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When Opinions Collide

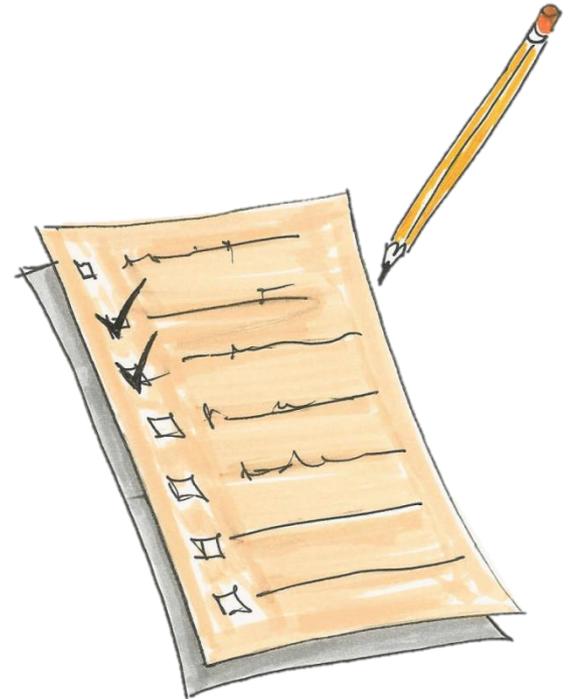
Sacramento
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PRESENTED BY

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Outline

- Conflicts of Interest: Can I Vote?
- Quasi-Legislative: What Does it Mean?
- Litigation and Legislation



Conflicts of Interest: Can I Vote?

- Government Code section 84308
- Political Reform Act
- Government Code section 1090
- Perception of a conflict of interest
- Incompatible offices
- Due Process



Potential Conflict #1

- Proposed annexation to annex 20 parcels into a water district.
- 5 property owners signed the petition.
- A married couple owns one of the affected parcels. Each gave \$300 to Commissioner Buck for his reelection campaign. Neither signed the annexation petition, and neither actively supported or opposed the annexation.
- Commission staff doesn't believe either member of the couple has tried to influence any Commissioner or staff.
- May Commissioner Buck participate in the annexation proceeding?



Potential Conflict #1

- Is this a covered proceeding?
- Who is a “participant?”
- What should Commissioner Buck do if he had received a contribution of over \$250 and had a conflict?
- What if the proceeding would have been to change the sphere of influence instead?
- What are best practices for 84308 compliance?



Potential Conflict #2

- Commissioner Bee is reviewing the agenda packet and realizes that her high school friend is the applicant. She hasn't seen her friend in over 20 years.
- She asks Commission counsel whether she has a conflict.
- What questions should counsel ask?

Potential Conflict #2

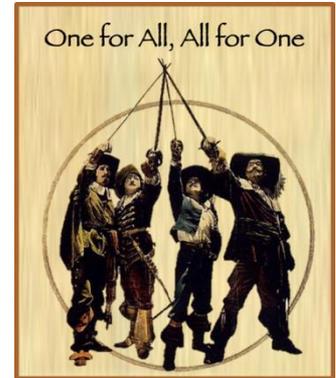
- Does Commissioner Bee have a financial interest in her high school friend or the project?
- Is there any conflict other than a perception of a conflict or bias towards or against the applicant?

Potential Conflict #3

- Commissioner Payne is an employee of an consulting firm. On the agenda for tomorrow night is a proposed contract between LAFCo and the consulting firm.
- Does the Commissioner have a conflict?
- If yes, under which law(s)?
- May the Commissioner recuse himself?



Potential Conflict #3



- Section 1090 issue
- Is there an applicable exception?
 - How many employees does the firm have?
 - Is Commissioner Payne a salaried employee or does she have any kind of ownership interest or officer position within the firm?
 - Does Commissioner Payne own stocks?
 - How long has the Commissioner worked at the firm?
- Remote interest permits Commission vote without her

Potential Conflict #4



- City Council approves, on a 4-1 vote, proceeding with a new business park project immediately outside of its boundaries and within its sphere of influence. Council Member Jones voted no.
- Jones is on the Commission. When the Commission considers the annexation application, the applicant asks Jones to recuse himself.
- Does Jones have a conflict of interest?

