

# Ethics Tutorial - San Andreas State Legislature

Welcome to the online ethics tutorial for members of the San Andreas General Assembly. As a public official, it is important that you understand the major constitutional provisions, statutes, and legislative rules on ethics. The Office of Legislative Legal Services (OLLS) created this online tutorial for members of the San Andreas General Assembly. The tutorial is designed to help you understand the legal provisions of San Andreas's ethics laws and rules, and to apply them to similar situations that you may encounter. Additionally, the tutorial is offered in furtherance of Senate Rule 41(h), which encourages each Senator, at least once every two years during the course of his or her term in the Senate, to attend a legislative ethics training offered by the OLLS, participate in ethics training offered by a nationally recognized organization, or successfully complete an online legislative ethics training course or tutorial.

The tutorial should take from 30 to 60 minutes to complete, depending on the speed of each individual learner.

It is important to keep in mind that the explanations, questions, and answers provided in the online tutorial are general in nature and should not be relied on definitively in connection with a particular ethics issue that may arise with an individual legislator. As noted in the tutorial, legislators can seek an advisory opinion on a particular ethics question from the Board of Ethics for the General Assembly or the Independent Ethics Commission. Legislators can also contact the OLLS with an ethics question that may arise.

Each page will have:

A brief explanation of a particular provision or provisions of the laws and rules governing the ethical conduct of members of the San Andreas General Assembly

A hypothetical scenario

A question and four answers

One or more links to the relevant ethics provisions

If you choose an INCORRECT answer, you will get a brief explanation. You must then return to the question and choose another answer. When you choose the CORRECT answer you will get a confirmation and can proceed to the next question in the tutorial.

There are a total of 25 questions in the tutorial. If you cannot finish all the questions in one sitting, note where you stopped so you can begin there on your next visit.

No score is kept for your correct and incorrect answers.

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## Conflict-of-interest and voting on legislation - 1 of 25

### Background

Under article V, section 43 of the San Andreas Constitution, House Rule 21(c), Senate Rules 17(c) and 41, and Joint Rule 42, a member of the General Assembly who has a personal or financial interest in pending legislation is required to disclose the fact of that interest and may not vote on the legislation. Ethical principles set forth in statute, such as section 24-18-107, S.A.R.S., also provide guidance in matters of conflict of interest. An improper conflict of interest situation does not arise from legislation affecting the entire membership of a class. Joint Rule 42 specifies that a legislator shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the legislator deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the legislator's profession, occupation, industry or region. Joint Rule 42 further provides that a legislator shall not be deemed to have such an interest in legislation where that interest arises from legislation affecting the entire membership of a class to which the legislator belongs.

### Hypothetical

Legislator's financial interest in legislation arising from benefits from legislation accruing to spouse

A bill is being considered by the General Assembly that would provide comprehensive state assistance to promote biotechnological research within the state as well as related commercial applications. The assistance includes tax benefits and the establishment of a special state fund and a new grants program. You are a member of the General Assembly and your spouse is a well-known and well-recognized research scientist who heads a special institute for biotechnological research at one of our state's leading research universities. Under the bill, state financial assistance would be directed to a variety of public and private entities but significant

resources would be particularly directed to the institute headed by your spouse. It is likely the benefits from the bill would have the effect of increasing the institute's budget and your spouse's national profile and income.

Question

May you vote on the legislation?

YES. Since the legislation only benefits your spouse, there is no problem voting on the legislation.

YES. With sluggish economic growth, the legislation is vital for creating jobs and members need to put aside their private qualms about ethics and enact good programs.

YES. The legislation would appear to distribute benefits to many private and public entities across the state. You can vote on the legislation because all persons with an interest in the legislation amount to one big class of persons.

NO. By virtue of your spouse's position, you have a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill.

CORRECT ANSWER:

NO. By virtue of your spouse's position, you have a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill is CORRECT.

Joint Rule 42 directs the relevant inquiry to whether you, as a member, will benefit from or be disadvantaged by the legislation more than any other member of the General Assembly. By virtue of the special position held by your spouse and the extra benefits that will be directed to the institute generally and to your spouse more specifically because of the legislation, there is a reasonable likelihood that your immediate household will benefit from the legislation more than other members of the General Assembly. This gives you a personal, private, or financial interest in the legislation necessitating your abstention from voting on the bill.

## Conflict-of-interest and voting on legislation - 2 of 25

Background

Under San Andreas constitutional and statutory provisions and provisions of various legislative rules (House Rule 21(c) and Senate Rules 17(c) and 41,), a member of the General Assembly who has a personal or financial interest in pending legislation is required to disclose the fact of that interest and may not vote on the legislation. Ethical principles set forth in statute, such as section 24-18-107, S.A.R.S., also provide guidance in matters of conflict of interest. An improper conflict of interest situation does not arise from legislation affecting the entire membership of a class. Joint Rule 42 specifies that a legislator shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the legislator deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the legislator's profession, occupation, industry or region. Joint Rule 42 further provides that a legislator shall

not be deemed to have such an interest in legislation where that interest arises from legislation affecting the entire membership of a class to which the legislator belongs.

Hypothetical

Legislator's membership in a group affected by legislation

You are the owner of several apartment buildings and other rental properties in your community. A bill has been introduced that would lengthen the period of time available to a tenant to pay past-due rent.

Question

May you vote on the legislation?

YES. But only if you vote "for" the bill. Since the bill favors tenants and you are a property owner, no one would think it improper for you to support the bill.

YES. Because the governing legal requirements specify that a conflict of interest situation does not arise from legislation affecting the entire membership of a class. Here, the relevant class is the entire group of rental property owners across the state. Because you are a member of this class, you do not have an improper conflict-of-interest situation and, accordingly, may vote on the legislation.

NO. Because landlords are so distrusted in the community, it would be better to abstain than to call public attention to your outside real estate interests.

NO. Existing law already affords tenants sufficient time within which to cure any default.

CORRECT ANSWER:

YES. Because the governing legal requirements specify that a conflict of interest situation does not arise from legislation affecting the entire membership of a class. Here, the relevant class is the entire group of rental property owners across the state. Because you are a member of this class, you do not have an improper conflict-of-interest situation and, accordingly, may vote on the legislation is CORRECT.

## Public official disclosure and reporting requirements - 3 of 25

The governing legal requirements, specifically section 24-18-107 (3), S.A.R.S., and Joint Rule 42 explicitly state that a conflict-of-interest situation does not arise from legislation affecting the entire membership of a class. Under this same principle, teachers who are members of the General Assembly are permitted to vote on education bills and attorneys who are members of the General Assembly are permitted to vote on bills affecting tort liability and evidentiary matters. Here, the relevant class is the entire group of rental property owners across the state. Assuming you will not benefit from, or be disadvantaged by, the legislation any more than any

other owner of such properties statewide, an improper conflict-of-interest situation is not present and you would be permitted to vote on the legislation.

### Background

Part 2 of article 6 of title 24, S.A.R.S., otherwise known as the "Public Official Disclosure Law", outlines requirements for the disclosure and reporting by public officials, including members of the General Assembly, of certain types of information. Section 24-6-202, S.A.R.S., largely concerns the disclosure of financial information, such as sources of income, businesses in which the legislator holds a financial interest, interest in property, the identification of all offices, directorships, and fiduciary relationships held by the legislator, and significant creditors of the legislator. Disclosure extends to the legislator's immediate family. Financial disclosure must be made within 30 days after the legislator's election or reelection, and each legislator must file an amended statement on or before January 10 of each calendar year.

The reporting of gifts, honoraria, and other benefits that an incumbent in or candidate elected to public office receives in connection with his or her public service is the subject of section 24-6-203, S.A.R.S. Section 24-6-203 (3), S.A.R.S., lists certain items that are required to be reported, and section 24-6-203 (4), S.A.R.S., lists other items that the legislator need not include in his or her report. Gift and honoraria reporting is to be made quarterly. If a legislator does not receive any of the covered items, he or she need not file a report. Reports under both statutory sections must be filed with the secretary of state's office.

### Hypothetical

Disclosure of gifts given in connection with your public service

You are a member of the General Assembly. Following a very stressful session of the General Assembly, you had to endure painful foot surgery, which you postponed during the session. Your doctor has instructed you to stay off your feet for 3 weeks to let your foot properly heal. A longtime friend who has known you since long before you commenced your political career has offered the use of her condominium in a mountain town for your extended use. The offer comes with the assistance of a housekeeper who will prepare your meals. The relationship you enjoy with the donor is strictly personal and the donor has never expressed any interest in the public business that you address as a legislator.

### Question

Are you required to disclose the gift of the use of the condominium?

