



VOLUME 8, NO. 1  
WINTER 2005

# f BOARD focus

*What Should Boards Do when Codes of Ethics are Violated?*

## Upholding Board Ethics

**I** care about, serve, and respect the community, the college and its employees, and our students."

*"I am law-abiding, trustworthy, and fair."*

by **Cindra J Smith, Ed. D.**

VIRTUALLY ALL community college trustees believe and abide by these statements. The public and college employees expect community college trustees to uphold these high standards in the performance of their duties. Governing boards, which serve the public and provide leadership for the campus community, must live up to these expectations.

Being ethical and legal involves knowing the law, developing a code of ethics, and then behaving lawfully and ethically. Effective boards know and comply with the laws and regulations that apply to college boards and public officials. They also establish and uphold a code of ethics, which defines what they ought to do to fulfill their moral duty as community servants and leaders.

Ethical behavior fosters confidence in the colleges and its governing board and promotes the public good. Being ethical means upholding the values of trustworthiness, respect, responsibility, fairness, caring, and citizenship.

### Standard V. B. I. h

The governing board has a code of ethics that includes a clearly defined policy for dealing with behavior that violates its code.

*Accrediting Commission for  
Community and Junior  
Colleges*

## Adopting a Board Code of Ethics

PREVENTION is the best cure in promoting ethical behavior. The best prevention consists of adopting a code of ethics, educating board members about laws and ethical expectations, and making an ongoing and public commitment to behaving legally and ethically.

Codes of ethics (or “standards of practice” as they are sometimes called) define specific expectations for board members. The codes define what boards think is appropriate behavior for trustees, college staff and community members. Codes of ethics put in writing the “oughts” of trusteeship. They go beyond legal requirements in describing board roles and responsibilities and trustee conduct.

Therefore, a key to success is to have a code of ethics that is periodically reviewed. There are many resources boards can use to develop and revise a code of ethics—the Community College League has a set of materials, and other resources are listed at the end of this article.

Much of the value of having a code of ethics comes from board review of the concepts in the code. Effective boards periodically review the code to be sure it continues to be an effective guide for board behavior. They foster awareness of ethical expectations by:

- Ensuring that all trustees are aware of the board’s ethical expectations by providing it to all trustees and having it available at board meetings.
- Including a review the code of ethics when orienting new trustees and CEOs.
- Using the standards in the code as criteria in the board self-evaluation process.
- Identifying consequences for violations of the code of ethics, since violations negatively impact the board and the college.

## Ethical Violations Cause Harm

TRUSTEES who violate the board’s code of ethics harm the board and the college in a number of ways. Violating ethics laws may subject the board and college to legal action, which can involve penalties and significant costs. Not addressing ethical and legal violations may cause the public and college employees to lose respect for and trust in the board, which may lead to loss of trust in the college and district. Unethical behavior may reduce support for community college issues from community leaders and the state legislature. Bond issues are less likely to pass. Collective bargaining processes are more difficult. Significant violations have caused colleges to risk their accreditation status.

Boards cannot afford to ignore “bad behavior” and violations of the code of ethics. It is difficult to approach a fellow trustee about perceived violations, but it must be done for the sake of the college and its students. The strategy a board uses to address ethical breaches depends on whether the behavior violates related laws or the board’s own code of ethics.

## Ethics Laws

THERE ARE THREE major categories of laws that address ethical behavior by public officials:

**Financial Interests.** Conflicts of interest laws prohibit trustees from financially benefiting from board decisions, or acting on matters that benefit family members.

**Fair and Open Decision-Making.** California’s open and public meetings laws (the Brown Act) require that the public’s business be done in public. Examples of violations include making decisions in private or that should be made in public meetings, discussing items that have not been noticed to the public, and violating provisions that closed session information shall be kept confidential.

**Use of Public Funds.** It is felony to misuse public funds. Examples include claiming expenses that they did not incur and using college resources for personal or political purposes.

Actual or perceived violations of the law must be dealt with expeditiously and legal advice should be sought. A study session or workshop may be appropriate for the entire board if it appears that trustees may be unaware of the law.

See the chart on pages 6-7 for the laws in these categories and the potential consequences of violating them.

