



*Everyday Ethics for Local Officials*

## **The Ethics of Speaking One's Mind**

*June 2008*

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### **QUESTION**

*I am an elected official. My colleagues on the governing board of my agency voted to oppose legislation that I personally support (it was a split vote and I voted no). I have communicated my views to our local Congress member. Now I am being accused of violating my ethical duty to support the agency's position. My view is that I have an ethical duty and a First Amendment right to share my views with anyone who wants to hear them, including our Congress member. Who is right on this issue?*

### **ANSWER**

This question poses an interesting conflict between multiple ethical values. One is the *responsibility* to advocate one's sense of what best serves the public's interests in a situation --- whether or not others share that viewpoint. The other values are *respect* for a decision-making process and *loyalty* to the organization as a whole. These values might suggest that an official accept the will of the majority and the result of the collective decision-making process.

A good question to ask when faced with conflicting or "right versus right" ethical dilemmas is, "What course of action best promotes the public's interests and its confidence in the decision-making process?" Let's analyze this dilemma using that framework.

### **The Importance of Starting With the Public's Interests**

To start on solid ethical ground, your reason for disagreeing with the majority needs to be firmly rooted in your sense of what best serves the public's interests in your community. You say that you personally support the legislation. Is this because you think that the legislation's passage will be in your constituents' best interests?

As a public agency decision-maker, you have a duty and responsibility to put the public's interests ahead of all others --- including your own --- in your decision-making. Factors to consider include (but are not limited to):

- Whether the legislation's passage would effectively address an issue the community is grappling with;
- Whether the legislation would enhance (or not erode) the agency's authority to address issues of concern to the community; and
- Whether the legislation is consistent with the agency's legal and fiscal interests.

If you base your legislative position on other factors, you may want to rethink your position and whether you should participate in the agency's decision-making process on this item.

For example, it would be inappropriate to vote your views based on your business's interests. Furthermore, if you have a personal financial interest in the decision, you may be disqualified from participating in the decision.

Similarly, if you serve on the board of a nonprofit organization that cares deeply about the legislation, the public might reasonably question whether your position is based on the community's general interests or the narrower interests of the nonprofit. You may want to step aside from the decision-making process to avoid any questions about what motivates your position. Some officials take this concept of undivided loyalties to the point of resigning leadership positions in nonprofit organizations so they can fully commit their loyalties to the public agency and the community that the agency serves.

You may also want to make it clear in any advocacy efforts you engage in that you are doing so in your capacity as a spokesperson for the nonprofit, *not* as a public official.

Here is another important thing to keep in mind: "When one works in the public sector, and particularly as one moves up the levels of the organizational hierarchy in the public sector, one becomes less and less a 'public citizen' and more and more a 'public servant.' This is part of the responsibilities and burdens one accepts as a public official," observes Associate Professor Craig Dunn of Western Washington University, whose research includes managerial ethics and values. Being a public servant may constrain your activities in many ways, including the open expression of personal views. Having the right to engage in an activity doesn't mean exercising that right is necessarily the best course of action.

In serving the public, officials routinely face difficult policy choices in which reasonable people can conscientiously reach differing conclusions on what best serves the community's interests. All the public officials consulted on this topic said that it is not unethical for a public official to remain true to his or her sense of what best serves the public's interests, even if a majority of colleagues on the decision-making body don't share those views.

Mountain View City Manager Kevin Duggan characterizes the competing considerations in clear terms:

... it is good practice for members, to the greatest degree possible, to support the position of their legislative body after the vote is taken. This demonstrates respect for the deliberations and decision-making of the body and communicates a clear message of the position of the council, board, etc.

However, continuing to espouse another opinion is not in and of itself unethical in my view. You could even make the point that advocating a contrary position on a matter that the board has voted on (especially a matter of consequence that a member has a fundamental objection to) could in fact be the ethical thing to do.

The question is not so much *whether* you persist in your view that the majority's view is mistaken but *how*.

## **Communicating Clearly When Speaking on Behalf of Others**

When speaking on behalf of the city to a member of Congress, Rancho Cordova City Council Member Ken Cooley indicates that he believes he has a responsibility first to share the city's officially adopted position, even when his views are out of step with his colleagues' views. After he has shared his agency's official perspective, if he feels that it would also be helpful to the Congress member, he would also share his individual perspective.

For John Longley, Porterville city manager, whether you use your title is an important issue. He believes that a personal perspective that differs from the agency's adopted position should be shared without using your official title. This makes a clear distinction between the agency's position and your differing position.