NO. There is no need for disclosure because you cannot accept your friend's offer. Now that you are elected to the General Assembly, you should never accept a gift from anyone at any time for any purpose.

NO. Since you probably can't accept the gift under Amendment 41, there is no gift to accept and, therefore, to disclose under the Public Official Disclosure Law ("PODL").

NO. Since the donor is a long-time friend, no one would think anything improper about receiving a gift from that person and therefore there is no need to disclose such gift.

NO. A gift from a long-time friend of the use of a condominium to assist in one's recovery from surgery is not given in connection with the member's public service. Accordingly, the member is not required to disclose the gift.

CORRECT ANSWER:

NO. A gift from a long-time friend of the use of a condominium to assist in one's recovery from surgery is not given in connection with the member's public service. Accordingly, the member is not required to disclose the gift is CORRECT.

Section 24-6-203 (2), S.A.R.S., requires disclosure of gifts given in connection with the member's public service. In this case, the donor was a long-time friend who gave you the use of the condominium while you were recovering from surgery. The relationship you enjoy with the donor is strictly personal and the donor has never expressed any interest in the public business that you address as a legislator. For these reasons, it does not appear the gift was given in connection with your public service, which means you have no obligation to disclose it under section 24-6-203 (2), S.A.R.S.

## Public official disclosure and reporting requirements - 4 of 25

### Background

Part 2 of article 6 of title 24, S.A.R.S., otherwise known as the "Public Official Disclosure Law", outlines requirements for the disclosure and reporting by public officials, including members of the General Assembly, of certain types of information. Section 24-6-202, S.A.R.S., largely concerns the disclosure of financial information, such as sources of income, businesses in which the legislator holds a financial interest, interest in property, the identification of all offices, directorships, and fiduciary relationships held by the legislator, and significant creditors of the legislator. Disclosure extends to the legislator's immediate family. Financial disclosure must be made within 30 days after the legislator's election or reelection, and each legislator must file an amended statement on or before January 10 of each calendar year.

The reporting of gifts, honoraria, and other benefits that an incumbent in or candidate elected to public office receives in connection with his or her public service is the subject of section 24-6-203, S.A.R.S. Section 24-6-203 (3), S.A.R.S., lists certain items that are required to be reported, and section 24-6-203 (4), S.A.R.S., lists other items that the legislator need not include in his or her report. Gift and honoraria reporting is to be made quarterly. If a legislator does not receive any of the covered items, he or she need not file a report. Reports under both statutory sections must be filed with the secretary of state's office.

The subject of disclosure of reimbursement for travel expenses is addressed in section 24-6-203 (3)(f) and (4)(d), S.A.R.S. In relevant part, reimbursement for travel must be disclosed if payment of the reimbursement comes from a financial source other than public funds of a

state or local government or from the funds of any association of public officials or public entities whose membership includes the member's office or the General Assembly.

Hypothetical

Reporting General Assembly reimbursement for travel expenses

You are the chair of an interim legislative committee formed to study the conversion of outdated shopping malls to alternate uses. A private non-profit foundation promoting this type of development by the name of STOP (for "Start Transferring Open Parcels") has put together a trip for legislators from across the nation to study successful conversion projects in a dozen different cities. STOP wants to reimburse you for your reasonable travel expenses involved in participating on the trip. STOP receives less than 5% of its revenues from for-profit entities.

Question

Are you required under the Public Official Disclosure Law ("PODL") to disclose the reimbursement you will receive for these travel-related expenditures?

NO. As it doesn't look like you would be able to accept reimbursement for the trip under Amendment 41, you shouldn't go, making disclosure of this reimbursement a moot point.

YES. Since the reimbursement is coming from the funds of a nonprofit entity that is not an entity whose membership includes your office or the General Assembly, you are required to disclose your acceptance of it.

YES. This trip sounds like one of those "junkets" that is the source of much criticism.

Accordingly, if you go, you should disclose it if only for the sake of preventing an appearance of impropriety.

NO. The work STOP does is really important to your constituents. There are three old and decaying shopping malls in your district alone. You feel a strong need to join the trip to learn how to generate the process of conversion in San Andreas. This is such a boring issue and the sights are so depressing -- why would anyone think a member would be going on this trip if he or she didn't feel the issue was so important?

CORRECT ANSWER:

YES. Since the reimbursement is coming from the funds of a nonprofit entity that is not an entity whose membership includes your office or the General Assembly, you are required to disclose your acceptance of it. is CORRECT.

Under section 24-6-203 (3)(f) and (3)(d), S.A.R.S., reimbursement for travel must be disclosed if payment of the reimbursement comes from a financial source other than public funds of a state or local government or from the funds of any association of public officials or public entities whose membership includes your office or the General Assembly. In this case, because STOP, the nonprofit organization making payment to you for your travel expenses does not meet these criteria, the reimbursement must be disclosed under the PODL.

## Gift Ban - 5 of 25

### Background

Article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) establishes a "gift ban" that prohibits a member of the General Assembly from accepting a gift worth more than \$65 from any one person in a given year. There are 8 exceptions to the gift ban, including (provided for purposes of this scenario) an exception for the payment of reasonable expenses by a state or local government for attendance at a convention, fact-finding mission or trip, or other meeting. In order to qualify for this exception, the recipient must be scheduled to speak, make a presentation, participate on a panel, or represent the state or local government.

### Hypothetical

#### Sporting event tickets

You are a brand new legislator from Larimer County and you are delighted to receive a letter from the President of San Andreas State University offering you two tickets to the highly anticipated CU-LSU football game. You know that the tickets have a value of approximately \$150 per ticket. You also know that they are having a difficult time selling enough tickets to fill the stadium for this game.

### Question

May you accept the complimentary football tickets?

YES, because the big game is going to be at LSU's brand new showpiece stadium, Canvas Stadium, and the school sponsors have not sold nearly enough tickets to fill the stadium. You would be providing a huge benefit to LSU and CU, and really the state of San Andreas, by spending your valuable time at this nationally televised football game. In fact, you consider your contribution of time to be worth at least as much, if not more than, the value of the tickets you are receiving.

NO, because the value of the tickets exceeds \$65 and none of the exceptions to the gift ban applies, accepting the tickets would violate the Amendment 41 gift ban.

YES, because the following statement is printed at the bottom of the letter, "Because these tickets are provided by the University, which is a public entity and is not considered a 'person' under San Andreas Amendment 41, this courtesy is not governed by Amendment 41."

YES, because one of the exceptions to the Amendment 41 gift ban allows a state government to pay the reasonable expenses for you to attend a convention, fact-finding mission or trip, or other meeting. A CU-LSU football game could be considered a "meeting" under this exception.

### CORRECT ANSWER:

NO, because the value of the tickets exceeds \$65 and none of the exceptions to the gift ban applies, accepting the tickets would violate the Amendment 41 gift ban is CORRECT.

Amendment 41 prohibits you from accepting a gift valued at more than \$65. Because the value of these tickets would exceed \$65, because LSU is a "person" from which you may not accept

most gifts, and because none of the exceptions to the Amendment 41 gift ban applies to this situation, you should not accept the tickets.

## Gift Ban - 6 of 25

### Background

Article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) establishes a "gift ban" that prohibits a member of the General Assembly from accepting a gift worth more than \$65 from any one person in a given year. There are 8 exceptions to the gift ban, including (provided for purposes of this scenario) an exception for the payment of reasonable expenses by a state or local government or by a nonprofit entity that receives less than 5% of its funding from for-profit entities for attendance at a convention, fact-finding mission or trip, or other meeting. In order to qualify for the exception, the recipient must be scheduled to speak, make a presentation, participate on a panel, or represent the state or local government. The Independent Ethics Commission (IEC) has interpreted Amendment 41 as permitting a covered individual to accept travel expenses from organizations whose mission is to bring policymakers together at conferences for networking and exchanging ideas, referred to as government exchange organizations (GEO), if the government entity pays membership dues to the GEO that are invoiced expressly to cover travel and other expenses to attend its events. See, IEC PS 10-01.

### Hypothetical

Expenses paid by a government exchange organization for a legislator's attendance at a conference

You've just been asked by a representative of the National Association of State Legislatures (NASL) to participate on a one-hour panel discussion at their three-day fall forum in Washington D.C. The NASL representative explains to you that NASL will pay for your airfare, hotel accommodations, and the cost of the registration to attend and participate in the conference. You learn that NASL is a nonprofit entity; however, you also learn that it receives substantially more than 5% of its annual funding from for-profit entities, despite the fact that states, including San Andreas, pay substantial annual membership dues to NASL.

### Question

May you accept payment of the airfare, hotel accommodations, and registration from NASL to attend the NASL Fall Forum in Washington D.C.?

