campaign expenses and contributions are fully and truthfully disclosed so voters are informed and improper practices are inhibited;
- Elections are fair;
- No laws or practices favor incumbents;
- The state ballot pamphlet gives useful information about state measures so voters can be less dependent on paid advertising for information;
- The activity of those who lobby the state legislature is regulated and finances disclosed to prevent improper influence on public officials; and
- Public officials and private citizens are given the means to vigorously enforce political reforms.

Evolution of the Political Reform Act's Conflict of Interest Provisions

The concept seemed simple enough:

> No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. [8]

However virtually every word and phrase in this sentence needed to be defined and/or interpreted. In an effort to structure the analysis, the Fair Political Practices Commission

[7] *See* Cal. Gov't Code §§ 81001-02.
[8] *See, e.g.*, Cal. Gov't Code § 87100.

© 2006

ultimately developed an eight-step analysis to guide attorneys through the relevant principles (see box below). Even each step has its own set of standards and definitions.

The Eight-Step Conflict of Interest Analysis Under California Law[9]

To organize the analysis, the Fair Political Practices Commission has adopted an eight-step procedure for identifying when one must disqualify oneself from participating in a matter. Although it is useful to be aware of the general outlines of the process, the analysis with all its twists and turns is best undertaken by agency attorneys and Fair Political Practices Commission staff—particularly since the rules are not necessarily logical or intuitive.

1. Are you a **public official** within the meaning of the rules?

2. Are you **making, participating in making, or influencing a governmental decision**?

3. Do you have an **economic interest in the decision**?

4. Is your economic interest **directly or indirectly involved** in the decision?

5. Are the **financial impacts on one's economic interest considered significant** (material) enough to trigger a conflict of interest?

6. Is it **reasonably foreseeable (substantially likely) that the governmental decision will have a material financial effect** on your economic interests?

7. Is the decision's effect on your economic interest **different from the effect on the public generally**?

8. Even if you have a disqualifying conflict of interest, is your **participation legally required**?

To educate officials on how to comply with the laws, Fair Political Practices Commission and local agency attorneys would carefully walk their audiences through the eight-step process, explaining the relevant rules and factors applicable to each step. In any ethics training session, an explanation of the Political Reform Act's requirements would easily consume the lion's share of time available and eclipse a discussion of other ethics laws, with the possible exception of the prohibition on self-dealing in contracts.[10]

[9] *See* 2 Cal. Code Regs. §§ 18700 *et seq.*
[10] Cal. Gov't Code §§ 1090 *et seq.*

© 2006

Taking a Moment to Reflect

A quarter century after the Political Reform Act's birth, others in California were looking at the Political Reform Act's girth with less than total fondness. In 1998, the Legislature and the Governor agreed that a review of the Political Reform Act would be useful.[11] A 14-member bipartisan commission was convened to study the Act's implementation and identify areas of potential improvement.

The Commission forthrightly signals its conclusions in the title of its 2000 report: *Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act.* Although the Commission noted the positive effect that the Act plays in creating an informed electorate and a fair political process,[12] it expressed concern that the Act's complexity was deterring people from participating in the political process--in part because of a fear that full compliance is unattainable.

Specifically, the Commission faulted "endless attempts to fill every conceivable loophole in the law, to require disclosure of every possible financial interest of a public official (no matter how convoluted)."[13] It also expressed concern that about the toll on the political process associated with requiring "disqualification from participation in governmental decisions in circumstances that are so confusing that lawyers argue for months over the correct application of the law."[14]

The Commission concluded that this complexity is counterproductive,[15] ruminating that the cure could be worse than the disease.[16]

Other Unintended Consequences

There have been arguably two other unintended consequences of the Political Reform Act's complexity. One is that the time and energy necessary for clients to understand the Act's requirements skewed the focus of educational efforts on ethics laws.

In reflecting, for example, on the League of California Cities' ethics educational efforts, one would find that important ethics breaches that were not covered by the Political Reform Act (for example, bribery and misuse of public resources) would receive scant, if any, coverage. On some level then, it was no wonder that these were indeed the kinds of misdeeds that were being prosecuted by law enforcement officials and showing up in the media.

---

[11] *See* SB 1737 (Statutes of 1998).
[12] Bipartisan Commission on the Political Reform Act of 1974, *Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act* (2000) at pages 1-2.
[13] *Id.* at 2-3.
[14] *Id.*
[15] *Id.* at 7.
[16] *Id.*

© 2006

Another possible unintended consequence is a tendency for local officials to simply give up in trying to comply with the law. It was not uncommon to hear local officials express disrespect for the Act's requirements.

This dynamic is exacerbated when officials are generally inclined to be skeptical about the importance and efficacy of public service ethics laws. Dennis Thompson described the phenomenon this way as it relates to federal officials:

> Some people who may be paragons of virtue in both their personal affairs and their business dealings in private life get into trouble when they go to Washington because the do not realize that government ethics require more, or at least something different. They experience what might be through of as a reverse spin on *Mr. Smith Goes to Washington.* Instead of finding lower standards of conduct in government, they are shocked to find higher standards, or at least more restrictive ones. Being respectable in their own communities and corporations, they find it hard to understand why they should take these more restrictive standards seriously, especially since they do not have as much respect for government as they do for institutions in the private sector.[17]

Thompson believes that greater appreciation of the difference between personal morality and public ethics might overcome the resistance that officials can sometimes exhibit to ethics education efforts. As he notes, some people can find it insulting to be told that they need to learn more about ethics.[18]

In short, like King Kong, the appearance and size of the Political Reform Act attracted significant attention among public agency lawyers—so much so that the Act was the predominant focus of ethics law education efforts to the exclusion of other ethics laws.

[17] Dennis F. Thompson, "Paradoxes of Government Ethics" reprinted in *The Ethics Edge,* International City-County Management Association (1998) at 51.
[18] *Id.* at 52.

© 2006

Act II: Field of Dreams-- If You Build an Ethics Resource Center, Will They Come?

In 2001, the leadership of the League of California Cities became concerned about what appeared to be a raft of corruption scandals. Moreover, these tended to not be Political Reform Act problems, but arguably harder core issues like bribery and misuse of public resources.

In a pro-active effort to "do something" about this unfortunate turn of events, the League asked its attorneys to explore whether a program like that launched by the Georgia Municipal Association might be appropriate for California.

Georgia on Our Minds

Georgia's program involves certifying cities as "Cities of Ethics."[19] To earn such a designation, a city must take two actions:

1. Adopt a resolution containing five ethics principles;[20] and

2. Adopt an ethics ordinance that meets minimum standards specified by the municipal league.[21]



[19] For more information about the Georgia Municipal Association's program, see http://www.gmanet.com/cities_of_ethics/.

[20] These principals are:

1. Serve others, not ourselves
2. Use resources with efficiency and economy
3. Treat all people fairly
4. Use the power of our position for the well being of our constituents
5. Create an environment of honesty, openness and integrity

The Georgia Municipal Association makes a sample resolution available. All elected official must sign the resolution.

[21] The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

© 2006

The city's resolution and ordinance are then forwarded to the Executive Committee of the GMA City Attorneys Section for their review. If the materials meet the program's requirements, the city is designated as a "Certified City of Ethics."

Too Much of a Good Thing

As groundbreaking and impressive as the Georgia program was, the California League's attorneys were concerned that recommending that cities adopt an additional set of ethical rules would create more confusion than clarity for California local officials, particularly given California's already-complex network of state ethics laws. There's also a line of thinking that there is a distinct limit to the extent that ethics laws can make public officials more ethical.[22]

The recommendation was to focus instead on developing more effective ethics educational tools and to evaluate ways to maximize the California League's educational efforts vis-à-vis ethics. The former fell to the League's nonprofit research arm, the Institute for Local Government. The latter assignment went to a task force convened by the League. In addition, the California League's board of directors designated ethics as one of its three strategic priorities for the years 2003 and 2004.

Institute for Local Government Efforts

With very limited resources[23] but a gritty sort of conviction, the Institute set about developing a series of informational resources for local officials on ethics. The goal was to discuss both ethics laws and ethics principles. Moreover, the Institute was very grateful for the ongoing counsel of Dr. Tom Shanks at the Markkula Center for Applied Ethics at Santa Clara University, who strongly advised the Institute to develop an overarching framework for its work.