## Board Code of Ethics Violations

IN SOME CASES, behaviors may violate the board's own board code of ethics or standards of practice, but do not violate the law. Addressing these violations can be difficult, because different people have different interpretations of ethical behavior and expectations. Following are three statements found in most codes of ethics and examples of behaviors that violate the statement.

- *"We recognize that a trustee is a member of a legal entity and shall abide by majority decisions of the board. We work with fellow board members in a spirit of harmony while respecting differences of opinion."* Examples of violations include attacking other trustees or the president in public, publicly advocating against board decisions after they are made, or sabotaging the work of the board. Trustees must find ethical ways to express their individual opinions that don't violate the all-important principle that the board is a unit.
- *"We clearly delegate to and support the CEO in the performance of his or her responsibilities."* Examples of violations include ongoing and substantial

attempts by trustees to administer, rather than govern the college, which violate the separation of CEO and board roles. Examples include ignoring local decision-making process and communication protocols by working directly with staff members, telling college staff whom they should hire, and attempting to direct the day-to-day duties of staff members.

- *"We represent the District as a whole, but recognize the unique needs of the individual colleges and local communities. We are not advocates for special interest groups."* Trustees who persistently advocate a single interest instead of the common public good may be violating this statement. Examples include trustees who ignore the broad range of public needs in community college education in their decision-making and appear to be agents of a union, a specific community group, or a business interest. All interests are important and should be considered, but solely representing single interests does not serve the greater good for the college and community.

The board of trustees is responsible for monitoring its members.

## Steps in Addressing Ethical Violations

THE BOARD OF TRUSTEES has responsibility for monitoring itself, and the chair plays a key role in ensuring that laws and codes of ethics are followed. While CEOs help ensure their boards are knowledgeable by providing information about ethics laws and the board's code of ethics, they should not be put in the position of enforcing trustees' ethical behavior.

Ethical dilemmas are not uncommon, where people are faced with decisions where they must balance two conflicting ethical values, or where doing the ethical thing comes at great personal cost. Good people may disagree on whether or not certain behavior is unethical.

Therefore, a first step in addressing a perceived violation of an ethical code or law is to examine the various perspectives about and interpretations of the behavior. Look both at the intention and motives of the trustee in question and those making the charge. Was the action or decision based on an ethical dilemma? Is the decision open to interpretation? Does the perceived violation betray the public trust? Do those expressing the concern have a particular interest that may influence their perception?

Accusations of unethical behavior can do as much harm to an institution as the behavior under question—care must be taken that misguided righteousness does not do more harm than good.

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(continued from page 3)

Unfortunately, some accusations may be based on retribution, personal benefit or the desire to embarrass someone.

Therefore, when considering charges that an ethical code has been violated, one should take into account the motives of the parties involved. Do they intend to benefit the college and its mission, are they to benefit or protect a certain group of people or the trustee, or are there other possible motives?

Also think about whether addressing the behavior will foster confidence in the district and its governing board. Take into account what will happen if this issue is not addressed. When considering possible responses, choose the one(s) that are most likely to uphold the public trust and that most closely reflect ethical values.

Boards and CEOs should seek advice from legal counsel regarding violations that may have legal ramifications. A presentation by an attorney about legal constraints and standards expectations may be all that is needed to prevent further violations of law and regulations. The CEO can be very helpful in ensuring that board members (particularly new ones) have the information they need to be aware of legal expectations and alerting the board to its legal responsibilities.

Addressing ethical issues is the responsibility of the board chair or other trustees identified by the board. Following are some possible courses of action:

- The board chair talks to the person about the implications of the perceived violation, including the negative impact the behavior will have on the college, the board, and the individual trustee. Other influential trustee(s) may also be asked to talk to the person. An opportunity should be provided for the person to explain his or her perspective and motives and to set matters straight. Good human relations and communication skills are helpful in handling

## FOUR QUESTIONS TO ASK

To help determine if what you are doing is ethical, ask:

- Am I doing to others what I would want done to me?
- Would I mind seeing what I am doing on the front page of a newspaper?
- Am I comfortable with members of my family knowing what I am doing?
- Do I want employees and students to do what I'm doing?

these difficult situations—charging someone with unethical behavior may lead to hostility and defensiveness and may make the situation worse.