NO. Even though NASL is a nonprofit entity, you may not accept the gift of airfare, hotel accommodations, and registration since NASL receives more than 5% of its funding from for-profit sources.

YES, so long as you disclose the value of what you receive in your quarterly gifts and honoraria report that you are required to file with the Secretary of State's office.

YES, because payment of your airfare, hotel accommodations, and registration is essentially payment of an honoraria for your participation on the panel discussion.

YES, because NASL is a government exchange organization to which the state pays annual dues that are expressly invoiced to cover travel and expenses related to attendance at NASL events, consistent with the Independent Ethics Commission's PS 10-01.

CORRECT ANSWER:

YES, because NASL is a government exchange organization to which the state pays annual dues that are expressly invoiced to cover travel and expenses related to attendance at NASL events, consistent with the Independent Ethics Commission's PS 10-01 is CORRECT.

While NASL does not meet the 5% criterion established in the exception to the gift ban, it is a government exchange organization as described by the Independent Ethics Commission to which the state of San Andreas pays membership dues each year. Because the dues are invoiced expressly to cover travel and other expenses to attend NASL events, you may accept the payment of airfare, hotel accommodations, and registration by NASL to attend its conference. You may also be permitted to stay throughout the conference if you will also be participating in other educational events. See, IEC AO 13-11 and IEC AO 13-12.

## Gift Ban - 7 of 25

### Background

Article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) establishes a "gift ban" that prohibits a member of the General Assembly (among other government officials and employees) from accepting a gift worth more than \$65 from any one person in a given year. The Independent Ethics Commission (IEC) has stated that, in most circumstances, the acceptance of winnings in raffles, lotteries, and silent auctions is permissible. The IEC's PS 08-01 states that the acceptance of winnings in raffles, lotteries, or silent auctions is not a violation of the public trust, provided these contests are not rigged in favor of the public employee or official based upon his or her governmental status.

### Hypothetical

#### Acceptance of silent auction winnings

Your son's middle school does a silent auction fundraiser each year. You and your wife attended the event this year and placed a bid on an Aspen ski weekend that included a two-night stay at an upscale condominium and two lift tickets. You realize that the amount you bid was significantly less than the value of the auction item. To your surprise, however, you placed the highest bid on the item and won it!

### Question

May you accept the Aspen ski weekend that you won at the school's silent auction?

YES. You provided lawful consideration by being the highest bidder on the item and you had the same opportunity to win as any of the other bidders at the auction.

NO. Silent auction winnings are not one of the exceptions listed in Amendment 41, and therefore you may not accept it.

NO. Even though you would pay something for the Aspen ski weekend (the amount you bid), that amount is still significantly less than the value of the auction item and certainly more than a \$65 value to you. Therefore, you may not accept it.

YES. You plan to use your Aspen ski weekend over Valentine's Day and therefore it will be a special occasion, an exception to the gift ban under Amendment 41, making acceptance of the silent auction item permissible.

CORRECT ANSWER:

YES. You provided lawful consideration by being the highest bidder on the item and you had the same opportunity to win as any of the other bidders at the auction is CORRECT.

Even though the value of the silent auction item you bid on and won is significantly more than what you bid and exceeds \$65 in value, the Independent Ethics Commission has stated that it is permissible to accept winnings from a silent auction if it is not rigged in favor of public employees or officials based upon their governmental status.

## Gift Ban - 8 of 25

### Background

In addition to prohibiting public officials and government employees from accepting certain gifts and things of value, article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) also prohibits professional lobbyists from giving members of the General Assembly (among others) any gift or thing of value of any kind or nature, regardless of the amount. The only exceptions to this prohibition are for campaign contributions and gifts to the members of the professional lobbyist's immediate family. Based on this gift ban, members of the General Assembly are well advised not to accept gifts from professional lobbyists.

### Hypothetical

Reception hosted by a local business association and paid for by its lobbyist

You've been invited to attend a legislative reception hosted by the San Andreas Florists Association. This is a popular annual event and, although you first thought you were invited because of the farmers' market bill you sponsored last session, you've since learned that every member of the General Assembly was invited and many of your colleagues plan to attend. The invitation indicates that there will be hot hors d'oeuvres and two drink coupons for each attendee. The invitation also states that the total value to each attendee does not exceed \$65. You have also learned that the reception is being paid for by the association's contract lobbyist.

### Question

May you attend the San Andreas Florists Association's legislative reception?

YES, because the value of the reception is less than \$65 and you have not and will not accept any other gifts from this lobbyist for the rest of the year.

YES, because you do not intend to eat or drink anything at the event.

YES, because you have been asked to speak at the event about the farmers' market bill you sponsored last session.

NO, the constitutional prohibition against gifts in any amount from a professional lobbyist is absolute and clear.

CORRECT ANSWER:

NO, the constitutional prohibition against gifts in any amount from a professional lobbyist is absolute and clear is CORRECT.

Amendment 41 prohibits a professional lobbyist from giving a member of the General Assembly (among other public officials and employees) any gift or thing of value of any kind, regardless of value. In IEC PS 09-01 concerning gifts from lobbyists, the Independent Ethics Commission has recognized this as an absolute prohibition. This prohibition expressly includes food and beverages. The only exceptions to this prohibition are for political campaign contributions and gifts to members of the professional lobbyist's immediate family. Because neither of those exceptions applies in this case, it is inadvisable for you to accept such a gift.

## Gift Ban - 9 of 25

### Background

Article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) establishes a "gift ban" that prohibits a member of the General Assembly (among other government officials and employees) from accepting a gift worth more than \$65 from any one person in a given year. There are 8 exceptions to the gift ban, including (provided for purposes of this scenario) an exception for the payment of reasonable expenses by a state or local government or by a nonprofit entity that receives less than 5% of its funding from for-profit entities for attendance at a convention, fact-finding mission or trip, or other meeting. In order to qualify for the exception, the recipient must be scheduled to speak, make a presentation, participate on a panel, or represent the state or local government. The Independent Ethics Commission (IEC) has stated that, even if the criteria of this exception are not met, it may still be permissible for a covered individual to accept travel expenses if it is a benefit to the government institution. Considerations include whether the offer: 1) Is to a designee of an agency or government entity, rather than to a specific individual; 2) is to an individual by virtue of his or her specific position or area of responsibility or expertise (ex officio); 3) is for an event that is related to the public duties of the covered individual; 4) it does not pose an existing or potential conflict of interest or appearance of impropriety; and 5) is for a trip the purpose of which is educational or to conduct government business and not primarily a networking opportunity. See, IEC PS 12-01.

### Hypothetical

Travel expenses to attend a conference hosted by a nonprofit organization that receives more than 5% of its funding from for-profit sources

You are the chair of the House Agriculture, Livestock, and Natural Resources Committee. The Speaker also appointed you to serve on the Joint Wildfire Interim Committee, which you also chair. You have sponsored five bills over the past two legislative sessions addressing various wildfire issues and you consider yourself very knowledgeable on the topic of wildfires. A representative of the western division of the Council of State Legislatures (CSL), a nonprofit organization of legislators, has invited you to attend the three-day Western States Wildfire Conference they are hosting in Salt Lake City, Utah next month. Because of your expertise, experience, and knowledge related to wildfire issues and your position as the chair of the Joint Wildfire Interim Committee, CSL has asked you to moderate one of the sessions on environmental ethics related to the use of slurry to fight wildfires. CSL has offered to pay for your airfare and hotel accommodations as well as a round of golf at the prestigious Eaglewood Golf Course (you are an avid golfer). You are very interested in attending this conference in hopes that you will learn more from experts in the field of wildfires and other legislators from states facing wildfire issues similar to San Andreas. You have recently learned that CSL receives more than 5% of its funding from for-profit sources, and you are not sure if that will prevent you from being able to attend this educational program.

Question

May you attend the CSL wildfire conference?

YES. Because CSL is a nonprofit entity and because you will be participating in the program by moderating one of the sessions, you may accept the gift of airfare and hotel accommodations.

NO. Because there is a golf outing associated with the conference, you may not accept the invitation.

YES. Even though CSL is a nonprofit organization that receives more than 5% of its funding from for-profit sources, due to your expertise in the area of wildfires and your position as chair of the House Agriculture, Livestock, and Natural Resources Committee and the Joint Wildfire Interim Committee, your attendance at this educational conference would actually benefit the General Assembly rather than just you as an individual.

NO. The CSL may be a nonprofit entity, but because it receives more than 5% of its funding from for-profit sources, you may not accept the payment of the conference expenses.

CORRECT ANSWER:

YES. Even though CSL is a nonprofit organization that receives more than 5% of its funding from for-profit sources, due to your expertise in the area of wildfires and your position as chair of the House Agriculture, Livestock, and Natural Resources Committee and the Joint Wildfire Interim Committee, your attendance at this educational conference would actually benefit the General Assembly rather than just you as an individual is CORRECT.