As part of these efforts, Institute staff spoke with local officials who found themselves on the wrong side of ethics-related prosecutions. These officials' insights on the dynamics that led to their actions have been a strong influence on the Institute's work.

The Institute was also the beneficiary of advice from academicians and seasoned public officials. One such advisor was John Larson, former County Counsel for Los Angeles, Chair of the Fair Political Practices Commission, and now a city council member in his community. Another was Jennifer Sparacino, City Manager for the city of Santa Clara, a city that had been engaged in a number of ground-breaking ethics efforts.

The result has been the development of a number of ethics-related resources, all of which are available to local officials without charge on the ethics portion of the Institute's website (www.ca-ilg.org/trust). A key theme of these resources is that the law is a floor for ethical

[22] *See* G. Calvin Mackenzie, *Scandal Proof: Do Ethics Laws Make Government Ethical*? (Brookings Institution Press 2002).

[23] For whatever reasons, foundations have not been much interested in funding ethics initiatives. The Institute is grateful to its private sector supporters, a high preponderance of which are part of the California municipal law community, for making the ethics program possible.

© 2006

behavior, not a ceiling. As the Institute's immediate past president, Rosemary Corbin, observes "Just because something is legal, doesn't mean it is ethical."

"Toto, We're Not in Kansas Anymore"

Proving that imitation is the sincerest form of flattery, the Institute and the League borrowed an approach from the Kansas Municipal League. The concept was a regular column in the league's monthly magazine analyzing ethical issues.

As adapted by the California League, the column is written in a "Dear Abby" style that analyzes both the legal and ethical dimensions of dilemmas local officials are likely to encounter in their public service. The column is titled "Everyday Ethics for Local Officials." Examples of the kinds of topics addressed appear in the sidebar at right. These columns have also been assembled into a compendium publication the League distributes at its conferences for new mayors and council members.

Other examples of resources are listed on the next page. One of these resources is designed to help local agencies adopt local ethics codes. Remaining true to the conviction that there are already quite a few ethics laws in California, the publication focuses on values-based, as opposed to rule-based ethics codes. A key premise of the publication is that the *process* an agency uses to develop and adopt such a code is just as important as the ultimate product.

These resources are assembled as part of the Institute's Ethics Resource Center at www.ca-ilg.org/trust. They are available without charge in electronic form to everyone.

Ethics Column Topics

Decision-Making Issues

- Making Politically Unpopular Decisions
- Balancing Local and Regional Interests When You're Asked to Serve Both
- Deciding When Not to Participate in an Agency Decision: Abstentions and Disqualifications
- Leading By Values: When Your Decision will Affect a Friend or Supporter

At Meetings

- Promoting Civility at Public Meetings
- Dealing with a Grandstander
- Being Less than Forthright about an Agency's Decision: The "Conditioning-a-Project-to-Death" Example

Out and About in the Community

- Owning Property in Your Jurisdiction
- When a Council Member Skirts the Law and Scandal Looms
- Buying Meals for Others on the Public's Dime
- Raising Funds for Favorite Causes
- Using Public Office to Promote One's Business Interests
- Receiving Gifts as a Public Official
- Campaigning for Re-Election

On the Road

- Attending Conferences

Back at City Hall

- Career Saving Tips on Mass Mailings
- Hiring: When a Relative Wants a Job
- Securing Goods and Services: Contracting Issues
- Fostering Positive Staff Relations
- Telling the Truth When It Hurts
- For Whom the Whistle Blows

© 2006

Examples of Ethics Publications Produced by The Institute for Local Government (www.ca-ilg.org/trust)

Doing the Right Thing, 2006. This pamphlet provides a framework for ethical decision-making for public servants. It explains such things as the role that values and public perception plays in public service ethics.

Key Ethics Law Principles for Public Servants, 2006. Don't be caught unawares on ethics law issues. This summary alerts local officials to situations triggering a need to consult with their agency counsel on ethics law issues.

Walking the Line: What to Do When You Suspect An Ethics Problem, 2005. Constructively addressing potential ethics issues in an agency can be difficult. This publication suggests and explains an eight-step process for undertaking this often delicate task.

Ethics Law Compliance Best Practices, 2005. What steps can the well-intended official take to make sure that his or her agency is maximizing the prospects for compliance and minimizing the likelihood of missteps? This checklist provides some ideas.

The ABCs of Open Government Laws, 2005. Transparency in government is vital in promoting public trust. This pamphlet explains the key provisions of the Brown Act and the Public Records Act.

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.

Win the Right Way: How to Run Effective Local Campaigns in California, 2005. Rather than echo the conventional wisdom that negative campaigning works, this guide shows candidates how to plan a campaign, build an effective organization, develop and deliver a clear and compelling message and mobilize voters on election day.

Everyday Ethics for Local Officials: Finding Your Way, 2005. This publication offers analyses of a series of everyday ethical dilemmas faced by elected officials and others in public service.

Local Official Ethics Checklist: Questions to Ask in Sticky Situations, 2004. This wallet-sized checklist suggests questions to help local officials through ethical dilemmas.

Developing a Local Agency Ethics Code: A Process-Oriented Guide, 2003. This guide assists local agencies that want to adopt an ethics code. It features a menu of potential values and expressions of what those values look like. Agencies can use this menu to develop a code that expresses their values**.**

Of Cookie Jars and Fishbowls: A Public Official's Guide to Use of Public Resources, 2004. The power to make decisions about the appropriate use of public resources is a trust for both elected and appointed officials. This guide explores ethical and legal considerations that bear on spending decisions, and features a sample expense policy.

© 2006

No Such Thing as a Free Lunch

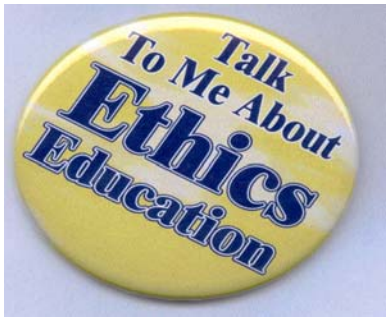
The Institute is very concerned about its work having genuine impact. One manifestation of this concern is the feedback forms the Institute included in a number of its publications.

One such returned form ended up playing a particularly important role. A water district board member wrote to note that the Institute's guide to California ethics law omitted an important topic: improper use of public resources issues. The water district's board had been under heavy scrutiny from the local newspaper, the *Sacramento Bee*, for extensive misuse of public resources. The reporting led to revelations of similar practices by other special districts. Expense reimbursement practices were a key area of concern.

The result of this feedback became the Institute's publication entitled *Of Cookie Jars and Fishbowls: A Local Official's Guide to the Use of Public Resources*. In addition to explaining the laws and ethical considerations relating to various aspects of public resource use (expense reimbursement, use of agency equipment and supplies, political use of public resources, use of public resources for charitable contributions, etc.), the publication included a sample annotated expense reimbursement policy.

The water district scandal also attracted the attention of the local state senator, Debra Ortiz, who vowed to introduce curative legislation.

Enhancing Ethics Education Efforts



Meanwhile, the League of California Cities' Ethics Education Task Force was meeting and mulling the issue of effective ethics education. One of their research techniques is illustrated at left. Members of the task force wore these buttons at League conferences to solicit their colleagues' input on ethics education.

Ultimately, the Task Force made a number of recommendations, including the following:

- Make ethics education *practical*, for example, by including case study-type information
- Include a discussion of the *consequences* of ethical lapses, including real life stories and testimonials
- Make ethics sessions *interesting to all officials*--not just those who are interested in the topic—by *integrating discussion of ethical issues into other topical discussions* on a regular basis
- Inform local officials of ethics resources available to them

© 2006

The Task Force concluded its work at the end of 2004 and the League's board of directors adopted the group's recommendations. The League also added a statement regarding ethics to its organizational values.

Toward A New Theory of Ethics Education

As part of all this contemplation, the Institute began to organize its educational materials and presentations about ethics laws differently than municipal attorneys had in the past. Two thoughts motivated this somewhat heretical approach. One was that the complexity of California's laws was obscuring certain *first principles that underlay those laws*. If local officials could keep those *principles* in mind, perhaps it would be easier for them to stay on the right side of those laws.