- An ad hoc committee may be appointed to look into the allegations and make a recommendation to the board chair or the board as a whole. Again, the person should be provided an opportunity to present their perspectives and rationale.
- The board may hold a workshop or retreat on codes of ethics and the importance of upholding them. All trustees discuss interpretations of the code and reinforce expected behavior.
- The board may, in a meeting, make a public statement of expected board behavior, adopt a board resolution about what expected behavior is, and/or publicly reaffirm the ethics policy. This course of action alerts the public that individual violations are not condoned by the board.
- The board may issue a public statement in which it expresses concern with an individual trustee's behavior. The statement would be made at a board meeting.
- A last resort is a board vote to censure the trustee's behavior. Censure distances the board from the unethical behavior of one of its members and is a clear, public statement that unethical behavior is not condoned or tolerated. However, censure officially divides the board, which may lead to additional

## Board Meeting Behavior

IF ILLEGAL or unethical behavior occurs during a board meeting, the chair can state what the expectations and standards are of board behavior, recess the meeting, and/or state that the behavior is not the policy and practice of the board. Examples of possible ethical violations include the trustee remaining at the board table when he or she has a conflict of interest, engaging in debate or discussion with audience members on topics not on the agenda, attacking a speaker, or not following the board's meeting procedures.

## Sample Policy Statements

EFFECTIVE BOARDS have a process to deal with violations of the board code of ethics. In 2002, the Accrediting Commission for Community and Junior Colleges adopted standards that require that the board's code of ethics include a "clearly defined policy for dealing with behavior that violates its code."

Concepts that may be addressed in such a policy include who on the board is responsible to address charges or perceptions of violations, what steps will be taken to examine and address both legal and ethical violations, and possible consequences of violations.

The following sample statements are provided as starting places for board discussion. Boards should change, delete or add additional detail to the suggested language to reflect their own procedures

### Sample 1

*The CEO and board chair are authorized to consult with legal counsel when they become aware of or are informed about actual or perceived violations of pertinent laws and regulations, including but not limited to conflict of interest, open and public meetings, confidentiality of closed session information, and use of public resources. Violations of law may be referred to the District Attorney or Attorney General as provided for in law.*

*Violations of the board's policy code of ethics will be addressed by the president of the board, who will first discuss the violation with the trustee to reach a resolution. If resolution is not achieved and further action is deemed necessary, the president may appoint an ad hoc committee to examine the matter and recommend further courses of action to the board. Sanctions will be determined by the board officers [or committee] and may include a recommendation to the board to censure of the trustee. If the president of the board is perceived to have violated the code, the vice president of the board is authorized to pursue resolution.*

### Sample 2

*Charges by any person that a board member has violated laws and regulations governing board behavior or the board's code of ethics shall be directed to the board president or the board of trustees. The board chair may establish an ad hoc committee to examine the charges and recommend further courses of action to the board. Possible courses of action include:*

- *If alleged behavior violates laws governing board behavior, legal counsel may be sought and the violations referred to the District Attorney or Attorney General as provided for in law.*
- *If the alleged behavior violates board policy on ethical conduct, the chair of the board shall alert the board member in question regarding the violation of policy, the board may discuss the violation at a board meeting and affirm its policy expectation, and/or the board may move to censure the trustee.*

### Sample 3

*All board members are expected to maintain the highest standards of conduct and ethical behavior and to adhere to the Board Code of Ethics. The board will be prepared to investigate the factual basis behind any charge or complaint of trustee misconduct. A board member may be subject to a resolution of censure by the governing board should it be determined that trustee misconduct has occurred. Censure is an official expression of disapproval passed by the governing board.*

*A complaint of trustee misconduct will be referred to an ad hoc committee composed of two trustees not subject to the complaint. In a manner deemed appropriate by the committee, a fact-finding process shall be initiated and completed within a reasonable period of time to determine the validity of the complaint. The committee shall be guided in its inquiry by the standards set forth in the Code of Ethics as defined in policy. The trustee subject to the charge of misconduct shall not be precluded from presenting information to the committee. The committee shall, within a reasonable period of time, make a report of its findings to the governing board for action.*

**P**olicy statements include who is responsible to address the violation, steps to be taken, and possible consequences.

## Potential Consequences of Violating Federal or State Ethics Laws

**Political Reform Act**  
(includes disclosure and disqualification requirements, mass mailing prohibition, campaign regulation violations)

Violations of the Political Reform Act are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities can demonstrate.