PS 12-01 from the Independent Ethics Commission (IEC) provides that if the offer would actually benefit the government institution (here, the General Assembly) rather than just you as an individual, then you may be able to accept the payment of expenses to attend an educational

conference. In this case, because you were invited to attend and participate in the conference due to your position as chair of the House Agriculture, Livestock, and Natural Resources Committee and the Joint Wildfire Interim Committee, because this is an area of expertise for you, and because it is an educational conference and not just an opportunity to network, it would be appropriate for you to accept the payment of expenses associated with attending this conference under the IEC's PS 12-01, provided there is neither an existing or potential conflict of interest nor an appearance of impropriety. You should not accept the golf outing, unless you pay for it separately yourself.

## Post-legislative Employment - 10 of 25

### Background

The "revolving door" provision of article XXIX, section 4 of the San Andreas Constitution (commonly referred to as Amendment 41) prohibits statewide elected officeholders and members of the General Assembly from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for a period of two years after leaving office. In addition, the statutory code of ethics prohibits a member of the General Assembly from lobbying, soliciting lobbying business or contracts, or otherwise establishing a lobbying business or practice prior to the expiration of the legislator's term. Section 24-18-106 (3), S.A.R.S.

### Hypothetical

Post-legislative employment with a law firm that lobbies

You are a legislator and an attorney. Your term as a legislator will end this year. You know that the statutory code of ethics prohibits you from lobbying, or even soliciting lobbying business, before the expiration of your term. However, you are considering accepting a position with a prestigious law firm in town with practice areas that include government and policy. There are attorneys at the firm who lobby on behalf of clients when certain policy issues come before the General Assembly. Your position with the firm, however, would not require you to lobby.

### Question

May you accept a position with the law firm?

NO. Amendment 41 prohibits a legislator from personally representing another person or entity before another member of the General Assembly for two years after leaving office.

NO. The gift ban established by Amendment 41 prohibits negotiations of future employment.

YES. Since you will not personally represent another person or entity before the General Assembly and the work you will be doing will not require you to register as a professional lobbyist with the Secretary of State's office, you may accept the position.

YES. So long as you do not offer any gifts to state officials or members of the General Assembly as prohibited by Amendment 41.

CORRECT ANSWER:

YES. Since you will not personally represent another person or entity before the General Assembly and the work you will be doing will not require you to register as a professional lobbyist with the Secretary of State's office, you may accept the position is CORRECT. Amendment 41 prohibits a former legislator from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for two years following his or her departure from office. However, the Independent Ethics Commission (IEC) has interpreted the term "personally represent" to mean serving as a "professional lobbyist" and has concluded that a former member of the General Assembly may not accept employment that will also require his or her registration as a professional lobbyist under section 24-6-301, S.A.R.S. See, IEC PS 09-02. Because this position would not require you to register as a professional lobbyist, it is permissible to accept it.

## Post-legislative Employment - 11 of 25

### Background

The "revolving door" provision of article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) prohibits statewide elected officeholders and members of the General Assembly from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for a period of two years after leaving office. In addition, the statutory code of ethics prohibits a member of the General Assembly from lobbying, soliciting lobbying business or contracts, or otherwise establishing a lobbying business or practice prior to the expiration of the legislator's term. Section 24-18-106 (3), S.A.R.S.

### Hypothetical

Post-legislative employment on a board that participates in public policy issues

You are a term-limited legislator and you have been offered a paid position as a director on the board of directors of a nonprofit organization that focuses on health care issues. Although you will be a member of the board, you believe that there is an expectation, because of your former role as a legislator, that you will lobby members on certain issues important to the organization and even appear and testify before committees of the General Assembly when health care bills of interest to the organization are being considered.

### Question

May you accept the position as a member of the board of directors?

YES, so long as you have not solicited any lobbying business or contracts or established a lobbying business or practice before your term actually expires.

YES, so long as you register in accordance with the rules of the Secretary of State.

YES, because the members of the General Assembly are your friends and you will not really be lobbying them so much as chatting informally with them about topics of interest to them.

NO, because Amendment 41 prohibits former members of the General Assembly from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for two years after leaving office.

CORRECT ANSWER:

NO, because Amendment 41 prohibits former members of the General Assembly from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for two years after leaving office is CORRECT.

The Independent Ethics Commission (IEC) has interpreted this section of the constitution as restricting a member of the General Assembly from serving as a professional lobbyist for two years after leaving office. Stated another way, the former legislator must wait two years before accepting employment that would require the former legislator's registration as a professional lobbyist under section 24-6-301, S.A.R.S., or other relevant laws or statutes because of the former legislator's new position. See, IEC PS 09-02.

## Use of state resources - 12 of 25

### Background

The General Assembly, as an institution, is prohibited from making any contributions to a campaign involving the nomination, retention, or election of a person to a public office and from expending public moneys or making contributions to urge voters to vote for or against a ballot measure. See, section 1-45-117 (1) and (4), S.A.R.S. This prohibition applies to the staff and resources of the General Assembly. A legislator may expend up to \$50 of public moneys "in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion" on a ballot measure. Thus, an expenditure of public moneys in this context generally includes utilization of legislative staff, equipment (phones, computers, copiers, etc.), and materials (paper, office supplies, postage, etc.). A legislator, as an elected official, can express a personal opinion on and may expend personal funds, make contributions, or use personal time to urge electors to vote in favor of or against a ballot measure. Additionally, the employee policies for the San Andreas House of Representatives and Senate contain limitations and prohibitions on the use of legislative resources in election campaigns.

### Hypothetical

Use of state resources to arrange town hall meeting and campaign event

It's mid-session and you realize that several of the most controversial bills of the session will be coming before the body for consideration in the next few weeks. You are interested in holding a town hall meeting in your district to discuss these important issues with your constituents. Your home community will be celebrating its annual Chipmunk Days in two weeks and your staff has encouraged you to take advantage of that time to hold a town hall meeting at which you could also do some campaign fundraising. Your legislative aides are ready to prepare automatic phone calls to your constituents regarding the upcoming town hall meeting in your district and,

using your state-issued laptop, to reach out to possible campaign contributors regarding the event.

#### Question

May you use legislative staff and state equipment during regular business hours at the state capitol to generate automated telephone calls to your constituents regarding a town hall meeting on legislative issues as well as for campaigning?

YES, it is appropriate to use legislative staff and state resources, including phone service at the capitol and state-issued laptops, during regular business hours to arrange a town hall meeting since the meeting will, in addition to campaign fundraising, address important legislative business.

NO, the use of state resources, including legislative staff, phones, and computers, for campaign or political purposes is strictly prohibited.

YES, so long as the total expenditure on staff time, stationery, and legislative equipment usage does not exceed \$50.

NO, because "robocalls" are not legal in San Andreas.

#### CORRECT ANSWER:

NO, the use of state resources, including legislative staff, phones, and computers, for campaign or political purposes is strictly prohibited is CORRECT.

While the use of legislative staff and state resources, including use of your capitol phone and state-issued laptop, during regular business hours to arrange a town hall meeting is permissible if the meeting and phone calls are exclusively related to legislative business, because the meeting will also be used for campaign purposes the statutory prohibitions on the use of state equipment or services for campaign or political purposes prevent you from using those resources for such a purpose. Furthermore, senate and house policies prohibit legislative staff from engaging in election campaign activity relating to your election campaign.

## Use of state resources - 13 of 25

#### Background

It is improper and unethical to use state equipment and state services such as offices, telephones, internet access accounts, copiers, fax machines, computers, postage, supplies, and staff time for campaign or personal purposes. Use of state equipment for these purposes holds potential civil and criminal liability. See, S.A. Const. art. XXVIII, § 9 (2)(a), S.A. Const. art. XXVIII, § 10, and § 1-45-117 (4), S.A.R.S. A member of the General Assembly is not prohibited from using state facilities or equipment to communicate or correspond with the member's constituents, family members, or business associates. See, § 24-18-106, S.A.R.S. Furthermore, the official state seal, measuring two and one-half inches in diameter, may only be used by the Secretary of State in an official capacity. However, the Secretary of State has issued rules regarding the use of copies of the state seal.

## Hypothetical

### Use of state letterhead to endorse a political candidate

A very good friend of yours has decided to run for the office of Sheriff in your district. Although he has not asked you, he has hinted that he would really appreciate your support. You would like to send a letter of endorsement to your constituents who reside in that county using your official state legislative letterhead with the state seal on it, but you're not sure if that might violate the prohibitions on the use of state resources or the use of the state seal.