The other thought was that perhaps we had lost sight of the learning objective as it relates to teaching elected and appointed officials about ethics laws. The learning objective should *not* be to teach the officials the law (which again, tends to be highly complex and varied, even for experienced municipal lawyers to understand[24]). Perhaps a more realistic and achievable objective is *to teach local officials in effect to issue-spot ethics law issues and, as a result, when they need to consult their municipal attorneys.*

The three principles around which the Institute started organizing its discussion of ethics laws are:

1) Personal financial gain cannot be a part of an officeholder's decision-making;

2) Personal advantages and perks for public servants are generally disfavored;

3) The public trusts a process it can see (governmental transparency) and that is fair.

How California's ethics laws group under these principles is illustrated on the next page, which is the latest edition of the Institute's quick reference to ethics laws for local officials. It is three-hole punched so it can conveniently be stored in elected officials' agenda binders. As the resource explains, it is not an explanation of the law, but cues as to when to consult with one's agency attorney.

Although the Institute had not been particularly successful in finding foundation support for its work, the generosity of the private sector (including a number of prominent municipal law firms) enabled it to pursue its efforts and distribute its materials fairly widely. This included distributions of materials through the California Special Districts Association and other associations of local agencies.

[24] The 2004 update of the California League's City Attorneys Department guide to advising on these laws illustrates this complexity. The narrative portion of the guide is 143 pages long, with 83 pages devoted to issues arising under California's Political Reform Act. Another nine pages analyzes the role of the municipal attorney in providing such advice and 25 pages explains California's prohibitions against self-dealing in contracts.

© 2006



Key Ethics Law Principles For Public Servants

Note that the following are not statements of law, but rather principles the law is designed to achieve.

The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws.

If an issue arises for you under these principles, consult your agency counsel.

PERSONAL FINANCIAL GAIN

Public officials:

- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- Cannot have an interest in a contract made by their agency.
- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Cannot influence agency decisions relating to potential prospective employers.
- May not acquire interests in property within redevelopment areas over which they have decision-making influence.

PERSONAL ADVANTAGES & PERKS

Public officials:

- Must disclose all gifts received of $50 or more and may not receive gifts aggregating to over $360 (2006) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- Cannot accept free transportation from transportation companies.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Cannot receive loans over $250 from those within the agency or those who do business with the agency.

GOVERNMENT TRANSPARENCY

Public officials:

- Must disclose their financial interests.
- Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- Must disclose information about significant ($5000 or more) fundraising activities for legislative, governmental or charitable purposes.

FAIR PROCESSES

Public officials:

- Have a responsibility to assure fair and competitive agency contracting processes.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than $250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- Cannot represent individuals before their agency for one year after leaving agency service.
- Must conduct public hearings in accordance with due process principles.

INSTITUTE FOR LOCAL GOVERNMENT

© 2006

© 2006

Act III: Get MET (Mandatory Ethics Training)

The First Volley

On February 13, 2004 (which happened to be Friday the 13th), Senator Ortiz introduced legislation to require special district audits to be performed in accordance with General Accounting Office standards for financial and compliance audits. The bill would have also imposed various other requirements on these audits and required the State Controller to review the audits under specified procedures.[25]

Mandatory ethics education and restrictions on expense reimbursement and compensation practices were later added to the bill, along with additional protections for employee whistle-blowers and restrictions on life and health insurance coverage for district board members.[26]

Because of the state's strapped financial condition and the costs associated with the bill, it did not get out of its house of origin in 2004. Undeterred, Senator Ortiz reintroduced a revised version of her bill in the next session.[27]

With Friends Like These . . .

The prospect that any version of an Ortiz bill might reach the Governor's desk was sufficiently unpalatable to special districts that they began crafting their own proposal.[28] On February 22, 2005, the Chair of the Assembly Local Government Committee, Simon Salinas, introduced AB 1234. As ultimately adopted, the bill had three parts:

- Mandatory ethics training for all local elected and appointed officials who receive compensation or reimbursement of expenses (two hours every two years);
- Requirements relating to the adoption of expense reimbursement policies and standards relating to certain kinds of expenses;
- A description of when special district directors could claim their daily per diem compensation.

---

[25] SB 1272 (as introduced).
[26] SB 1272 (as amended April 27, 2004).
[27] SB 393 (2005-2006 Legislative Session).
[28] Although the bill did not have official sponsors, Assemblymember Salinas noted when he received the Association of California Water Agencies "Legislator of the Year Award" that "It has been a privilege to work closely with ACWA's Legislative Advocacy team on crafting language for Assembly Bill 1234." See "ACWA 2005 Legislative Leadership Award Presented to Assembly Member Simon Salinas; Friend to Special Districts Honored at ACWA Conference," Business Wire, December 2, 2005 (available at http://www.findarticles.com/p/articles/mi_m0EIN/is_2005_Dec_2/ai_n15892237#continue). In that same press release, the ACWA executive director signaled the importance of special districts not being singled out as he effused "Assemblyman Salinas has really hit the ball out of the park with his work on AB 1234. He provided needed reform without resorting to punitive measures that are aimed only at special districts."

© 2006

With the exception of the third requirement, AB 1234 applied not only to special districts, but cities and counties.

Assemblymember Salinas explained that the bill responded to reports by the State Auditor's Office, dozens of newspaper articles, and public requests regarding inappropriate uses of local tax dollars. The goal of the bill was to require more transparency relating to local government compensation and travel reimbursements.[29]

Interestingly, by the time it received its final votes of approval by the Legislature, some 86 local agencies (mostly special districts) and local agency associations were listed in support of the measure.[30]

The New Vision for California Ethics Training

In addition to adopting some of the recommended expense reimbursement policies in the Institute's *Of Cookie Jars and Fishbowls*, AB 1234 also adopted a principle-centered concept of describing ethics laws. Under AB 1234, ethics training must cover *both* ethics principles and ethics laws.

For purposes of mandatory ethics training, California's *ethics laws* now have been divided into four parts:[31]

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);

- 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;

- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);

- Law relating to fair processes, including fair contracting requirements, common law bias requirements and due process.

The California Attorney General's guidelines implementing the bill said that the learning objectives of the mandatory ethics training should be to:

- Alert officials to the kinds of financial interests, relationships and/or activities that may either be prohibited or trigger disclosure or disqualification obligations under ethics laws described in Government Code section 53234(d).

[29] Assembly Local Government Committee Analysis of AB 1234 (April 13, 2005 Hearing).
[30] AB 1234 Senate Third Reading Analysis, August 23, 2005.
[31] Cal. Gov't Code § 53234(d).

© 2006

- Advise officials to 1) avoid prohibited activities, 2) comply with disclosure, disqualification and other affirmative ethics law requirements, and 3) consult with qualified legal counsel and/or regulatory authorities regarding the specifics of any situation that may involve prohibited or required conduct.

- Note that ethics laws create minimum standards for ethical conduct by public officials; the public's expectations and ethics principles are likely to create a higher standard for behavior.

- Advise participants of the legal and other consequences of violating ethics laws.

- Include examples of conduct scenarios that are covered by the ethics laws in question.[32]

AB 1234 became law on January 1, 2006.

The requirement that mandatory ethics training go beyond ethics laws is a very interesting one. To assist local agency attorneys with this requirement, the Institute for Local Government has published a pamphlet entitled "Doing the Right Thing: Putting Ethics Principles into Practice in Public Service." The information in the pamphlet is based on the Institute's research on public service ethics issue and is designed to acquaint local officials with such principles as:

- How commonly held values apply in the public service context;

- The importance of appearances in ethical decision-making;

- Types of ethical dilemmas; and

- Dilemma resolution techniques (questions to ask oneself).

A copy of this pamphlet is included as Attachment 1. As a non-legal publication, it is not tied to California law.

The Legacy of AB 1234's Mandatory Ethics Training Requirement?

Will mandatory ethics education reduce the number of scandals California's local government community suffers? It's obviously too early to tell.

However, AB 1234 is causing those who teach local agency officials ethics laws to rethink their objectives and the scope of what they cover. In essence, it may be a new paradigm. Two hours—the standard created by AB 1234—is simply not enough time to teach officials the law. It *is* enough time, however, to teach local officials about the issues they need to be aware of and when they need to consult with agency counsel.

[32] California Attorney General "Ethics Training for Local Officials" available at http://caag.state.ca.us/ethics/eth_loc_guide_final.pdf.