Dick DeWees, mayor of Lompoc, adds, "The public official must make it absolutely clear in any written or oral communication that his or her position on the issue is contrary to the majority position of the agency he or she represents." This gets to the ethical value of trustworthiness --- being very forthright about the full set of facts related to an issue and leaving nothing to inference (for example, the inference that if one city official feels a certain way about an issue, then the city must also feel that way).

Bob LaSala, former city manager of Lancaster and Sunnyvale, believes a dissenting elected official "has an obligation to both the majority position as the official position of the agency *and* to her minority position on the issue." LaSala believes that as long as she is not representing her position as that of the agency (and specifically stating that she is not speaking on behalf of the agency and that there *is* an official position), then it is perfectly acceptable to present another point of view to the Congress member. LaSala says, "Doing so in this way will actually foster the process of respectful disagreement and acknowledge both the rule of the majority and the importance of the minority opinion."

## The Issue of Using Public Resources

Using agency stationery or other resources to promote your minority position prompted mixed reactions. A good practice is to have a policy that sets out the collective views of the governing body or local agency on when it is OK to use agency letterhead. For example, the City of San Pablo has the following policy:

- A. To the extent allowed by law, and subject to the restrictions set forth in paragraph B, individual city council members may have letters or other written communications prepared by the City Manager's Office and sent on city stationery provided that the subject matter of the correspondence concerns official city business or matters within the subject matter jurisdiction of the city council. The correspondence should clearly state that the opinions expressed therein are the personal opinions of the council member and do not necessarily reflect the consensus of the city council. Copies of all such correspondence should be sent to each member of the city council.
- B. Notwithstanding paragraph A, above, whenever a matter is agendaized for city council consideration, and that matter may or does result in a letter or other written communication from the city council, any such letter shall be sent on behalf of the entire city council and shall be signed by the mayor. No other letters or written communications shall be prepared by city staff on behalf of individual city council members on such matters unless so directed by city council action.

As Merced Deputy City Attorney Ken Rozell notes, policies on using agency letterhead vary. Rozell explains, "Some jurisdictions do not allow individual elected officials to use agency letterhead at all, some allow an elected official to use letterhead with his or her name on it (in other words, individualized letterhead indicating status as an elected official for the agency) while other jurisdictions allow a letter to be sent out on agency letterhead if the letter has been preapproved." Having a policy so everyone knows what is and is not OK is very helpful.

In this context, it is important to remember a key point: Both personal and political use of public resources are prohibited.<sup>1</sup> A local official would be well-advised not to use public resources to promote what might be perceived as (or actually be) individual personal or political agendas.

## Keep the Tone of the Debate Respectful, Civil and Honest

John Beauman, mayor pro tem for the City of Brea, shares his perspective:

It is one thing to respectfully differ with a majority opinion, expressing an opposing viewpoint objectively stating why --- but quite another to continue making a public issue of it by badmouthing one's colleagues. Everyone votes on a matter from their respective understanding of the issue, which may differ. We

make the best decision we can under the circumstances --- which include the data we receive and from whom.

To argue and publicly attack one's colleagues does not persuade anyone of the validity of one's argument, nor does it win others or public opinion over to one's viewpoint. . . . Once a matter is settled by a majority vote, continually attacking the opposing side creates a climate of distrust and contention that carries over to all future business to the point that it tends to become personal, which interferes with conducting the people's business in a professional and orderly manner.

Creating a climate of distrust and contention is not consistent with your ethical obligations as an elected official, especially if you undermine the public's trust and confidence in the decision-making process simply because your perspective did not prevail. Of course, it is never ethical to misrepresent, distort or "spin" the position or the motivations of the majority for taking the position in question --- such an approach is inconsistent with the ethical value of trustworthiness.

As Dr. Martin Luther King Jr. observed, the means one uses must be as pure as the end one seeks --- worthy ends never justify questionable means.

## **The Relationship Issue**

There also are short- and long-term elements to the analysis of what to do in a given situation. City of Port Hueneme Council Member Murray Rosenbluth agreed that he would be inclined to share his dissenting concerns with the Congress member, making it clear that he was speaking only for himself. Council Member Rosenbluth noted that he would also need to weigh the wisdom of possibly alienating his colleagues. As a participant in a decision-making process that draws on multiple decision-makers, it can be both useful and ethical to respect the views of those with whom one disagrees on a given issue.