Potential Conflict #4



- Every member on LAFCo serves as a LAFCo Commissioner, not as a representative of his/her home agency
- Commissioners make independent judgments, based on LAFCo policies and CKH, not necessarily based on views of their own agency

Potential Conflict #5

- Member of the local sewer district applies for the vacant public Commission seat.
- May the Commission appoint the sewer district board member to the Commission?



Potential Conflict #5

No. Government Code section 56331: No person appointed as a public member or alternate public member pursuant to this chapter shall be an officer or employee of the county or any city or district with territory in the county, provided, however, that any officer or employee serving on January 1, 1994, may complete the term for which he or she was appointed.

Potential Conflict #6

- LAFCo considers an annexation of certain territory into a city. City Council member Cynic publicly expresses strong opposition to the annexation and the project itself.
- Following LAFCo approval, the project later returns to the City Council when the applicant wants to change one of the conditions in the use permit previously approved by the Council.
- May Cynic participate and vote on this item?

Potential Conflict #6

- If Commissioner Cynic was so biased and had his mind so “unalterably closed” to considering any other viewpoint, a court may find him to have been unable to afford the applicant due process if he participates.
- Requires a case-by-case individual determination and assessment of the situation
- Typically arises when a legislative body acts like a court, in quasi-judicial proceedings

What is Quasi-Legislative?

- Miriam Webster: quasi-legislative agency is one that has a partly legislative character by possession of the right to make rules and regulations having the force of law
- Essentially, the agency acts more like a legislative body than not.



Quasi-Legislative v. Quasi-Judicial

- As compared to quasi-judicial where administrative hearings are held, evidence is taken, and a decision is rendered with respect to a particular piece of property or person
- Example: License revocation proceedings in front of a city council are quasi-judicial



What is the difference?

- LAFCo is required to hold a public hearing and to study provision of services to be provided
- LAFCo must consider certain criteria
- LAFCo must hear and consider written testimony
- LAFCo must make findings



What is Quasi-Legislative?

- Courts: annexation is considered a quasi-legislative function
- Powers are legislative and political rather than judicial in nature
- LAFCo is a legislative creation, exercising a legislative function

What is Quasi-Legislative?

- Doesn't matter if not enacting ordinances or other regulations
- Public hearing process uncovers facts necessary to arrive at a “sound and fair legislative decision.”
- Important distinction: due process is not an issue
 - No right to the adoption of legislation

Impact of Quasi-Legislative Decisions

- Agencies subject to LAFCo decisions must comply with LAFCo conditions of approval. No discretion to disregard them.
- As independent agencies, no administrative appeal following LAFCo approval.
- Litigation is the remedy. Standard: abuse of discretion.
 - Was the decision arbitrary and capricious?
 - More deferential standard of review

Litigation & Legislation

- *Northern Inyo Healthcare District & Inyo LAFCo v. So. Mono Healthcare District, Sac. Co.*
Superior Ct. Case No. 2015-80002247 (2017)
 - SMHD provided orthopedic services in Bishop (NIHD) since 2003, with NIHD's agreement
 - SMHD opened new, larger clinic in 2015. NIHD & Inyo LAFCo demanded LAFCo approval
 - Sac Sup. Court judgment for SMHD





Litigation & Legislation

- *City of Patterson v. Turlock Irrigation District*, 227 Cal. App. 4th 484 (2014) and AB 464
 - Court: statutory scheme doesn't authorize expansion of a district's territorial boundaries for the sole purpose of granting voting rights to consumers of the district's existing electrical services.
 - City's application wasn't the type authorized by statute
 - AB 464 would permit annexations of areas already receiving services via an out of area service agreement

Litigation & Legislation



City of Selma v. Fresno County LAFCo, 1 Cal. App. 5th 573 (2016)

- LAFCo continued hearing on reorganization proposal
- Didn't comply with GC section 56666(a) 70-day time limit
- Court: Under GC section 56106, time limit was directory, not mandatory
- Even though that meant that the Commission would have no consequences, court under CCP section 1858 could not rewrite the law "simply because a literal interpretation might produce results of arguable utility."

Litigation & Legislation

- SB 448 (Wieckowski): Inactive districts
- SB 1266 requirement for JPAs providing municipal services to file with LAFCOs is 7/1/17
- Little Hoover Commission meeting June 22, 2017



Thank you for attending!

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