© 2006

© 2006

Act IV: (Juris) Doctor, Heal Thyself

Get Thee to an Ethics Code

In the late 1990's, the leadership of California's city managers[33] became concerned about a dynamic which appeared to involve 1) campaign contributions, 2) attorneys wanting to be city attorney, and 3) elections involving the installation of new leadership in the city.[34] A casualty of this dynamic tended to be the city's then-sitting city manager. In fact, in one instance, a council member was installed as a city manager.[35]

The International City-County Management Association Code of Ethics[36] prohibits managers from making campaign contributions. The managers, in essence, thought that the city attorneys should have something analogous--in other words, a code of ethics for city attorneys.

First Stop: The Bar (The State Bar, That Is)

Being a responsive but deliberate lot, the city attorneys agreed to give the issue some thought. Given that city attorneys' conduct is also governed by the California Bar's Rules of Professional Conduct,[37] the California League's city attorneys department determined the first step should be to make sure that everyone was clear on existing laws relating to professional responsibility and ethics.

The result was a publication entitled *Practicing Ethics: A Handbook for Municipal Lawyers.*[38] Published in the fall of 2004, this handbook provides guidance on the professional standards that govern the various facets of a city attorney's practice. The handbook describes how ethical issues might arise and what legal standards apply to their resolution. The handbook also explores the application of California's prohibitions against self-dealing to city attorneys,[39] the conflict of interest provisions in the Political Reform Act, the city attorney's role and duties during litigation, and issues involving the selection and management of outside counsel.[40]

---

[33] The League of California Cities is divided into departments, representing various municipal professions. For example, there is a city managers department and a city attorneys department, each of which serve as statewide professional associations for their respective members.

[34] *See, e.g.*, "A Scramble for Power and Patronage," *Los Angeles Times*, November 17, 2005.

[35] *See generally People v. Chacon*, 117 Cal. App. 4th 961, 118 Cal. App. 4th 427 (2d Dist. 2004), *rev. granted* (August 11, 2004). The District Attorney prosecuted the council member for violating California's prohibition against self-dealing on contracts (the theory being that becoming the city manager involved a contract); one of the council member's/manager's defenses is that she relied on the city attorney's advice.

[36] Available at http://www.icma.org/main/bc.asp?bcid=40&hsid=1&ssid1=17&ssid2=24 Tenet 7 of the Code specifically enjoins member managers to "[r]efrain from all political activities which undermine public confidence in professional administrators . . . [and to] [r]efrain from participation in the election of the members of the employing legislative body.

[37] Available at http://www.calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10158&id=1267.

[38] Available at www.cacities.org/attorneys (the California city attorneys website).

[39] Cal. Gov't Code § 1090.

[40] Note that California's minimum continuing legal education requirements (MCLE) require attorneys to have four hours of training on attorney ethical obligations (and 21 hours of other topics) every three years. *See* Cal. Bus. &

© 2006

Now About that Code of Ethics . . .

With that important and groundbreaking work completed, the department next turned its attention to developing a set of aspirational ethical principles for city attorneys. The notion was that these ethics principles would supplement the guidance provided by the Rules of Professional Responsibility.

The document that resulted[41] contains three basic parts:

1. A preamble that explains the purpose and goal of the principles, and those to whom[42] the principles are intended to apply;

2. Ten core ethical principles to guide a city attorney in his or her practice; and

3. Examples of how those principles apply in certain situations.

Each principle also includes an explanation of why the principle is significant to the practice of municipal law.

The goals of the principles are to:

- Serve as an aspirational guide to city attorneys in making decisions in difficult situations,

- Provide guidance to clients and the public on the ethical standards to which city attorneys aspire, and

- Promote integrity of the city and city attorney office.

Some of the issues the principles address include:

- Promoting, defending and exemplifying the rule of law;

- Earning client trust through quality legal advice; and

- Avoiding politicization of the city attorney's position.

Prof. Code §§ 6070-71. This booklet forms the basis of self-study materials ultimately worth three hours of such credit.

[41] Attached as Attachment 2, also available at www.cacities.org/cityattorneysethicalprinciples.

[42] Note that, for purposes of the principles, the term "city attorney" refers to city attorneys and their legal staff and firms providing legal services to cities on an ongoing basis that are the functional equivalent to services provided by assistant or deputy city attorneys (for example, on redevelopment and personnel issues). The principles are not intended to apply to special counsel who represent a city on an intermittent basis.

© 2006

Again, each ethical principle is followed by a series of examples that explain how the principle applies in specific situations. Under the "no politicization" principle, an example reads as follows:

> The city attorney or persons seeking to become city attorney should not make campaign contributions to or participate in the campaigns of that city's officials, including candidates running for that city's offices or city officers running for other offices. For private law firms serving as city attorney or seeking to become city attorney, this restriction should apply to the law firm's attorneys.

This of course was what the city managers had hoped would be included. The full document can be viewed at www.cacities.org/cityattorneysethicalprinciples and is attached as Attachment 2.

The principles are intended to be, in essence, self-enforcing (unlike the ICMA code). There is no oversight or enforcement body to monitor or enforce compliance with the principles. The notion is that peer support and pressure will motivate city attorneys to attain the aspirations.

Process

The aspirational principles, like *Practicising Ethics*, were developed by a blue ribbon committee of the city attorneys department's leading thinkers on municipal attorney ethics. The principles were then circulated for comment, revised and presented to the department for approval.

The principles were not without controversy, including controversy on the issue of discouraging campaign contributions. Interesting issues arose within the League as to whether the League's Board of Directors should review and approve the principles, inasmuch as the department adopted the principles under the auspices of the League.

The principles are still freshly minted and there hasn't been a great deal of discussion about the adopted principles yet within the city attorneys ranks. The department has scheduled a series of small group discussions about the principles at its spring conference in May.

Back to the Bar (Yep, Still the State Bar)

Meanwhile, the California Bar (which seems to have a penchant for getting crosswise with public lawyers) raised city attorney hackles with a recent quote in the local legal newspapers. The context of the quote was the Bar's position on AB 1612, the third in a series of legislative efforts to extend California's whistle-blowing protections to California public agency attorneys. The Legislature has twice passed such legislation, only to have it vetoed by two different governors.

The dust-up related to a Bar employee's explanation of why the State Bar would oppose the legislation. Apparently one of the issues was whether public lawyers should be considered public

© 2006

servants. Apparently the Bar thinks not: "Public lawyers do not serve the public," said State Bar Deputy Executive Director Robert A. Hawley. "Public officials serve the public."[43]

The issue of whistle blowing protections for public agency attorneys has been in the legal news since the end of the 1990's, when a state lawyer turned over information to a legislative committee indicating that her boss, the state Insurance Commissioner, had misused insurance settlement monies, including using the money for personal political purposes. The State Bar declined to take disciplinary action against the attorney for breaching what might have been considered the attorney-client privilege, but did not grant assurances that other attorneys would receive similar protections in future situations.[44]

The Bar staffer insists he was quoted out of context. A clarification may be pending.

[43] *See* "State Bar Opposes Lawyer Whistle-Blowers," *Daily Journal* (March 21, 2006).
[44] *See* "State Bar Exonerates Quakenbush Whistle-Blower" *State Bar Journal* (January 2001) at 1; available at http://www.calbar.ca.gov/calbar/2cbj/01jan/page24-1.htm.

© 2006

Epilogue: Toward a Culture of Ethics

Having spent this period of reflection on ethics and ethics education, a few observations bear sharing.

- As even the Federal Sentencing Guidelines recognize (see summary and references on the following page), an effective ethics compliance program goes beyond educating individuals in an organization about the legal requirements, but includes fostering a culture of ethics.

- Adopting a values-based code of ethics can help, but is only a small step to creating a true culture of ethics in an organization.[45]

- One aspect of creating a culture of ethics is the extent to which an organization's leaders (elected and appointed) are selected and retained based on ethical considerations and those leaders then communicate their expectations to others in the agency (including in the employee review process).

- There are a number of tools available for helping local officials understand their special obligations as public servants and promote a culture of ethics within their agency.

- At some point, it is helpful to recognize that there is a limit to the extent that laws can assure proper behavior and promote the public's trust in public agency decisions.[46]

Undoubtedly there is more to learn and share about this issue. Your thoughts are welcome. The odyssey is by no means over.

[45] *See* Stephen Bonczek and Donald Menzel, "Achieving an Ethical Workplace," reprinted in *The Ethics Edge* at 106 ("While it is important to have ethics guidelines and to [disseminate] those guidelines . . ., this action alone will likely fall short of guiding behavior, and can do little toward changing it when change is needed. An ethics training initiative is necessary to enhance ethical decision making through a structured problem-solving process. Ethics training must have substance and address more than methods of staying out of trouble. It also needs to focus on making government work better in serving the public interest.")

