



# ETHICS OFFICE MONTHLY REPORT

## TO BOARD OF DIRECTORS

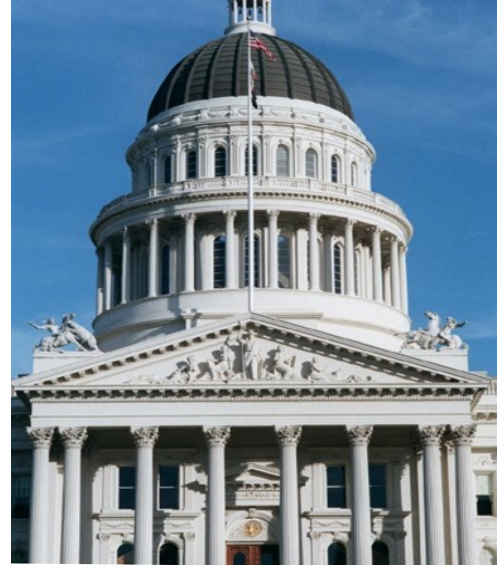
Metropolitan Water District of Southern California  
May 2016

### BROWN ACT AND PUBLIC RECORDS ACT: UPDATES AND REMINDERS

On June 2, Ethics Officer Deena Ghaly attended the State Bar's annual conference on California's open government laws. The conference is always an engaging and informative reminder about the legal requirements for protecting the public's rights to know and participate in its own governance. Highlights of the conference included:

#### AGENDA REQUIREMENTS

Precise, accurate agendas remain a central element of a cleanly run public meeting. Practitioners suggest imagining their public looking at agendas and trying to decide whether the subject matter warrants their time and effort to attend. Would they be sufficiently on notice about what is about to be discussed and possibly decided?



#### CLOSED SESSIONS FOR REAL ESTATE NEGOTIATIONS

Closed sessions are limited to discussions and vote on specific matters – litigation; security; personnel; labor negotiations; and real property transactions. A recent case, *LA Times v. Memorial Coliseum Commission* (2013) is a reminder that closed sessions to consider real property transactions are strictly limited to issues about price and payment terms only.

In that case, the Coliseum Commission discussed a number of issues beyond the lease terms, including: the future of the Sports Arena, naming rights for the Coliseum, environmental impact reports, historic preservation issues, and parking.

The court ruled that the topics the Commission discussed in closed session were beyond the narrow exception for real estate negotiations. As part of its remedy, the court required the Commission to audio record all future closed sessions for three years.

#### SECURITY AND SELF-IDENTIFICATION

In this time of heightened security concerns, there must be a balance between public safety and the public's right to attend and speak without identifying themselves. Among the practices suggested are (i) providing for a sign-in and entrance badge requirements but writing only "Board Meeting/Date" on the badges; and (ii) avoiding "cross-pollination" between security personnel and staff managing meetings by having security keep sign-in sheets confidential and directing them not to answer questions from staff and officials like "who's the guy in the green sports coat?"

## MEETING BY TELECONFERENCE

Teleconferencing for absent officials is permitted but not required to be provided. The public official's physical location must be accessible to the public for the entire duration of the meeting. So, maybe yes for a hotel room in Miami but not for a cruise ship deck where only paying passengers are permitted.

## MISTAKEN DISCLOSURE OF PRIVILEGED INFORMATION

A recent California Supreme Court case, *Ardon v. City of Los Angeles* (2016) 62 Cal 4th 1176, supports an agency's position that inadvertent disclosures do not constitute waiver of attorney-client or attorney work product privileges with regard to Public Records Act requests.

## PERSONAL ELECTRONIC INFORMATION

A case now pending before the California Supreme Court, *City of San Jose v. Superior Court* (No. S218066) will address important questions of whether government agencies must disclose government business-related communications stored on public officials' and employees' personal devices and sent from their personal accounts.

## PROJECTS & INITIATIVES

The Ethics Officer and staff remain engaged in several projects and initiatives for review, analysis, and evaluation of various aspects of Metropolitan's activities:

- ⇒ New Ethics Office helpline implementation.
- ⇒ Update of Ethics Office webpage, posters, and other outreach materials.
- ⇒ Continuing implementation of new electronic matter management and document management software solution.
- ⇒ Amendments to Metropolitan's conflict of interest code (i.e., designated positions and disclosure categories).
- ⇒ Continuation of several investigation matters.
  
- ⇒ Monthly director conflict bulletins.

## ADVICE AND ASSISTANCE

The Ethics Office provides advice, counseling, or other assistance to any director, officer, employee, or contractor regarding application or interpretation of Metropolitan's ethics rules or policies. Absent any unusual circumstances, the Office gives its advice in writing.

The Ethics Office can provide advice only prospectively, i.e., about future activities. If it becomes apparent that a request for advice or other assistance concerns events that have already occurred, it might be necessary to review the matter as a potential violation.

## ADVICE AND ASSISTANCE, CONTINUED

In May 2016, the Office provided analysis and advice in the following areas:

- ⇒ Participation rules as a political candidate.
- ⇒ Application of incompatible public offices rules for directors.
- ⇒ RFP/RFQ Evaluation committees, and potential conflict of interest.
- ⇒ Conflict implications of outside consulting income.
- ⇒ Conflict implications of travel funded by non-profit public interest associations.

## ETHICS OFFICE MATTERS MONTHLY REPORT

Matters Addressed FY 2015-16	FY	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY
	14/15	2015	2015	2015	2015	2015	2015	2016	2016	2016	2016	2016	2016	15/16
<b>Ethics Complaints</b>														
Abuse of Authority	14	1	2	4			2	1	1		2			13
Campaign Contributions								1	1	1				3
Conflict of Interest	1													0
Discrimination					1									1
Economic Disclosure														0
Gifts														0
Misleading Associations														0
Nepotism														0
Outside Employment														0
Outside Scope of Ethics Office	21						1							1
Revolving Door														0
Whistleblower Protection	3													0
<b>Total Complaints</b>	<b>39</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>		<b>18</b>
<b>Ethics Advice</b>														
Abuse of Authority	3	2				2								4
Political Activities	2						1	1		4	1			7
Conflicts of Interest	19	1	2	3	4	3		11	5	3	9	10		51
Economic Disclosure	16			2					3	19	9			33
Gifts	25		1	2			3		4	2	4	2		18
Misleading Associations														0
Nepotism											1			1
Outside Employment	4		1		1					1	1			4
Outside Scope of Ethics Office	3								2			1		3
Public Inquiries				1										1
Revolving Door	8	3												3
Whistleblower Protection														0
<b>Total Questions</b>	<b>80</b>	<b>6</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>12</b>	<b>14</b>	<b>29</b>	<b>25</b>	<b>13</b>		<b>125</b>
<b>Combined Total</b>	<b>119</b>	<b>7</b>	<b>6</b>	<b>12</b>	<b>6</b>	<b>5</b>	<b>7</b>	<b>14</b>	<b>16</b>	<b>30</b>	<b>27</b>	<b>13</b>		<b>143</b>