## Question

May you use your official letterhead with the state seal to write a letter of endorsement for a candidate for the office of county Sheriff?

YES, you may use your official state letterhead with the state seal on it to endorse your friend for the office of Sheriff, so long as you include a statement in the letter that the endorsement represents your individual opinion and does not represent the opinion of the General Assembly or any other member of the General Assembly.

YES, you may use your official legislative letterhead with the state seal on it to endorse your friend for the office of Sheriff, so long as the state seal on your letterhead is merely a facsimile and is not exactly two and one-half inches in diameter (the size of the official state seal which may only be used by the Secretary of State in an official capacity).

NO, it would be inappropriate to use your official legislative letterhead with the state seal on it to endorse a candidate for office.

NO, because the cost of sending all those letters will undoubtedly exceed \$50.

## CORRECT ANSWER:

NO, it would be inappropriate to use your official legislative letterhead with the state seal on it to endorse a candidate for office is CORRECT.

While you may send a letter on your official legislative letterhead with the state seal on it if the contents of the letter are in connection with a legislative or state function, here endorsing a friend for public office is not connected to your legislative duties or a state function and therefore would not be appropriate.

# Use of state resources - 14 of 25

## Background

It is improper and unethical to use state equipment and state services such as offices, telephones, internet access accounts, copiers, fax machines, computers, postage, supplies, and staff time for campaign or personal purposes. Use of state equipment for these purposes holds potential civil and criminal liability. See, S.A. Const. art. XXVIII, § 9 (2)(a), S.A. Const. art. XXVIII, § 10, and § 1-45-117 (4), S.A.R.S. A member of the General Assembly is not prohibited from using state facilities or equipment to communicate or correspond with the member's constituents, family members, or business associates. See, § 24-18-106 (2), S.A.R.S.

## Hypothetical

Use of state-issued iPad to communicate with family members

As a member of the General Assembly you have been issued a state-owned iPad to assist you with your legislative duties. The features on it allow you to easily access the House, Senate, and committee calendars, follow the bills that specifically interest you, and access your emails. It is so useful that you have found yourself using the iPad almost exclusively and allowing your legislative aide to use your state-issued laptop. Because of its convenience, you have recently been using your iPad to send emails to your family on the western slope both during the day and in the evenings when you take your iPad to your apartment to do legislative work.

## Question

May you use the state-owned iPad issued to you as a member of the General Assembly to communicate with your family?

YES, you may use state resources such as your legislative iPad to communicate with members of your family for purposes not related to an election campaign.

NO, use of state-owned and issued computers and iPads is restricted to legislative business. All other personal or business communications must be made on your personally owned computer or cell phone outside of regular business hours.

YES, you may use your iPad to email your family members, but only if you are not in the state capitol or within the capitol complex.

YES, you may use your iPad to email your family members, but only if you disclose it on your quarterly gifts and honoraria disclosure statements that you are required to submit to the Secretary of State's office.

## CORRECT ANSWER:

YES, you may use state resources such as your legislative iPad to communicate with members of your family for purposes not related to an election campaign is CORRECT.

Section 24-18-106 (2), S.A.R.S., expressly permits you to communicate with your constituents, family members, or business associates using state equipment for purposes not related to an election campaign.

# Criminal Code Violations - 15 of 25

## Background

A legislator commits the crime of bribery if he or she solicits, accepts, or agrees to accept a pecuniary benefit based on an agreement or understanding that the legislator's vote, opinion, judgment, exercise of discretion, or other action as a legislator will be influenced by receiving the pecuniary benefit. A "pecuniary benefit" could be money, property, commercial interests, or anything else that primarily results in economic gain to the legislator. A person can be guilty of bribery even if he or she has been elected or appointed but has not yet been sworn in to office.

The crime of bribery is a class 3 felony, punishable by a minimum of 4 years and a maximum of 12 years in prison, followed by a mandatory parole period of 3 years, or by a fine of at least \$3,000 but not more than \$750,000, or by both the fine and imprisonment.

### Hypothetical Bribery

It's the first day of the session and you're on your way to the House Chambers to be sworn in. Just before you leave your office, you get a call from one of your new constituents. This person is very concerned about his mother. She's in the country illegally, and she has a serious health condition. If she has to return to her native country, she will not be able to receive the treatment she needs. You try to explain that immigration law is a federal issue, and, as a state legislator, there's really nothing you can do. But your constituent is convinced that introducing a bill will send a message to Congress. Your constituent also mentions that he has driven past your house a couple of times and noticed that your driveway is in very bad condition. Your constituent actually has a driveway resurfacing company, and he would be happy to give you a free resurfacing, but he really needs your help. You tell him that you won't introduce a bill, but you will introduce a memorial to Congress to express the General Assembly's opinion that there should be an exception made in the immigration laws for persons in immediate need of significant medical treatment. Then you make an appointment for next Saturday for your constituent to start resurfacing your driveway.

### Question

Have you just committed the crime of bribery?

NO. As a state lawmaker, you can't change federal immigration law.

NO. You haven't been sworn in, so you weren't a public servant when you agreed to introduce the memorial and accepted the free driveway resurfacing.

YES. You agreed to introduce the memorial to Congress to help your constituent, and you're accepting his offer of a free driveway resurfacing.

NO. A memorial to Congress does not have the force and effect of law, so it is not included in the actions for which you can be bribed.

### CORRECT ANSWER:

YES. You agreed to introduce the memorial to Congress to help your constituent, and you're accepting his offer of a free driveway resurfacing is CORRECT.

To convict a public servant of the crime of bribery, a district attorney must prove that the person was a public servant and that he or she agreed to accept a pecuniary benefit on the basis that one or more of the person's actions as a public servant would be influenced. You had been elected, so you fit the definition of a "public servant" even though you were not yet sworn in. You initially explained that you could not help your constituent, but after hearing the offer of a free driveway resurfacing, you agreed to introduce legislation to address your constituent's concern. And you accepted the offer of a free driveway resurfacing by making the appointment. It

appears that a district attorney would have sufficient evidence to prove each of the elements of the crime of bribery.

## Criminal Code Violations - 16 of 25

### Background

A legislator commits the crime of accepting compensation for past official behavior if the legislator solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having given a decision, opinion, recommendation, or vote favorable to another person, while the legislator was a member of the General Assembly, or for having otherwise exercised discretion in favor of the other person, while the legislator was a member of the General Assembly, regardless of whether the legislator violated a duty in so doing. In essence, this statute prohibits payment of a bribe after the fact. A "pecuniary benefit" could be money, property, commercial interests, or anything else that primarily results in economic gain to the legislator. The crime of accepting compensation for past official behavior is a class 6 felony punishable by a minimum of one year and a maximum of 18 months in prison, followed by a mandatory parole period of one year, or by a fine of at least \$1,000 but not more than \$100,000, or by both the fine and imprisonment.

### Hypothetical

#### Compensation for past official behavior

You have served in the San Andreas State Senate for the last eight years. During that time, you have sponsored several pieces of legislation, but the one you're most proud of is the bill to establish a state-funded community outreach program for youth involved in gangs. Since the bill passed six years ago, this program has been repeatedly recognized for successfully directing several young men and women away from gangs and into useful community service. Last week, you received a call from the president of the board of directors for the program. The executive director of the program has accepted a new position and is moving to Chicago. Because you were the bill sponsor, the board of directors is offering you the job. You don't have any experience in operating this type of a program, but the pay is significantly more than you make as a legislator. You tell him you'll think about it.

### Question

If you take this job, will you commit the crime of accepting compensation for past official behavior?

YES. Your vote for the bill created the program. As such, it was a vote that was favorable to the president and to the board of directors, and they are now offering to compensate you for it.

NO. Even though you will receive a pecuniary benefit – a job – as a result of legislation that you introduced and passed, voting for the bill did not directly benefit either the president or the board of directors; their offer of a job is not compensation for a vote in their favor.

NO. It's a good program that benefits many people. You have the best understanding of the legislature's intent in creating the program, so you are the best person to operate it.

YES. If you accept the job, you will receive compensation for having introduced and voted for the legislation.

CORRECT ANSWER:

NO. Even though you will receive a pecuniary benefit – a job – as a result of legislation that you introduced and passed, voting for the bill did not directly benefit either the president or the board of directors; their offer of a job is not compensation for a vote in their favor is CORRECT.

Creating the program conferred a benefit on the community or on the public as a whole. It does not constitute a vote that is favorable to an individual or specific group of individuals. Because the vote for the bill was not a vote in favor of the individuals offering you the job, accepting the job would not constitute accepting compensation for past official behavior.