[46] *See Scandal Proof*, at 172 ("We believe the principal flaw in contemporary federal ethics policy is that it has too often sought to substitute formal regulations for the expectations of good conduct. As former White House Counsel C. Boyden Gray has argued, 'Ethics is, mind you, an elaborate legalistic ritual in which the application of multi-part tests substitutes for the internalization of values and the establishment of multi-level clearance processes replaces the development of supportive institutional culture. For government [officials] who must negotiate this ritual, the result is frustration and alienation. For citizens who hear all the ethics fanfare but nevertheless see government as usual, the result is disillusionment and cynicism.'")

© 2006

What Constitutes an Effective Ethics Compliance Program?

Effective compliance programs can take many forms, ranging from regular financial audits that include periodic review of management practices to more extensive programs. Here are some concepts on compliance program elements from the Federal Sentencing Guidelines:[47]

- ❑ Does the agency have standards and procedures to prevent and detect unlawful conduct?
- ❑ Is the agency's leadership knowledgeable about the agency's compliance programs?
    - o Does the leadership exercise reasonable oversight of program implementation?
    - o Are specific individuals assigned overall responsibility for compliance issues, as well as day-to-day operational responsibility? Is there periodic communication between the two areas of responsibility?
    - o Does the governing body and top management take responsibility for assuring that the agency's actions comply with the law and that the agency's ethics program is effective?
- ❑ Do employees have a mechanism for reporting concerns about illegal or unethical behavior without fear of retaliation?
- ❑ For employees, are those who have engaged in unethical or illegal behaviors disciplined and precluded from serving in positions of authority (in a manner consistent with federal, state and local personnel laws)?
- ❑ Do employees and agents have incentives to act legally and ethically (including avoiding even the appearance of impropriety)?
- ❑ Is the agency's compliance and ethics program monitored and periodically evaluated to assess its effectiveness?
- ❑ Does the agency have a history of taking reasonable steps to respond to misconduct and prevent future misconduct?
- ❑ Does the agency periodically assess the risk of unlawful conduct, so it can take steps to minimize those risks? This can include:
    - o An inventory of the range of agency activities, the laws that apply to those activities, and the potential for missteps in complying with those laws.
    - o An analysis of what would be the most serious missteps and hence most deserving of priority in prevention efforts.
- ❑ Does the agency's leadership foster a culture of ethics within the agency?

A key theme of the guidelines is holding management accountable for encouraging compliance and ethical behavior. Moreover, the emphasis on a "culture of ethics" recognizes that no matter how effective an ethics program is, it will not be effective in the absence of demonstrated ethical leadership by an organization's top leadership. For more information on this topic, see www.ca-ilg.org/culturechecks.

Note that these guidelines apply to governmental units.[48] The guidelines also recognize that efforts will reasonably vary based on the size of an organization, history of misconduct and industry practice.[49]

[47] United States Sentencing Commission, Guidelines Manual, Chapter 8, Part B: Remedying Harm from Criminal Conduct, and Effective Ethics and Compliance Program (November 2004).
[48] *Id.* § 8A1.1 (Application Note #1: The organizational sentencing guidelines apply to "corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations").
[49] *Id.* §8B2.1 (Application Note #2A: The organizational sentencing guidelines apply to "corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.").

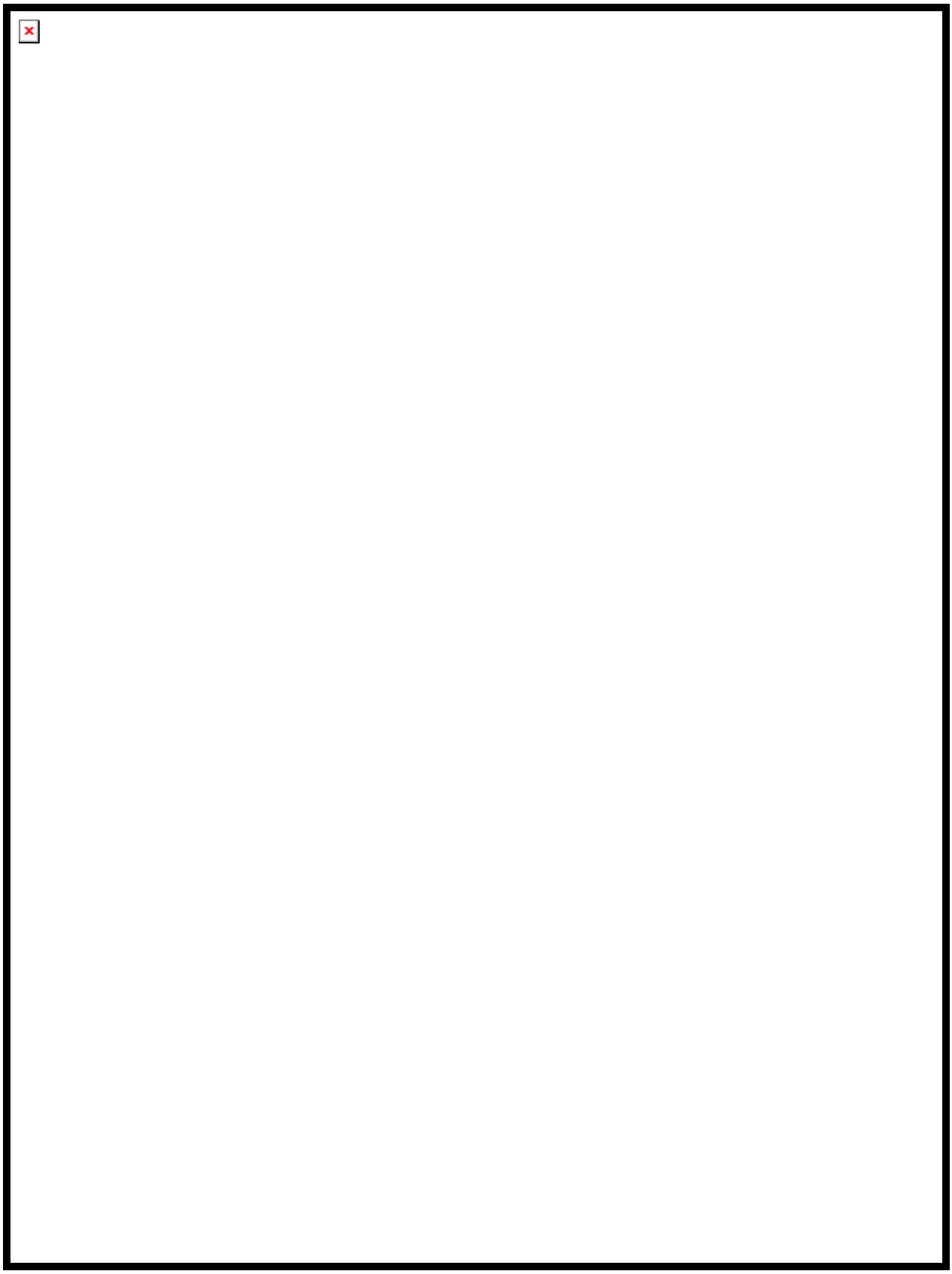
© 2006

Attachment 1:

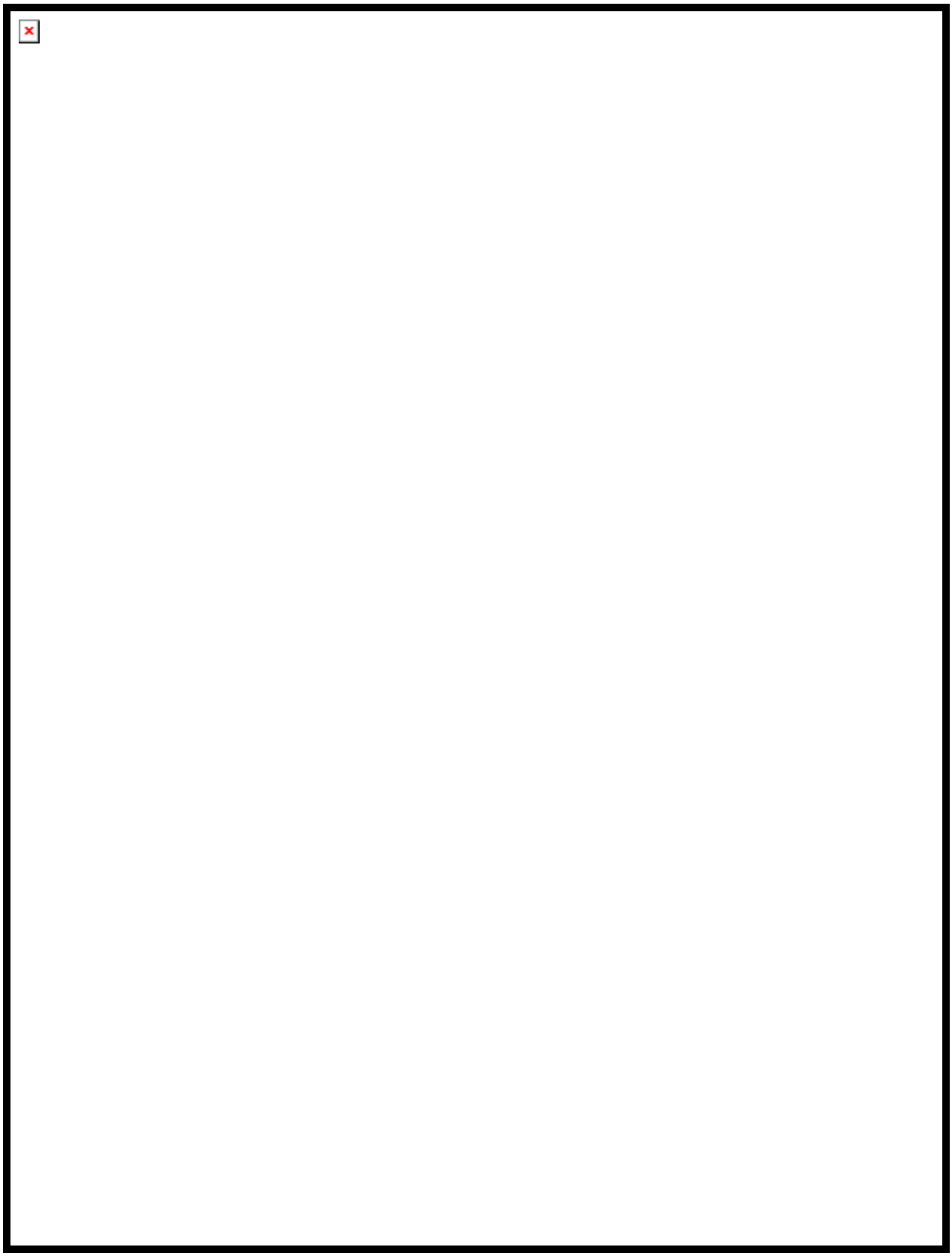
Doing the Right Thing: Putting Ethics Principles into Practice in Public Service

(A Resource for Local Officials)