**Criminal Sanctions.** A knowing or willful violation of the Political Reform Act's requirements is a misdemeanor. A person convicted of a misdemeanor under these laws may not be a candidate for elective office for four years following the conviction. Such a conviction may also create an immediate loss of office under the theory that the official violated his or her official duties, or create a basis for a grand jury to initiate proceedings for removal on the theory that failure to disclose constitutes willful or corrupt misconduct in office. Jail time is also a possibility.

In addition, the Fair Political Practices Commission (FPPC) may levy fines of up to \$10,000 per violation or more, depending on the circumstances.

**Civil Sanctions.** Violations prosecuted as a civil matter can also be punishable by civil fines. Also, district attorneys, some city attorneys, the FPPC or a member of the public can bring an action to prevent the official from violating the law. If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorneys' fees.

**Administrative Fines.** In addition to civil and criminal penalties, the FPPC may impose administrative penalties. The administrative penalty for violating the Political Reform Act is a fine of up to \$5,000 per violation.

**Employment Consequences.** Employees who do not comply with the Political Reform Act may be subject to discipline and possibly dismissal under an agency's personnel regulations.

**Effect on the Agency and Those Affected by Agency's Decision.** When a disqualified official participates in a decision, it can void the decision. This can have serious consequences for those affected by the decision as well as the public agency. If someone is being encouraged to participate despite a disqualifying interest, point out to them the costs that would be incurred if the agency's decision has to be undone—not to mention the legal consequences.

**Prohibition Against Interests In Contracts**

**Criminal Penalties.** Willful violations are a felony and may be punished by fines of up to \$1,000, imprisonment and being disqualified from ever holding public office again.

**Effect on Contract.** The contract also is void, which means the local agency does not have to pay for goods or services received under the contract. The agency may also seek repayment of amounts already paid.

**Personal or Political Use of Public Resources**

Public officials face both criminal and civil penalties for using public resources for personal benefit. Criminal penalties include a two-to four-year state prison term and permanent disqualification from public office. Civil penalties include a fine of up to \$1,000 for each day the violation occurs, plus three times the value of the resource used.

At some point, personal use of public resources becomes embezzlement—a form of theft. Embezzlement may constitute "willful misconduct," which warrants removal from office, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement is guilty of a felony punishable by imprisonment; in addition, that person is thereafter ineligible to hold public office in California.

Federal prosecutors have been known to treat the receipt of illegitimate expense reimbursements or advances as income to the official. Because the official has not typically reported these payments as such on personal tax returns, the official then becomes subject to an action for income tax evasion.

The Internal Revenue Code is notoriously complex and its penalty sections are no exception. The general penalty for willful income tax evasion is a fine of up to \$100,000 and up to five years in prison or both. Those convicted are also responsible for paying the costs of prosecution. Failure to report information to the tax authorities is punishable by fines of up to \$25,000 and/or a year in federal prison, plus the costs of prosecution.

If the U.S. Postal Service was used in any way, such use can also be the basis for a charge of mail fraud. Mail fraud is punishable by up to five years in federal prison per violation and/or a fine of the greater of: 1) twice the gain to the violator; or 2) \$250,000 per violation.

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement also apply.