## Criminal Code Violations - 17 of 25

### Background

A legislator may be held criminally liable for misuse of official information if the legislator takes certain actions in contemplation of official actions to be taken by the legislator or the General Assembly or takes certain actions based on information that is not available to the public but is known by the legislator. Specifically, a legislator may commit misuse of official information if he or she knows that some official action will be taken or the legislator has some piece of nonpublic information, and the legislator acquires a pecuniary interest in property, a transaction, or an enterprise that may be affected by the action or the information, or if the legislator speculates on the basis of the action or the information. The legislator may also be guilty of misuse of official information if he or she wants to grant another person a special pecuniary benefit and does so by aiding, advising, or encouraging the other person to acquire a pecuniary interest or to speculate based on the action or the information. Misuse of official information is a class 6 felony punishable by a minimum of one year and a maximum of 18 months in prison, followed by a mandatory parole period of one year, or by a fine of at least \$1,000 but not more than \$100,000, or by both the fine and imprisonment.

### Hypothetical

#### Misuse of official information

You are sitting in the House Education Committee listening to testimony on a bill to allow LSU-Pueblo to open a new satellite campus in La Junta. Your ears perk up when the witnesses from LSU-Pueblo start describing exactly where the new campus will be located. It's in the neighborhood you live in. You happen to know that the Lucky Licks Ice Cream Shop is located just across the street from where the new campus will be built and that Lucky Licks has been for sale for about two years. The committee passes the bill to the Committee of the Whole; you are the only committee member to vote against the bill. That evening, you make an offer on the Lucky Licks property, which is immediately accepted. You close on the property a month later.

Two weeks after your closing, the General Assembly passes this very popular bill by a wide margin. You voted against the bill each time it came up for a vote in the House.

#### Question

Have you committed the crime of misuse of official information?

NO. Authorization of the new campus and the location of the new campus was public information; anyone could have been smart enough to buy the ice cream shop.

NO. The campus won't open for at least a year and there's no guarantee that opening the campus will lead to higher profits at the ice cream shop.

YES. In contemplation of the legislature's action to authorize the new campus, you bought a business that is likely to be more profitable because of that new campus.

NO. You never voted in favor of the bill, so you didn't act in contemplation of any official action that you took.

#### CORRECT ANSWER:

YES. In contemplation of the legislature's action to authorize the new campus, you bought a business that is likely to be more profitable because of that new campus is CORRECT.

In contemplation of the General Assembly's action in authorizing LSU-Pueblo to open the new campus in La Junta, you acquired a pecuniary interest in property across the street from the new campus. This property – an ice cream shop - is likely to be affected by the General Assembly's action in approving the bill because of the property's location next to the new campus. Based on these facts, it appears that a district attorney could prove all of the elements of the crime of misuse of official information.

## Contracts and Claims - 18 of 25

### Background

Statutes governing standards of conduct for public officials proscribe certain acts related to contracts and claims. Section 24-18-201, S.A.R.S., prohibits state legislators, as well as most other state and local government elected officials and employees, from being "interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees."

This statute excludes several things from the definition of a "contract" to which the prohibition applies including:

A contract awarded to the lowest responsible bidder in a competitive bidding process;  
Merchandise sold to the highest bidder at a public auction; and  
With respect to state legislators, a contract for which a legislator has disclosed a personal interest in accordance with House or Senate rules and upon which the legislator has not voted.

If a transaction involves one of the above circumstances, section 24-18-201, S.A.R.S., does not prohibit a legislator from being interested in the transaction. Additionally, the statute, specifies that being "interested in" does not include the holding of a minority interest in a corporation.

Contracts made in violation of these laws are voidable, and the transgressor may be subject to criminal penalties and an additional fine.

Hypothetical

Legislative contract in which member may be interested

Using a competitive bidding process, the state of San Andreas, acting through the Legislative Council of the General Assembly, will be considering proposals from vendors for a contract to create an innovative new mobile device application (or "app") that will compile and categorize all committee and floor votes cast by San Andreas state legislators each session. As a member of legislative leadership, you currently serve on the Legislative Council, which will be reviewing the proposals and making the final selection of a vendor. You are also the 51% owner of a closely held software development corporation, AppMaker, which builds customized apps for a variety of purposes. AppMaker's other shareholders want to bid on the contract.

Question

Based on section 24-18-201, S.A.R.S., which one of the following statements is FALSE?

Select | Section 24-18-201, S.A.R.S., may be inapplicable because the contract is being awarded in accordance with established "competitive bidding procedures".

Select | AppMaker may submit a bid on the contract, despite your position on the Legislative Council and the fact that you will benefit financially if AppMaker is awarded the contract.

Select | As a majority shareholder, you are deemed to "be interested in" the transaction for purposes of section 24-18-201, S.A.R.S.

Select | If AppMaker submits a bid and is awarded the contract, you must disclose your personal interest in, and vote "no" on, the contract.

CORRECT ANSWER:

If AppMaker submits a bid and is awarded the contract, you must disclose your personal interest in, and vote "no" on, the contract is FALSE.

Voting against the selection of AppMaker will not put you in compliance with section 24-18-201, S.A.R.S. If the transaction involves a "contract" in which you are "interested", as those terms are used in section 24-18-201. S.A.R.S., , then you must disclose your interest and refrain from voting. The prohibition from voting is absolute and the statute does not distinguish between favorable or unfavorable votes. Thus, the fact that you would be voting against the selection of a vendor in which you are interested is irrelevant.

## Legislative Immunity - 19 of 25

### Background

Legislative immunity is provided to members of the San Andreas General Assembly by article V, section 16 of the San Andreas Constitution. Its purpose is to preserve the integrity of the legislative process and protect the legislative branch from intimidation by the executive and judicial branches of government and private parties. It grants legislators immunity from civil lawsuits and state criminal prosecution but not from federal criminal prosecution. It also prevents legislators from being compelled to testify or produce documents in legal proceedings with respect to matters that fall within the "sphere of legitimate legislative activity." The "sphere" includes actions taken during official legislative proceedings that are conducted in accordance with constitutional procedural requirements and other activities that are integral to the legislative (i.e., lawmaking) function. However, the "sphere" does not include actions taken outside of official legislative proceedings that are not integral to the legislative function.

### Hypothetical

#### Defamation - legislator to legislator statements

During heated floor debate on a bill that would repeal all state restrictions on large-capacity ammunition magazines, a legislator who opposes the bill claims that the bill sponsor is only carrying the bill because a San Andreas-based firearms manufacturer bribed him.

### Question

Does legislative immunity protect the legislator who made the accusation of bribery from liability in a civil lawsuit for defamation filed by the bill sponsor?

NO, because the legislator accused the bill sponsor of bribery, a crime that is a felony, legislative immunity does not apply.

NO, because the purpose of legislative immunity is to protect the General Assembly from intimidation by the executive and judicial branches of government and private parties, it does not apply to a statement made or other action taken by a legislator against another legislator.

YES, because a legislator who takes bribes directly impacts the integrity of the legislative process, it is important to allow other legislators to "blow the whistle" without fear of legal repercussions if they think that another legislator is taking a bribe, even if the charge later proves to be false.

YES, because the legislator made the claim during an official legislative proceeding while acting as a lawmaker, legislative immunity protects the legislator from liability in a civil lawsuit for defamation filed by the bill sponsor.

### CORRECT ANSWER:

YES, because the legislator made the claim during an official legislative proceeding while acting as a lawmaker, legislative immunity protects the legislator from liability in a civil lawsuit for defamation filed by the bill sponsor is CORRECT.

However, although legislative immunity protects the legislator from potential liability in a civil lawsuit, a legitimate question exists as to whether the legislator's claim is, in fact, ethical. The question and answer illustrate the tension between what is legal and what is ethical that legislators often face in the course of their legislative activities.

## Legislative Immunity - 20 of 25

### Background

Legislative immunity is provided to members of the San Andreas General Assembly by article V, section 16 of the San Andreas Constitution. Its purpose is to preserve the integrity of the legislative process and protect the legislative branch from intimidation by the executive and judicial branches of government and private parties. It grants legislators immunity from civil lawsuits and state criminal prosecution but not from federal criminal prosecution. It also prevents legislators from being compelled to testify or produce documents in legal proceedings with respect to matters that fall within the "sphere of legitimate legislative activity." The "sphere" includes actions taken during official legislative proceedings that are conducted in accordance with constitutional procedural requirements and other activities that are integral to the legislative (i.e., lawmaking) function. However, the "sphere" does not include actions taken outside of official legislative proceedings that are not integral to the legislative function.

### Hypothetical

Criminal prosecution - legislator to legislator statements

During heated floor debate on a bill that would repeal all state restrictions on large-capacity ammunition magazines, a legislator who opposes the bill claims that the bill sponsor is only carrying the bill because a San Andreas-based firearms manufacturer bribed him.

