



## Ethics & Open Government



We are substantive and practical experts in ethics and conflict of interest laws and the statutes which provide for governmental transparency. We advise our public officials on the Brown Act, the Public Records Act, Public Bidding laws, AB 1234, the Maddy Act, conflicts of interest, including the provisions of the Political Reform Act, prohibition on contracting with public officials (Gov't Code §1090), incompatibility of employment (Gov't Code § 1125), and similar provisions. We provide impartial legal counsel of the highest quality to ensure governmental actions are undertaken in an ethical and transparent manner. We frequently work with both the Fair Political Practices Commission and Attorney General's office on conflict issues. We advise our clients on compliance with important Federal, State, and local election rules.

California legislative policy and good government promotes governmental transparency, accessibility and fairness; and there exist many different laws to help create "open government." Even with the best of intentions on the part of public officials, such laws can become pitfalls for public agencies without the skillful guidance of experienced legal counsel. We have partnered with several cities that endured a series of debilitating public corruption scandals and assisted them in fostering transparency with a goal to improve public trust in the institutions of local government, as well as to educate the public about the complexities of municipal and state laws.

For example, in Lawndale, it was discovered the elected City Clerk was not a city resident. A&W, as Lawndale's City Attorney, assisted the City with the removal of the City Clerk from office and successfully defended the City Council's power to remove an elected City Clerk at the appellate level.

After Carson endured a series of public corruption scandals resulting in public officials being convicted of bribery and extortion, our Firm was hired as city attorney. On behalf of the City, we immediately pursued litigation targeting those who benefited from the public corruption for the return the money taken from the City. The Firm won a case on behalf of the City of Carson utilizing Government Code § 1090, where a developer had paid \$75,000 to receive an \$850,000 loan from the City for a 30-year low-income housing project. The Court ordered the developer to repay to the City the entire \$850,000 benefit he received and the City was able to retain the benefits of the 30-year low-income housing. The case was appealed by the defendants and resulted in the published opinion of *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal. App. 4th 1323.

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Surpassing the scandals in Carson and to unprecedented levels, Bell's elected officials, upper management employees and contract vendors enriched themselves at the public's expense and received extensive national media coverage for alleged corruption. The City Manager was paid over \$1M per year and Councilmembers received \$100,000 annually despite Charter limitations. Upon the discovery of the scandals and with the community galvanized to take action, A&W provided pro-bono services to guide efforts by the Bell Association to STOP the Abuse (BASTA), a community based organization, to recall the City Council (gathering 4,000 recall signatures in a month). After the successful recall, A&W became City Attorney in 2011. We have since represented Bell in more than 60 lawsuits, mediations, appeals and administrative proceedings. Due to the broad nature and lengthy period of the corruption, we have handled the following types of matters: (i) administrative CalPERS proceedings to limit pension benefits based on unauthorized contracts; (ii) defense of indemnification claims by former employees being prosecuted by state and federal entities; (iii) responding to investigations by the SEC, IRS, and State Controller; (iv) performing bond work-outs and restructuring, and advising on financial market disclosures; (v) reviewing an unprecedented employee loan program of over \$1M and various personnel investigations; (vi) dissolving a multi-million dollar Supplemental Retirement Pension Fund; (vii) undertaking recovery of millions of dollars based on malpractice claims against the City's former law firms, accounting firms, and bond financing firms; (viii) dealing with all the City's insurers and obtaining recoveries in excess of \$1M; and (ix) coordinating with the Attorney General and District Attorney on prosecutions and obtaining restitution.

In the City of Lynwood, A&W guided the Council in adopting rules as part of the municipal code to impose ethical standards on City officials exceeding minimum legal requirements. We have also assisted the City in terminating agreements that were secured through inappropriate influence by recalled former councilmembers, most of which were accomplished without the need for protracted litigation. We have further collected on judgments and court orders against perpetrators of the corruption that proved so devastating to the City's finances, as well as the community's trust and confidence in the City. In turn, the City has since been successful in demonstrating its ability to rid itself of corruption by winning the All American City award in 2010.

## Expertise

- Working closely with cities damaged by corruption to create transparent systems and restore public trust and community confidence
- Pursuing litigation targeting those who benefited from public corruption for the return of funds taken from the public entity
- Coordinating with outside agencies such as Los Angeles District Attorney's Office, State Attorney General of California, United States Securities and Exchange Commission and Internal Revenue Service
- Administrative Actions involving CalPERS concerning excessive retirement compensation claims
- Defending indemnification claims from corrupt officials
- Legal and financial malpractice claims
- The Ralph M. Brown Act
- The Political Reform Act
- The California Public Records Act
- The Maddy Act (Governmental Appointments)
- Statements of Economic Interest (FPPC Form 700 Compliance)



