



DANGEROUS  
CURRENTS:  
RECOGNIZING  
AND AVOIDING  
CONFLICTS OF  
INTEREST

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# Session Outline

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1. Introduction
2. 13 Ethical Questions To Consider
3. Case Study
4. Legal Ramification for Not Having a Conflict-of-Interest Policy
5. Why Adopt Conflict of Interest Policy
6. Questions

# Introduction

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John Withers  
Case Study



Scott Smith  
Legal Ramifications  
for Not Having a  
Conflict-of-Interest  
Policy



Bill Kelly  
Why Adopt Conflict  
of Interest Policy

# 13 Ethical Questions To Consider

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## 1. Standing up to Power

- Someone in power is asking you to do something unethical.

## 2. Made a Promise

- Conflicting commitments force you to choose.

## 3. Intervention

- You see something wrong. How do you proceed?

## 4. Conflicts of Interest

- Multiple roles put you at cross purposes

## 5. Suspicious Without Enough Evidence

- You believe something is going on, but you're not sure.

## 6. Playing Dirty

- Achieving justice but by doing something unethical

## 7. Skirting the Rules

- Bending a rule for a better outcome.

## 8. Dissemblance

- Misrepresenting the truth for a better outcome.

## 9. Loyalty

- Giving up ethical stance to protect valued relationship.

## 10. Sacrificing Personal Values

- Living ethically might put burden on others.

## 11. Unfair Advantage

- When opportunity exists to wield an unfair upper hand.

## 12. Repair

- When you are responsible for a mistake.

## 13. Showing Mercy

- You could grant forgiveness, but you don't know if you should.

# Introduction & Background



John Withers

OC LAFCO Special District Commissioner,  
(1994-2018)

- Appointed May 1994 as the Alternate Special District Member
- Within 3 months, became the senior Special District Member of the Commission due to election turnover and the death of a commissioner
- Served on OC LAFCO almost 25 years

# Examples of Participated in LAFCO Actions

- Consolidation of the Los Aliso, Santiago County, Santa Ana Heights, and Carpenter Water Districts
- Consolidation of OC Sanitation Districts and Garden Grove Sanitation District
- Incorporation of the Cities of Aliso Viejo, Laguna Woods, and Rancho Santa Margarita
- Annexations to the City of Lake Forest
- Merger of the Coastal and Municipal Water Districts of Orange County
- Annexation of the former MCAS, El Toro to the City of Irvine
- Annexation of 50 county islands
- Adoptions of MSR's, sphere of influence updates, and South OC Governance reports



"As a LAFCO Commissioner you don't make friends,  
you accumulate enemies."

# Political Conflict Issue #1

“Do you represent the public at-large or the constituency who elected you?”

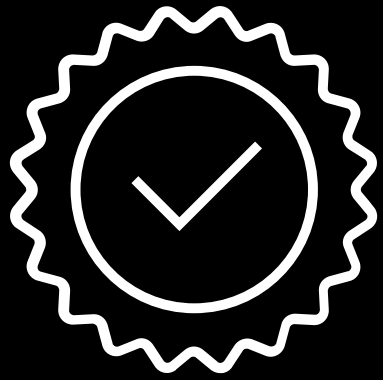


# Political Conflict Issue #2

“Is it ok to vote on issues affecting your agency?”

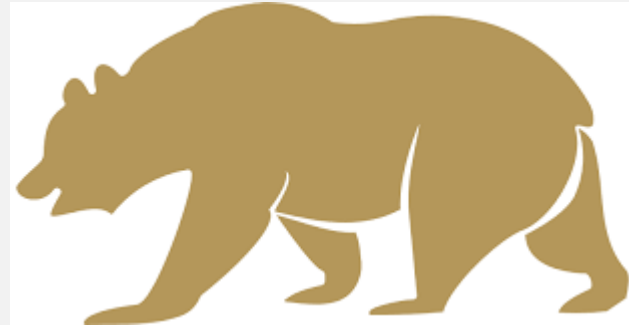
Political  
Conflict  
Issue # 3

“Is it ok to go political?”



“Although not always popular, it is never wrong to do the right thing.”

# Questions



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ATTORNEYS AT LAW

# LAFCO AP Ethics

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October 2022

# PUBLIC ETHICS

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- Open Meeting Laws
- Financial Conflicts of Interest
  - Political Reform Act
  - Contracts – Gov't Code Sec. 1090
- Due Process and Fair Hearing

# RALPH M. BROWN ACT

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- What's a "meeting"?
- No discussion or action, except on agenda
- Closed sessions
- Remedies and penalties



# BROWN ACT EXCEPTIONS

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## BUT:

- Stakeholders can petition you
- Staff can brief you

# REMEDIES

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- Violations of Act
  - Writ to set aside action
  - Injunction to bar future violations
  - Commission pays all attorneys fees
  - Knew or should have known
  - Enforcement by FPPC, AG, DAs

# INCOMPATIBLE OFFICES

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- ❑ Public offices are incompatible if there is any significant clash of duties or loyalties
- ❑ BUT Gov't Code Sec. 1099 allows them where state law compels or allows simultaneous office holding

# LEVINE ACT

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- ❑ Disqualification

- ❑ Usually not disqualifying as “income”

- ❑ BUT at LAFCO, if the decision involves a license, permit, or other entitlement for use before LAFCO (incl. annexations)