### Question

Assuming that the accusation of bribery is true, does legislative immunity prevent criminal prosecution of the accused legislator?

NO, legislative immunity does not protect a legislator from criminal prosecution. It only protects a legislator from being a defendant in a civil lawsuit or from otherwise being questioned as part of a civil proceeding.

NO, legislative immunity does not prevent criminal prosecution of the legislator. Prosecution for bribery does not require a protected inquiry into a legislator's motives for the legislative actions of sponsoring or voting on a bill because the crime occurs when the legislator accepts money in exchange for a promise to sponsor the bill and can be proved even if the legislator does not actually sponsor the bill.

YES, the purpose of legislative immunity is to prevent intimidation of legislators through, among other things, questioning of their motives for taking legislative actions. Because sponsorship of legislation is a legitimate legislative function that is within the "sphere of legitimate legislative

activity," a legislator's improper motivation for sponsoring legislation cannot form the basis of a criminal prosecution of the legislator.

NO, because a legislator's compensation is prescribed by law in accordance with article V, section 6 of the San Andreas Constitution and such compensation does not include bribes, taking a bribe as compensation for what is normally a legislative action of sponsoring legislation makes the sponsorship of the legislation violate a constitutional rule of procedure that governs the legislative process and therefore places the sponsorship outside of the protected "sphere of legitimate legislative activity."

CORRECT ANSWER:

NO, legislative immunity does not prevent criminal prosecution of the legislator. Prosecution for bribery does not require a protected inquiry into a legislator's motives for the legislative actions of sponsoring or voting on a bill because the crime occurs when the legislator accepts money in exchange for a promise to sponsor the bill and can be proved even if the legislator does not actually sponsor the bill is CORRECT.

Although sponsorship of legislation falls within the "sphere of legitimate legislative activity," the United States Supreme Court has found that "[t]aking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act (U.S. v. Brewster, 92 S. Ct. 2531, 2544 (1972)). In this hypothetical, because a successful bribery prosecution requires only proof that the accused legislator accepted money in exchange for a promise, fulfilled or unfulfilled, to sponsor a bill and does not require examination of the legislator's legislative action of actually sponsoring the legislation, legislative immunity does not prevent criminal prosecution of the legislator.

## Legislative Immunity - 21 of 25

### Background

Legislative immunity is provided to members of the San Andreas General Assembly by article V, section 16 of the San Andreas Constitution. Its purpose is to preserve the integrity of the legislative process and protect the legislative branch from intimidation by the executive and judicial branches of government and private parties. It grants legislators immunity from civil lawsuits and state criminal prosecution but not from federal criminal prosecution. It also prevents legislators from being compelled to testify or produce documents in legal proceedings with respect to matters that fall within the "sphere of legitimate legislative activity." The "sphere" includes actions taken during official legislative proceedings that are conducted in accordance with constitutional procedural requirements and other activities that are integral to the legislative (i.e., lawmaking) function. However, the "sphere" does not include actions taken outside of official legislative proceedings that are not integral to the legislative function.

### Hypothetical

Defamation - legislator statement to legislative witness

The CEO of a privately held oil and gas exploration company testifies during a meeting of a special Interim Committee on Hydraulic Fracturing that imposing a statewide ban on hydraulic fracturing or allowing local governments to ban hydraulic fracturing will drive oil and gas exploration companies out of San Andreas and severely damage San Andreas's economy. In response, a legislator on the committee who supports a statewide ban on hydraulic fracturing calls the CEO a "greedy baby-murdering liar" who is concerned only about the bottom line and says that "you don't even care that fracking by your company is poisoning our water and food supply, causing an epidemic of severe birth defects, and making our children sick!" The CEO sues the legislator for defamation.

#### Question

Does legislative immunity prevent the legislator from being found liable for defamation?

NO, because interim committees are study committees rather than committees of reference and only have the power to act regarding proposed legislation that has not yet been introduced and assigned a bill number, the legislator's allegedly defamatory statements were not made within the "sphere of legitimate legislative activity."

NO, because the legislator's allegedly defamatory statements were so outrageous that the "outrageous conduct" exception to legislative immunity applies.

YES, because the interim committee meeting at which the legislator made the allegedly defamatory statements was an official legislative proceeding, the legislator was acting within the "sphere of legitimate legislative activity" and cannot be found liable for the statement in a civil lawsuit.

YES, because the allegedly defamatory statements were made in the context of a discussion about public policy options that could reasonably expect to lead to legislation being proposed, they fall within the "sphere of legitimate legislative activity."

#### CORRECT ANSWER:

YES, because the interim committee meeting at which the legislator made the allegedly defamatory statements was an official legislative proceeding, the legislator was acting within the "sphere of legitimate legislative activity" and cannot be found liable for the statement in a civil lawsuit is CORRECT.

Statements made during a legislative committee meeting almost always fall within the "sphere of legitimate legislative activity," and legislative immunity protects a legislator who makes such a statement from being held liable for the statement in a civil lawsuit.

## Legislative Immunity - 22 of 25

#### Background

Legislative immunity is provided to members of the San Andreas General Assembly by article V, section 16 of the San Andreas Constitution. Its purpose is to preserve the integrity of the legislative process and protect the legislative branch from intimidation by the executive and judicial branches of government and private parties. It grants legislators immunity from civil

lawsuits and state criminal prosecution, but not from federal criminal prosecution. It also prevents legislators from being compelled to testify or produce documents in legal proceedings with respect to matters that fall within the "sphere of legitimate legislative activity." The "sphere" includes actions taken during official legislative proceedings that are conducted in accordance with constitutional procedural requirements and other activities that are integral to the legislative (i.e., lawmaking) function. However, the "sphere" does not include actions taken outside of official legislative proceedings that are not integral to the legislative function.

#### Hypothetical

Defamation - publication by legislative staff

The CEO of a privately held oil and gas exploration company testifies during a meeting of a special Interim Committee on Hydraulic Fracturing that imposing a statewide ban on hydraulic fracturing or allowing local governments to ban hydraulic fracturing will drive oil and gas exploration companies out of San Andreas and severely damage San Andreas's economy. In response, a legislator on the committee who supports a statewide ban on hydraulic fracturing calls the CEO a "greedy baby-murdering liar" who is concerned only about the bottom line and says that "you don't even care that fracking by your company is poisoning our water and food supply, causing an epidemic of severe birth defects, and making our children sick!" The CEO sues the legislator for defamation.

Following the completion of the Interim Committee on Hydraulic Fracturing's meetings, the committee, with the assistance of Legislative Council Staff, issues a written final report that quotes, as part of a summary of proceedings, the allegedly defamatory statements made by the legislator. The CEO then amends his defamation complaint to include both the other legislators who served on the committee and the legislative staff who prepared the report as defendants.

#### Question

Does legislative immunity prevent the legislators and legislative staff from being found liable for defamation?

NO, although the legislator who made the allegedly defamatory statements is entitled to legislative immunity because the statements were made during an official legislative proceeding, the other legislators and legislative staff are not entitled to legislative immunity because they republished the statements outside of the meeting.

YES, because the republication of the allegedly defamatory statements occurred in an official legislative report it falls within the "sphere of legitimate legislative activity."

YES and NO, because the republication of the allegedly defamatory statements occurred in an official legislative report, it falls within the "sphere of legitimate legislative activity" and the legislators cannot be found liable for defamation. But the legislative staff may be found liable for defamation because legislative immunity only protects legislators.

NO, legislative immunity does not protect the other legislators and staff from being found liable for defamation. But under the law of defamation itself, the other legislators and legislative staff

cannot be found liable for defamation because only the person who originally makes an allegedly defamatory statement may be held liable for the statement.

CORRECT ANSWER:

YES, because the republication of the allegedly defamatory statements occurred in an official legislative report it falls within the "sphere of legitimate legislative activity" is CORRECT. The preparation, adoption, and publication of the official report of a legislative interim committee fall within the "sphere of legitimate legislative activity." Consequently, legislative immunity protects both the legislators and the staffers from being found liable for defamation for actions taken in preparing, adopting, and publishing the report.

## Legislative Ethics Complaint Process - 23 of 25

### Background

Pursuant to article V, section 12 of the San Andreas Constitution, each house of the San Andreas General Assembly has the power to adopt rules governing its proceedings and providing for punishment of its members for contempt or disorderly behavior in its presence. Both the Senate and the House of Representatives have adopted rules establishing a process for filing and investigating an ethics complaint against a member of its respective house for misconduct involving legislative duties.