<p><b>Violation of Ralph M. Brown Act And Open Meeting Laws</b></p>	<p><b>Nullification of Decision.</b> As a general matter, decisions that are not made according to open meeting laws are avoidable. After asking the agency to correct the violation, either the district attorney or any interested person may sue to have the action declared invalid. Costs and attorneys' fees may be awarded to those who successfully challenge Brown Act violations.</p> <p><b>Criminal Sanctions.</b> Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor. The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.</p> <p><b>Other Measures.</b> Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws. Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape recorded. Costs and attorneys' fees may be awarded too.</p>
<p><b>Public Records Act</b></p>	<p>Anyone can sue a public agency to enforce his or her right to access public records subject to disclosure. If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys' fees.</p>
<p><b>State and Federal Criminal Bribery Laws</b></p>	<p><b>State Law Penalties for Bribery.</b> Receiving or agreeing to receive a bribe is a criminal act punishable by a combination of prison time, fines, losing one's office and being forever disqualified from holding public office. The specified prison sentence is two to four years in state prison. The fines vary according to whether the bribe was actually received. If it was, the fine is a minimum of \$2,000 up to either \$10,000 or double the amount of the bribe, whichever is greater. If a bribe was not actually received, there is still a fine of between \$2,000 and \$10,000.</p> <p><b>State Law Penalties for Extortion.</b> Extortion by public officials is a misdemeanor. Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000 or both. Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.</p> <p><b>State Law Penalties for Appointing Someone to Office.</b> An official who receives payment or favors for an appointment faces the following punishments: forfeiture of office; disqualification from ever holding public office again; and a fine of up to \$10,000.</p> <p><b>Federal Penalties.</b> If an agency receives more than \$10,000 in federal monies (which many agencies do), an official could be subject to federal prosecution if the amount at stake (for example, a bribe) exceeds \$5,000. The penalty for bribery under federal law is a fine of up to three times the amount of the bribe or \$250,000 (whichever is more), up to 10 years imprisonment or both.</p> <p><b>Restitution.</b> The official may be ordered to pay restitution to the agency in the amount of the profit or advantage received (or loss to the agency) as the result of the misuse of the official's position.</p>
<p><b>Misconduct in Office</b></p>	<p>Willful or corrupt official misconduct can create a basis for a grand jury to initiate proceedings for removing an official from office.</p>
<p><b>Election Law Violations</b></p>	<p><b>Election Contest.</b> An election result may be challenged in an election contest, the primary purpose of which is to ascertain the will of the people and to make certain that mistake or fraud has not frustrated the public's exercise of its will. Any elector of any county, city or of any political subdivision of either may contest any election held in the jurisdiction.</p> <p><b>Quo Warranto.</b> The entitlement of a public officer to hold office may be contested in quo warranto proceedings. In rare instances, the attorney general may pursue such actions; more often the attorney general's role is one of granting or denying permission to private individuals to bring such actions on behalf of the public. Private individuals cannot bring such actions without first obtaining the attorney general's permission. For more information, visit <a href="http://caag.state.ca.us/opinions/quo.htm">http://caag.state.ca.us/opinions/quo.htm</a>.</p>
<p><b>Whistle-Blower Protections</b></p>	<p>Any employer who violates this law is guilty of a misdemeanor punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed \$1,000 or both and, in the case of a corporation, by a fine not to exceed \$5,000. A private lawsuit for damages is also possible.</p> <p style="text-align: right;"><i>Reproduced with permission from the Institute for Local Government, Sacramento CA</i></p>



Published to provide  
locally-elected trustees  
and chief executives with  
information and strategies for  
effective boardsmanship

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## Resources

### Community College League of California

The League helps all new trustees learn about their roles and responsibilities by providing each new trustee with *The Trustee Handbook*, *A Local Officials Reference on Ethics Laws* (published by the Institute for Local Government) and *Open and Public III, A User's Guide to the Ralph M. Brown Act*. These materials and others are distributed at the annual Effective Trusteeship Workshop, designed for new trustees and others interested in improving board effectiveness.

The League also provides on request the *Board Ethics Resource Guide* (2003), a packet of information that includes articles on board ethics and standards of practice, sample codes of ethics, and worksheets for developing a board code of ethics.

### Institute for Local Government

The Institute is the nonprofit research arm of the League of California Cities, and is an outstanding

source of research and information for California's elected and appointed officials. The Institute has extensive resources on ethics, most of which are available on the web at [www.ilsg.org](http://www.ilsg.org) (also, [www.ca-ilg.org](http://www.ca-ilg.org)).

Two excellent resources are:

- *Everyday Ethics for Local Officials, Finding Your Way*. © 2005 by the Institute for Local Government, Sacramento, CA 95814. It may be downloaded from <http://www.ca-ilg.org/everydayethics>. To order, contact CityBooks at (916) 658-8257 or [www.cacities.org/store](http://www.cacities.org/store).
- *A Local Officials Reference on Ethics Laws: Connecting Principles to Prohibitions to Consequences*. © 2005 by the Institute for Local Government, Sacramento, CA 95814. The book is provided to all new trustees and participants in the Community College League's annual Effective Trusteeship Workshop. To order (\$20.00 each plus shipping), contact the League, 916-444-8641.

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