John F. Kennedy looked at this issue in *Profiles in Courage*:

Realizing that the path of the conscientious insurgent must frequently be a lonely one, we are anxious to get along with our fellow legislators . . . We realize, moreover, that our influence . . . --- and the extent to which we can accomplish our objectives and those of our constituents --- are dependent in some measure on the esteem with which we are regarded by other [decision-makers].<sup>2</sup>

To go back to the means versus ends issue, this is a situation where using good means can also help one achieve good ends: greater effectiveness with one's colleagues. There are accounts of decision-makers, who started on the short side of a three-to-two split on a vote, winning over members of the majority because of the integrity and civility with which they conducted themselves.

Another question to ponder is whether there might be a middle ground on which all or more members of the decision-making body can agree. Kennedy also noted:

Going along means more than just good fellowship --- it includes the use of compromise, the sense of things possible. We should not be too hasty in condemning all compromise as bad morals. For politics and legislation are not matters for inflexible principles or unattainable ideals. . . .

. . . the legislator has some responsibility to conciliate those opposing forces. . . and to represent them in the larger clash of interests . . . he alone knows that there are few if any issues where all the truth and all the right and all the angels are on one side.<sup>3</sup>

Thinking in terms of finding common ground is a solid and ethical leadership strategy for both those in the majority and the minority, because it gives voice to more segments of the community. As the Reverend Jesse Jackson said, "Leadership has a harder job to do than just choose sides. It must bring sides together."

## Conclusion

Based on the responses we received to the query presented at the beginning of this article, it is clear that local elected officials highly prize their First Amendment right to speak their conscience when they feel the public's interests are served by doing so.

It is also clear from the responses that even when one has a right to speak, there can be good reasons to think about *how* to do so. And as Mark Twain suggested, a higher purpose can sometimes be achieved by discretion: ". . . in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience and the prudence never to practice either." Such prudence may enhance the public's and others' trust and confidence in your leadership.

## **Policies Expressing Shared Norms of Dissent Can Help**

Misunderstandings and unnecessary conflict can be avoided if a decision-making body has a shared understanding of the norms associated with dealing with varying viewpoints. Draft language for such a policy appears below. Note that this policy is a statement of the body's mutual expectations and norms.

### *Representing the City, Personal or Other Organizations' Interests*

If an elected official appears before another governmental agency, official or organization to give a statement on an issue, the official must clearly state whether his or her statement reflects personal opinion or the official position of the agency. If the elected official is representing the agency's official position, the official must explain and advocate the official agency position on an issue, not a contrary personal viewpoint. If the official feels he cannot in good conscience do so, he should ask that another official be sent to represent the agency's position.

If the elected official is representing another organization whose position is different from the agency's, the elected official should consider abstaining on the issue when it comes before the agency if the issue substantially impacts or is detrimental to the interests of the agency and those it serves.

When an organization appears before the decision-making body in which elected officials participate, the elected officials should disclose their involvement in the organization. The officials should consider abstaining from the vote on the issue if it would appear to a reasonable member of the public that the officials may have conflicting loyalties that might prevent them from putting the interests of the agency -- and those it serves -- first.

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This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit [www.ca-ilg.org/trust](http://www.ca-ilg.org/trust).

The Institute for Local Government thanks the following individuals who shared their views in connection with this column: John Beaman, mayor pro tem, City of Brea; Thomas B. Brown, attorney, Hanson Bridgett; Tom Butt, council member, Richmond; Michael N. Conneran, attorney, Hanson Bridgett; Ken Cooley, council member, Rancho Cordova; Burk E. Delventhal, deputy city attorney, Office of the San Francisco City Attorney; Dick DeWees, mayor, City of Lompoc; Kevin Duggan, city manager,

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Mountain View; *Craig P. Dunn, Ph.D, associate professor, Department of Management, Western Washington University*; Martin Gibson, council member, Canyon Lake; Matt Grocott, council member, San Carlos; John Larson, council member, Seal Beach (retired); Robert LaSala, former city manager, Lancaster and Sunnyvale; Brian M. Libow, city attorney, San Pablo; John Longley, city manager, Porterville; Larry McCallon, council member, Highland; Rebecca L. Moon, assistant city attorney, Sunnyvale; Joseph W. Pannone, Aleshire & Wynder, city attorney for Baldwin Park, Bellflower and Palos Verdes Estates; Elizabeth Patterson, mayor, Benicia; Gail Reavis, council member, Mission Viejo; Murray Rosenbluth, council member, Port Hueneme; Kenneth D. Rozell, deputy city attorney, City Attorney's Office, Merced.

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## Endnotes:

<sup>1</sup> See Cal. Penal Code § 424; Cal. Gov't Code § 8314.

<sup>2</sup> Kennedy, John F., *Profiles in Courage* (HarperPerennial:2000) at page 4 (original edition published in 1956).

<sup>3</sup> *Id.* at 4-5.