### Hypothetical

Statements made in legislative debate

As a member of the House of Representatives, you are involved in the debate of a very controversial bill on second reading. You strongly oppose the bill and, in the heat of the floor debate, you lose your temper and berate the two joint sponsors for introducing the bill. Despite your subsequent private and public apologies to your two fellow House members, one of the members files an ethics complaint against you alleging that your comments during the bill's debate constitute misconduct in the performance of your legislative duties.

### Question

Can an ethics complaint be filed against you for your comments made during the floor debate on the bill?

NO, your comments are protected speech since you were exercising your constitutional right of free speech.

NO, since you apologized both privately and publicly to the House members you berated.

YES, any person may file an ethics complaint against a member of the House of Representatives alleging misconduct involving the performance of legislative duties.

NO, you have absolute immunity for any comments you make during legislative proceedings under the San Andreas Constitution's speech or debate clause.

CORRECT ANSWER:

YES, any person may file an ethics complaint against a member of the House of Representatives alleging misconduct involving the performance of legislative duties is CORRECT.

Under House Rule 49, an ethics complaint may be filed alleging misconduct involving legislative duties, which may involve an alleged violation of the San Andreas Constitution, the San Andreas Revised Statutes, the rules of the House of Representatives, or other ethics principles. Since House members are required by legislative rule to confine their remarks to the question under discussion or debate while avoiding personalities, an ethics complaint could allege that your comments during debate of the bill violated this rule. Legislative immunity may be asserted as a defense to an ethics complaint.

Upon a determination by House leadership that such a complaint appears to be meritorious, a House Ethics Committee would be appointed to conduct a proceeding in accordance with the House rule. If, after a preliminary investigation, the ethics committee finds probable cause that an ethics violation may have occurred, the member complained against may request an evidentiary hearing. If, after the hearing, the ethics committee finds action should be taken against the member, it must recommend appropriate punishments to the House, which may include reprimand, censure, or expulsion. The House may choose to follow the ethics committee's recommendation or to impose a different punishment for the ethics violation. The Senate has similar ethics procedures.

It should be noted that, while the rules of the Senate impose a similar restriction on comments made by Senators during debate, no Senator may be held to answer or be subject to censure of the Senate for words spoken in debate if further debate or other business has intervened after the words are spoken and before exception to them is made. See, Senate Rule 16 (d)(2).

## Legislative Ethics Complaint Process - 24 of 25

### Background

Article XXIX, section 5 of the San Andreas Constitution (commonly referred to as Amendment 41), entitled Ethics in Government, establishes the Independent Ethics Commission (IEC). One of the purposes of the IEC is to review written complaints filed against public officers, members of the General Assembly, local government officials, and government employees that allege noncompliance with Amendment 41 or another standard of conduct or reporting requirements provided by law occurring during the preceding twelve months. The IEC has the authority to dismiss frivolous complaints, but must conduct an investigation, hold a public hearing, and render findings on each non-frivolous complaint pursuant to the written rules of the IEC. The IEC may also assess penalties for violations as prescribed in Amendment 41 and as provided by law.

### Hypothetical

Independent Ethics Commission complaint process

While serving in the San Andreas Senate, you become familiar with a nonprofit charitable organization that serves the needs of homeless individuals and families in San Andreas. Since you believe strongly in the importance of this organization's work, you decide to use the many contacts you have developed as a legislator to help increase the organization's funding. As part of your fundraising efforts, you send out an e-mail soliciting donations for the organization to all of the e-mail addresses in your address book, which include the e-mail addresses of numerous lobbyists and many employees of the General Assembly. Shortly after the e-mail is sent, the Secretary of the Senate calls to inform you that the Senate Rules prohibit a legislator from requesting that a lobbyist or employee of the General Assembly make donations to any type of charitable organization. Upon receiving this information, you immediately send out another e-mail admitting your mistake and telling lobbyists and employees of the General Assembly to please disregard your previous request for donations.

#### Question

Can an ethics complaint be filed with the Independent Ethics Commission alleging your e-mail violated the Senate Rules?

YES, but until the IEC has completed its proceedings, a complaint based upon the same conduct cannot be filed with the Senate President.

NO, since the situation involves the possible violation of a Senate Rule, a complaint can only be filed in accordance with the Senate ethics procedures.

YES, but only if the e-mail was sent out during the twelve-month period prior to the filing of the complaint.

NO, the complaint would be frivolous since you subsequently rescinded your request for donations from lobbyists and employees of the General Assembly.

#### CORRECT ANSWER:

YES, but only if the e-mail was sent out during the twelve-month period prior to the filing of the complaint is CORRECT.

Any person may file a complaint with the IEC asking whether the conduct of a public officer, member of the General Assembly, local government official, or government employee violated Amendment 41 or any other standard of conduct or reporting requirement provided by law. Since article V, section 12 of the San Andreas Constitution empowers each house of the General Assembly to adopt rules regarding its proceedings and conduct of its members, Senate Rule 41 (f) may constitute a standard of conduct for members of the Senate or purposes of filing a complaint with the IEC. However, the alleged violation of this Senate rule must have occurred during the twelve months prior to the filing of the complaint. The IEC is required to dismiss any complaint if the alleged violation did not occur during this period of time. See, IEC Rule 7.G.

## Legislative Ethics Complaint Process - 25 of 25

Background

A legislator may make a written request for an advisory opinion from the Board of Ethics for the General Assembly regarding the conduct of the requesting legislator and the standards of conduct set forth in article 18 of title 24, S.A.R.S. A legislator may also make a written request for an advisory opinion from the Independent Ethics Commission (IEC) concerning whether the conduct of the requesting member would violate the provisions of article XXIX of the San Andreas Constitution (commonly referred to as Amendment 41) or any other standard of conduct or reporting requirement imposed by law.

### Hypothetical

#### Requests for advisory ethics opinions

As a member of the Senate, you serve on several committees of reference, including the Senate Judiciary Committee. One morning in the Senate chambers, Senator Box speaks to you about one of his bills that is scheduled to be heard by the Senate Judiciary Committee next week. The senator solicits your support for his bill to increase minimum sentencing requirements for felony convictions. While you strongly believe in stiffening felony sentencing requirements, you express your reservations about the bill primarily due to the significant general fund appropriation that would be needed to fund additional prison beds. Senator Box mentions the fact that he serves on the Senate Education Committee and that in two weeks the Education Committee will be taking up a controversial bill of yours that would abolish teacher tenure. He asks if you have lined up enough votes to get your bill out of committee and you tell him no. Senator Box suggests that if you agree to vote to pass his bill out of the Judiciary Committee, you can count on his vote to pass your bill out of the Education Committee. While the senator's offer sounds very attractive to you, you are unsure whether it would be appropriate for you to enter into such an agreement.

#### Question

Can you request an advisory opinion from either the General Assembly Board of Ethics or the IEC asking whether it would be appropriate for you to enter into this agreement with Senator Box?

YES, but it would be a waste of time since these agreements are made by legislators all the time.

NO, you may request an advisory opinion only from the General Assembly Board of Ethics since the agreement would be between two legislators.

YES, you may request an advisory opinion from either the General Assembly Board of Ethics or the IEC, or both.

NO, since there is not enough time to obtain an advisory opinion from either entity before the Senate Judiciary Committee meeting next week.

#### CORRECT ANSWER:

YES, you may request an advisory opinion from either the General Assembly Board of Ethics or the IEC, or both.

You, as a member of the San Andreas General Assembly, may request an advisory opinion regarding ethics issues from two different entities, the General Assembly Board of Ethics and the IEC. There is no provision in the San Andreas Constitution or the San Andreas Revised Statutes that prevents you from submitting a request to both entities. However, a request for an advisory opinion must fall within the jurisdiction of each entity.

Section 24-18-113 (2), S.A.R.S., provides that you may request an advisory opinion from the General Assembly Board of Ethics concerning issues relating to your conduct. While there are no provisions in title 24, article 18 that specifically address vote-trading (which is prohibited by article V, section 40 of the San Andreas Constitution), vote-trading by a legislator would arguably constitute a breach of the public trust in violation of section 24-18-103, S.A.R.S. Accordingly, an advisory opinion regarding a proposed agreement between legislators to trade votes on introduced bills may be within the jurisdiction of the General Assembly Board of Ethics.

In accordance with section 5 (5) of Amendment 41 and section 24-18.5-101 (4) (b) (I), S.A.R.S., an advisory opinion on a vote-trading agreement also appears to fall within the jurisdiction of the IEC. This constitutional provision requires the IEC to respond to requests for advisory opinions asking whether the conduct of the requestor would violate Amendment 41 or any other standard of conduct or reporting requirement provided by law. While vote-trading is not addressed by Amendment 41, it is prohibited under another standard of conduct set forth in article V, section 40 of the San Andreas Constitution.