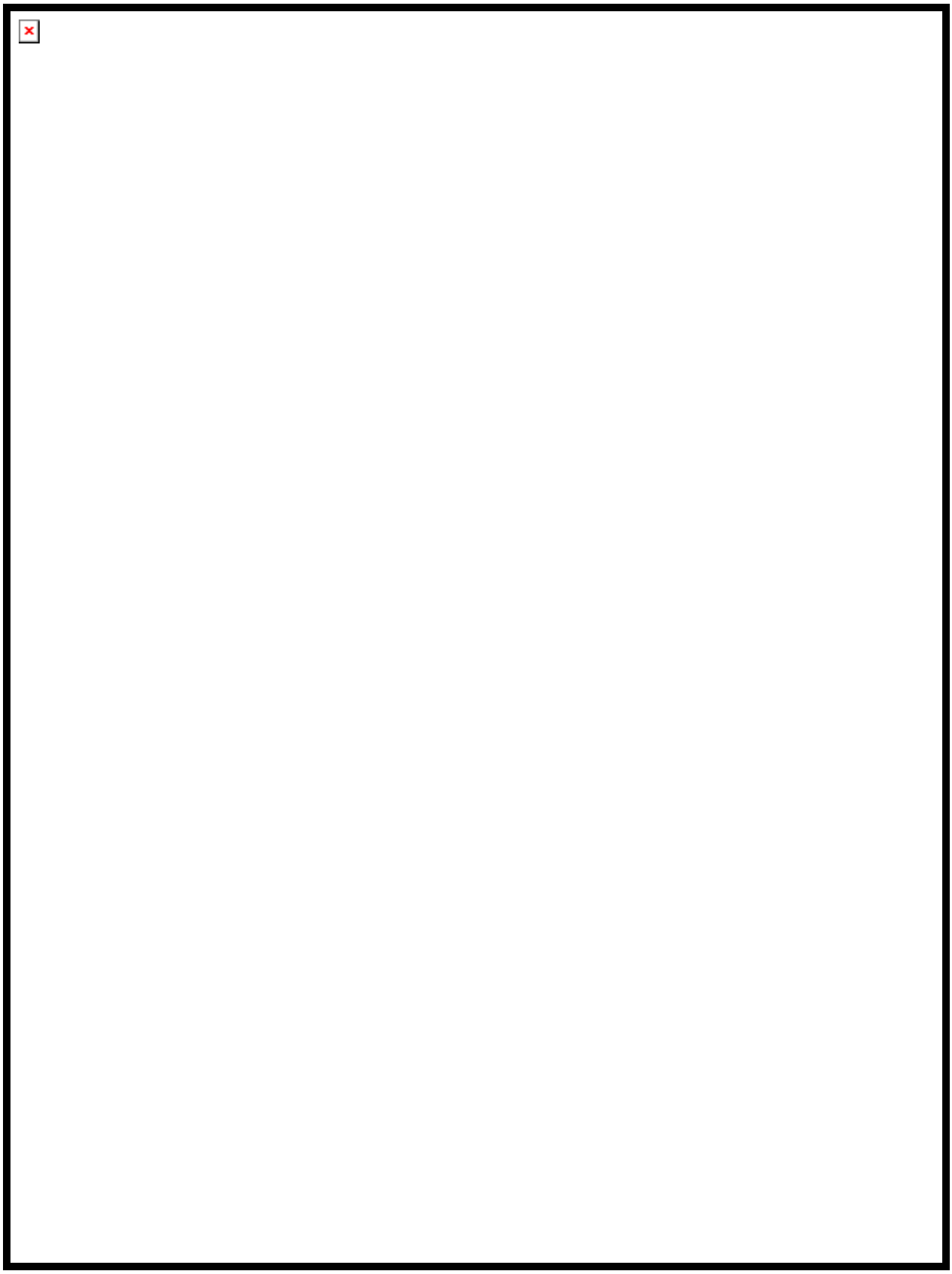
© 2006



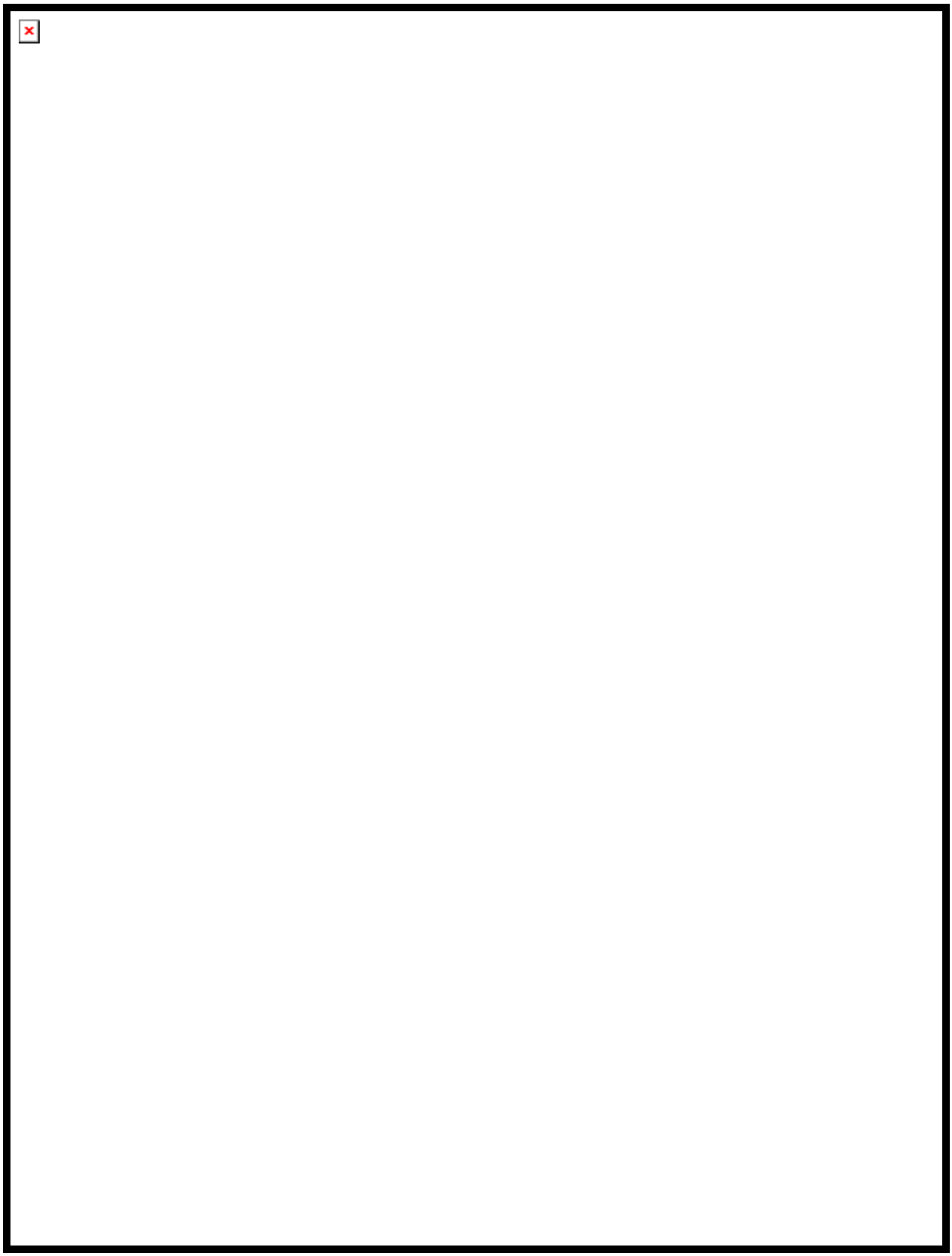
© 2006



© 2006



© 2006



© 2006

© 2006

Attachment 2:

California City Attorneys Ethical Principles

© 2006

Ethical Principles for California City Attorneys[50]

Adopted October 6, 2005
City Attorneys Department, League of California Cities

Preamble

A city attorney occupies an important position of trust and responsibility within city government. Central to that trust is an expectation and commitment that city attorneys will hold themselves to the highest ethical standards. Every effort should be made to earn the trust and respect of those advised, as well as the community served.

The City Attorneys Department of the League of California Cities has therefore adopted these ethical principles to:

- Serve as an aspirational guide to city attorneys in making decisions in difficult situations,
- Provide guidance to clients and the public on the ethical standards to which city attorneys aspire, and
- Promote integrity of the city and city attorney office.

City attorneys are also subject to the State Bar's Rules of Professional Conduct. For an explanation of how the rules apply to city attorneys, please see Practicing Ethics *published by the League of California Cities in 2004, available at www.cacities.org/attorneys. These aspirational ethical principles are not an effort to duplicate or interpret the State Bar's requirements or create additional regulatory standards.*

The role of the city attorney and the client city varies. Some city attorneys are full-time public employees appointed by a city council; some are members of a private law firm, who serve under contract at the pleasure of a city council. A few are directly elected by the voters; some are governed by a charter. When reflecting on the following principles, the city attorney should take these variations into account.

The city attorney should be mindful of his or her unique role in public service and take steps to ensure his or her words and deeds will assist in furthering the underlying intent of these principles.

[50] When used in this document, the term "city attorney" refers to all persons engaged in the practice of municipal law. This includes attorneys in firms that provide legal services to cities on an ongoing basis that are the functional equivalent to services provided by assistant or deputy city attorneys (for example, on redevelopment and personnel issues).

© 2006

Fundamental Principles (There is no significance to the order of the list.)

Principle 1 (Rule of Law). As an officer of the courts and local government, the city attorney should strive to defend, promote and exemplify the law's purpose and intent, as determined from constitutional and statutory language, the case law interpreting it, and evidence of legislative intent. As an attorney representing a public agency, the city attorney should promote the rule of law and the public's trust in city government by providing representation that helps create a culture of compliance with ethical and legal obligations.

Explanation. *The city attorney's advice and actions should always proceed from the goal of promoting the rule of law in a free, democratic society. Because the public's business is involved, within the city organization the city attorney should consistently point out clear legal constraints in an unambiguous manner, help the city to observe such constraints, identify to responsible city officials known legal improprieties and remedies to cure them, and if necessary, report up the chain of command to the highest level of the organization that can act on the client city's behalf.*

Examples

1. The city attorney should give advice consistent with the law and the policy objectives underlying those laws, but may consider and explain good faith arguments for the extension or change of a legal principle.

2. The city attorney should not attempt to justify a course of action that is clearly unlawful. Where the city attorney's good faith legal assessment is that an act or omission would be clearly unlawful, the city attorney should resist pressure to be "creative" to come up with questionable legal conclusions that will provide cover for the elected or appointed public officials to take actions which are objectively unlikely to be in conformance with the legal constraints on the city's actions.

3. The city attorney's guiding principle in providing advice and services should be sound legal analysis. The city attorney should not advise that a course of action is legal solely because it is a common practice ("everyone else does it that way"), a past practice ("we have always done it that way"), or because the risk of suit or other consequence for action is considered low.

4. The city attorney's advice should reflect respect for the legal system.

5. If the city has made a decision that the city attorney believes may be legally harmful to the city, the city attorney should encourage the city to take any necessary corrective action but do so in a way that minimizes any damage to the city's interests.

6. The city attorney should be willing to give unpopular legal advice that meets the law's purpose and intent even when the advice is not sought but the legal problem is evident to the attorney.

© 2006

7. The city attorney should not only explain and advise the city on the law, but should encourage the city to comply with the law's purpose and intent.

Principle 2 (Client Trust). The city attorney should earn client trust through quality legal advice and the manner in which the attorney represents the city's interests.

Explanation. *It is difficult for the city attorney to effectively represent the city if public officials do not trust the city attorney's competence and professionalism.*

Examples

1. The city attorney should use available resources to maximize his or her ability to advise knowledgeably on issues of municipal law.

2. The city attorney should be clear with individual council members and staff on the extent to which their communications with the city attorney can and will be kept confidential. The city attorney should be especially clear when confidentiality cannot be lawfully maintained.

3. Sometimes the city attorney will be asked a question during a public or private meeting and the city attorney is unsure of the answer. When time permits, the city attorney should advise that additional time is needed to research the matter and provide an appropriate response. If extra time is not available, then the city attorney should be candid regarding any uncertainty he or she feels about the answer given.

4. When a question is posed and the city attorney knows there is no definitive, clear conclusion, the city attorney should describe the competing legal considerations, as well as inform the city of the legally supportable courses of action, together with an evaluation of the course that is most likely to be upheld.

5. In the event the city attorney is asked in a public forum to provide advice that could undermine the city's ultimate position, the city attorney should seek to meet in closed session, if legally permissible, or, if time permits, provide his or her opinion in a confidential memorandum. If the advice must be given during an open session, then the city attorney must be mindful of the impact that advice given in public may have on the city's ultimate position.

6. When the city attorney has a duty to provide documents or other information to outside law enforcement authorities, he or she should do so in a way to minimize harm to the city consistent with that duty.

© 2006

Principle 3 (No Politicization). The city attorney should provide legal advice in a manner that avoids the appearance that the advice is based on political alignment or partisanship, which can undermine client trust.

Explanation. *The city attorney and the city attorney's advice needs to be trusted as impartial by the entire council, staff and community.*

Examples

1. The city attorney should provide consistent advice with the city's overall legal interests in mind to all members of the city team regardless of their individual views on the issue.

2. Each city council member, irrespective of political affiliation, should have equal access to legal advice from the city attorney, while legal work on a matter consuming significant legal resources should require direction from a council majority.

3. The city attorney or persons seeking to become city attorney should not make campaign contributions to or participate in the campaigns of that city's officials, including candidates running for that city's offices or city officers running for other offices. For private law firms serving as city attorney or seeking to become city attorney, this restriction should apply to the law firm's attorneys.