- AB 1234 Ethics training
- Mass Mailing regulations
- Local Conflict of Interest Codes
- Government Code § 1090
- Incompatibility of Offices Doctrine
- Due Process/Fair Hearing conflicts
- Quo Warranto actions
- Common Law Conflict of Interest Doctrine
- Anti-SLAPP actions
- False Claims Act
- Insurance claims and recoveries related to the above

## Expertise in Action

Our attorneys frequently conduct training sessions for public officials, including orientation for new council members and commissioners. We provide AB 1234 ethics training, and have developed expense reimbursement policies. We were instrumental participants in developing the ethical standards for city attorneys approved by the City Attorneys Department of the League of California Cities in 2006. We advise city clerks and other public officials on responses to Public Records Act requests. One of our equity partners has served as a member of the League's Public Act Records Committee and serves on the Practicing Ethics Committee. We have drafted codes of ethics in our municipalities, created ethics commissions and assisted in improving the ethical environment in communities where officials have been subject to scrutiny due to public corruption scandals. We frequently consult with public officials on conflict issues and are expert in working with both the FPPC, and when required, the Attorney General's office on such matters. We have authored FPPC regulatory changes (small city exception).

Major litigation matters involving ethics or public corruption include:

- *Nicolopoulos v. City of Lawndale* (2001) 91 Cal. App. 4th 1221. The Court of Appeal upheld the City of Lawndale's removal of their City Clerk after the City Council removed the Clerk for failing to reside in the City.
- *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal. App. 4th 1323. A&W prevailed in affirming a judgment for the City of Carson against a contractor for obtaining funds by way of an illegal loan.
- Defending the City of Bell in illegal compensation litigation: *Robert Rizzo v. City of Bell* (Case No. BC472566); *Randy Adams v. City of Bell* (Case No. BC489331); *Eric Eggena v. City of Bell* (Case No. BC487522). These key players in the Bell scandals collectively seek approximately \$2.8 million in severance payments, unpaid wages, unpaid vacation and sick leave benefits, and other fringe benefits.
- California Public Employees' Retirement System Board of Administration hearings reducing the CalPers retirement pensions of Robert Rizzo (Agency Case No. 2011-0774, OAH No. 2012020199), Angela Spaccia (Agency Case No. 2011-0789, OAH



No. 2012020198), Randy Adams (Agency Case No. 2011-0788, OAH No. 2012030095), and George Cole (Agency Case No. 2011-0944, OAH No. 2012031026) based on contracts which were not properly authorized. Plaintiffs sought \$6M in pension benefits.

- *People of California v. Robert Rizzo*. A&W represents the City of Bell in its support of the Attorney General's action against Mr. Rizzo by providing a detailed analysis of how the city charter was violated by the Bell 8 and additional new legal theories under the False Claims Act.
- Successfully defending the City of Bell in lawsuits filed by the City's former vendors. In one suit, *D&J Engineering v. City of Bell* (Case No. VC059415), A&W successfully asserted legal arguments to demonstrate that the vendor's written contract with the City's former leadership under Robert Rizzo did not comply with the city charter, resulting in nullification of the contract and a victory for Bell. Similarly, in *Richard Fisher Associates v. City of Bell*, the City asserted the same defense, and the Plaintiff dismissed its lawsuit. City is pursuing other contractors for funds paid where no written contracts were in effect.
- *Luis Ramirez et al. v. City of Bell et al.*, LASC Case No. BC474118 (Related to *City of Bell v. Claudia Avila et al.*, LASC Case No. BC491531). The City seeks to terminate excessive benefits plans authorized under the previous administration of the City. One of these plans is a Supplemental Retirement Plan for miscellaneous employees, including Robert Rizzo, giving such employees an additional 2% at 55 pension benefit, funded entirely by the City. The ordinance was not properly enacted by the Council and the City has prevailed at trial court.
- *Dexia v. City of Bell (BC466436)*. Dexia seeks \$35M against the City seeking foreclosure of property securing bonds and a judgment against the City for deficiencies when underlying lease of property was invalidated due to a successful CEQA lawsuit. A&W has defended the City based upon the transaction violating the Constitutional debt limit, and has sued a former City Attorney, Best Best & Krieger, for malpractice related to the CEQA action. We sued Nixon Peabody, the City's former bond counsel, based on the structure of the financing and for excessive fees.
- *Bell v. Mayer Hoffman McCann*. A&W is pursuing the City's long-time former audit firm for malpractice for inadequate financial disclosure for its audit reports for the years 2009-10, based upon finding by the State Controller in an audit report in 2010, which can be found at [sco.ca.gov](http://sco.ca.gov).

Enhanced public communication and transparency are vital to restoring public trust. We have prepared Staff reports updating the City Council and the public on the status of corruption litigation. For example, A&W drafted and presented a Litigation Staff Report at the November 2, 2012 meeting of Bell's City Council.