# DUE PROCESS

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- ❑ Quasi-judicial proceedings
  - ❑ Ex-parte communications
  - ❑ Disclosure
- ❑ BUT LAFCO decisions are legislative and quasi-legislative

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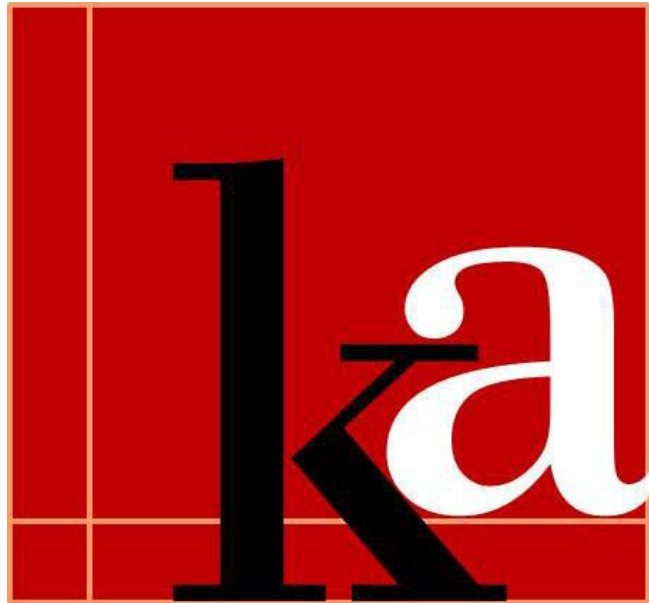
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# WILLIAM R. KELLEY

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PRESIDENT CEO

KELLY ASSOCIATES MANAGEMENT GROUP LLC



# Why Would a Local Agency want to Adopt a Conflict of Interest Policy?

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# Continued

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**Why Not!**

**Good Governance** – Ethics and conduct

**AB1234**

**Public Expectations** – Transparency, integrity, accountability, and ethical behavior

**Policy Documents** – Operational/governance manuals, handbooks on procedures, code of ethics and conduct, ethical standards for public officials

**Conflict of Interest Statements**

# Balancing Power And Influence




...or, how to put lipstick on a bulldog

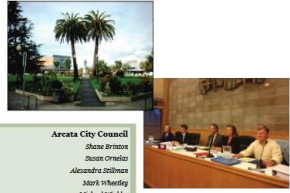


# LAFCO AP Ethics

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October 2022

 **City Council Protocol Manual**  
2011



Arcata City Council  
Shane Brown  
Susan Orndorff  
Alexandra Stilleman  
Mark Healdy  
Jacobus Vreider


CHAPTERS	PAGE
Introduction and Overview	1
General Powers & Responsibilities	5
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Revised 4/2011

City of Brea

CITY COUNCIL

PROTOCOLS & PROCEDURES



November 2014  
Last Revised: June 2022


EAST VALLEY WATER DISTRICT

**BOARD OF DIRECTORS**  
**HANDBOOK**



LEADERSHIP | PARTNERSHIP | STEWARDSHIP



  
City of Henderson Ethics Code  
Chapter 2.40 – Ethical Standards for Public Servants  
Adopted 10/17/2017

Sections:  
2.40.010 - Purpose  
2.40.020 - Coverage  
2.40.030 - Policy of the city  
2.40.040 - Commitments of a Private Capacity  
2.40.045 - Prohibited conduct  
2.40.045 - Gifts  
2.40.050 - City contracts  
2.40.060 - Conflicts of interest  
2.40.070 - Disclosure of confidential information  
2.40.080 - Outside employment of city employee  
2.40.090 - Political activity of city employees  
2.40.100 - Advisory opinions  
2.40.110 - Enforcement  
2.40.120 - Violations  
2.40.130 - Remedies prohibited  
2.40.140 - Cooling-off period, lobbying and former attorneys  
2.40.150 - Ethics education  
2.40.160 - Severability

2.40.010 - Purpose.

A. The purpose of this chapter is to


1. Create a city ethics committee that consists of the mayor-pro tem, the city manager, the city attorney and the director of human resources.
2. State ethical standards that are to be applied in public service to the city;
3. To provide a process by which public servants may identify and resolve ethical issues; and
4. To promote public confidence and trust in the integrity of public servants.

2.40.020 - Coverage.

A. This chapter applies to all public servants of the city. Public servants include:

1. Elected officials—Mayor and members of city council;
2. Public appointees—All persons appointed by the city council to a city board, commission or committee that makes decisions, sets policy, or advises or makes recommendations to the city;
3. All city employees; and
4. Contracted employees — All persons who are not city employees but meet all of the following criteria:
  - a. Enter into a contract with the city;
  - b. Are paid compensation with public money;
  - c. Serve in a position that involves the performance of public duties under the substantial and continuing direction and control of a city executive or supervisory employee;
  - d. The position ordinarily would be held or filled by a city employee and would require the city employee to hold a valid professional or occupational license or similar type of authorization issued by a state or local agency to perform the public duties of the position, other than a general business license or similar type of authorization;
  - e. The position is entrusted with public duties of a substantial and continuing nature which ordinarily would require a city employee to avoid conflicts between the

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Sunnyvale

City of Sunnyvale  
2022 Code of Ethics and Conduct for  
Elected and Appointed Officials

*"Conduct is three-fourths of our life and its largest concern."  
—Matthew Arnold*



"Sure I'm depressed. I'm the senior senator from my state and the junior senator already has more conflicts of interest."

THANK YOU.  
ANY QUESTIONS?