4. When considering whether to become involved in policy advocacy on an issue that may potentially come before the city, the city attorney should evaluate whether such involvement might compromise the attorney's ability to give unbiased advice or create the appearance of bias.

Principle 4 (No Self Aggrandizement). The city attorney should discharge his or her duties in a manner that consistently places the city's interests above self-advancement or enrichment.

Explanation. *The city attorney, by his or her acts and deeds, should demonstrate that his or her highest professional priority is to serve the city's needs.*

Examples

1. The city attorney's operating and legal services budget requests should be based on the goal of efficiently serving the client city's realistic legal needs (*i.e.* avoid "empire building").

2. The city attorney should provide advice without a focus on garnering personal support or avoiding personal criticism.

© 2006

3. While it is appropriate for a city attorneys to provide both advisory and litigation services, a city attorney should give the city a full range of reasonable options including alternatives to litigation for resolving issues.

Principle 5 (Professionalism and Courtesy). The city attorney should conduct himself/herself at all times in a professional and dignified manner, interacting with all elected officials, city staff. members of the public, and the media with courtesy and respect.

Explanation. *The city attorney should be a role model of decorum and composure.*

Examples

1. The city attorney should provide advice and information to the council and individual council members in an evenhanded manner consistent with city policy governing the provision of legal services to the city.

2. The city attorney should communicate in a way that is sensitive to both the context and audience, explaining the law in a way that is understandable.

3. In interactions with the public, the city attorney's role is to explain procedures and the law, but not engage in debate.

4. The city attorney should show professional respect for city staff, colleagues, the legal system and opponents. The city attorney should not personally attack or denigrate individuals, particularly in public forums.

5. The city attorney should not seem to endorse, by silence or otherwise, offensive comments made to him/her about others.

6. Sometimes the city attorney will provide advice in public, either because of a city's approved practices or as necessitated during a public meeting. Such advice should be provided in a low-key, dispassionate and non-confrontational manner.

7. The tone of the city attorney's advice and representation should not give the appearance of a personal attack on an individual, even when it is necessary to explain that a particular official's action is unlawful.

8. The city attorney should be open to constructive feedback and criticism.

Principle 6 (Policy versus Law). The city attorney's obligation is to understand the city's policy objectives and provide objective legal advice that outlines the legally defensible options available to the city for achieving those objectives.

Explanation. *The city attorney must respect policymakers' right to make policy decisions.*

© 2006

Examples

1. The city attorney may offer input on policy matters, but should make clear when an opinion is legal advice and when it is practical advice.

2. The city attorney should not let his or her policy preferences influence his or her legal advice.

3. If a city attorney finds it necessary to advise the city that a particular course of action would be unlawful, the city attorney should strive to identify alternative approaches that would lawfully advance the city's goals.

Principle 7 (Consistency). The city attorney should conduct his or her practice in a way that consistently furthers the legitimate interests of cities.

Explanation. *Consistency in the legal positions taken by city attorneys is vital to city attorneys' credibility with the courts, clients, and the public.*

Examples

1. The city attorney should not represent a private client if that representation will necessitate advancing legal principles adverse to cities' clearly recognized and accepted interests.

2. When providing advice, the city attorney should inform his or her city of any far-reaching negative impacts a position may have on the city's own potential future interests as well as cities' interests in general, particularly when establishing legal precedent.

3. The city attorney should carefully consider whether to hire or recommend a firm that advances legal principles adverse to city interests on behalf of private clients.

Principle 8 (Personal Financial Gain). The city attorney's primary responsibility is to serve the city's interest without reference to personal financial gain.

Explanation. *An important aspect of the city attorney profession is public service.*

Examples

1. The city attorney should provide the highest possible quality work regardless of the remuneration received.

2. The city attorney's representation should be based on a realistic understanding of the city's needs in light of the city's fiscal and other constraints. However the city attorney should advise the city when additional resources are necessary to provide the level of legal services the city requires.

© 2006

3. The city attorney should refrain from providing unnecessary or redundant services to the city.

4. The city attorney should never use the power, resources or prestige of the office for personal gain.

Principle 9 (Hiring by and of City Attorneys). The selection and retention of the city attorney and city attorney staff should be based on a fair process that emphasizes professional competence and experience. The process should not include inappropriate considerations such as political, personal or financial ties.

Explanation. *The public's trust in the quality of the city's legal services is undermined if it appears that considerations other than competence affected the decision to hire someone.*

Examples

1. The city attorney should engage staff and vendors based on objective standards relating to professional competence and experience.

2. The city attorney should avoid providing gratuities to decision-makers during the pendency of decisions relating to the city attorney's employment.

3. City attorneys must keep employment negotiations separate from the city attorney's role as the city's legal advisor.

4. The city attorney should not undermine the employment of an incumbent city attorney. The city attorney may respond to unsolicited inquiries from a potential client about future representation.

5. The city attorney should maintain an office that is open to employees from diverse backgrounds and remove unnecessary barriers to success in his or her office and in the legal profession.

6. The city attorney should not award or recommend award of litigation or legal services-related contracts if the public could question whether the contract was awarded for reasons other than merit, such as the contractor (or member of the contractor) providing gifts to or participating in political campaigns of (including making campaign contributions to) officials with the power to award the contracts.

7. The city attorney should hire or recommend staff and consultants who adhere to these ethical principles and encourage existing staff and consultants to do likewise.

8. The city attorney should seriously consider refusing to represent cities that do not support the city attorney's adherence to these principles

© 2006

Principle 10 (Professional Development). The city attorney should contribute to the profession's development by improving his or her own knowledge and training and by assisting other public agency attorneys and colleagues in their professional development.

Explanation. *For city attorneys to remain a vital, positive part of municipal government, members of the profession should take affirmative actions to advance respect for and proficiency by its practitioners.*

Examples

1. City attorneys have a strong tradition of assisting their colleagues through formal or informal sharing of their knowledge and expertise, including active participation in the League of California Cities, the State Bar and a local municipal attorney group or bar association. This tradition also includes sharing of research and opinions when consistent with protecting client confidences.

2. The city attorney should continually strive to improve his or her substantive knowledge of the law affecting municipalities through presenting or attending appropriate educational programs.

3. The city attorney should keep in mind the dynamic nature of municipal law and update his or her understanding of the law on an issue, rather than relying on past knowledge.

© 2006

© 2006

Attachment 3:

Municipal Lawyers Top 10 Tips For Ethics Education

© 2006

© 2006

Top 10 Ethics Education Tips

1. **Affirm Your Audience's Sense of Personal Ethics.** Acknowledge that public service ethics is different—and sometimes counter-intuitive--because of its emphases on laws, public perceptions and avoiding even the appearance of impropriety.

2. **First Principles.** Take a step back and contemplate what a given law or set of laws is trying to accomplish (for example, keeping considerations relating to personal financial gain out of government decisions). Use such first principles as starting points for your explanations. Avoid explaining the laws in terms of how you understand it as an attorney (how it's written in the statutes or codes, or the kind of legal analysis that has to be undertaken to given good advice in a given situation).

3. **Be Clear on Your Role.** Explain that your goal is to keep them from making missteps and to protect the agency from the consequences (legal, financial and public trust) of mis-steps.

4. **Make it Real.** Include stories both as illustrations of the concepts you are presenting, as well as a way of underscoring that people do get in trouble for overstepping the bounds of the law.

5. **Consequences.** Explain the legal, financial and personal consequences of ethics law mis-steps.

6. **Provide Tools and References.** Checklists, analytic frameworks, resources for further reading and other informational materials can reinforce your messages and reduce the likelihood of information overload.

7. **The Relationship between Law and Ethics.** Note that the law creates only minimum standards for behavior. Just because a course of action is legal doesn't mean that it is ethical or the public will perceive it to be such.

8. **Focus on the Learning Objective.** Your ultimate goal is to encourage local officials to consult with counsel when issues arise. The intermediate goal is to help them identify when a given situation may present issues under the applicable ethics laws. The goal is *not* to teach them the law or encourage them to self-advise.

9. **Acknowledge the Laws Aren't Perfect or Even Intuitive**. Spare those in your audience (and yourself) the frustration associated with trying to rationalize those inevitable situations in which the application of the law does not achieve just or even rational results.

10. **Ethics Isn't Easy.** The hard truth is that doing the right thing often comes at a personal cost.

© 2006