

**CDIAC**

**CALIFORNIA  
DEBT AND  
INVESTMENT  
ADVISORY  
COMMISSION**

**SESSION ONE:  
UNDERSTANDING ROLES AND  
RESPONSIBILITIES OF PUBLIC  
INVESTMENT OFFICERS, STAFF AND  
ELECTED OFFICIALS**

**CDIAC/CMTA  
JANUARY 23, 2018**

**David Carr, Assistant City Treasurer, City of Santa Monica  
Vishal B. Thacker, Chief investment Officer, County of Alameda**

# Overview

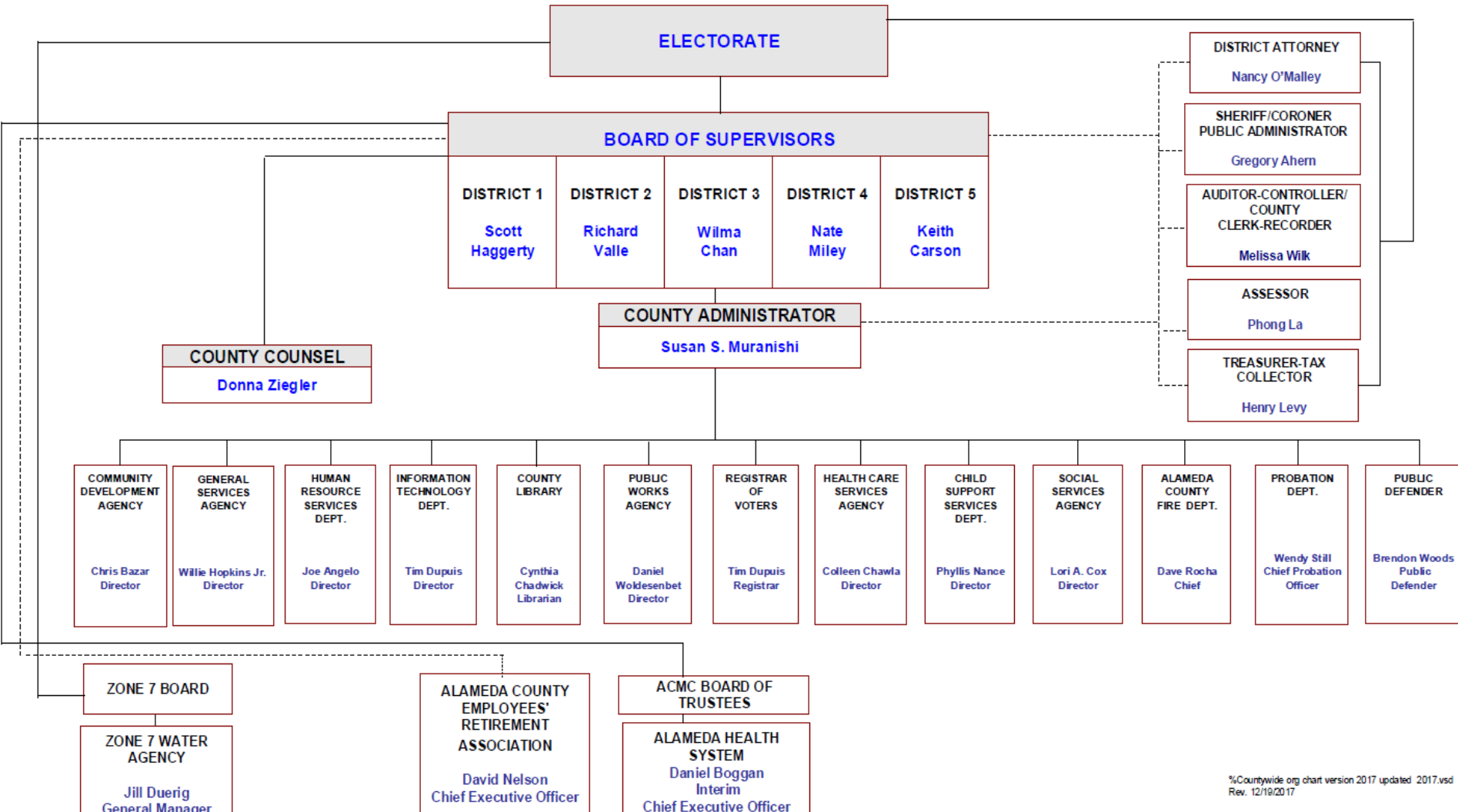
- Roles and Responsibilities
- Agency Organizational Structures
- Legal & Fiduciary Responsibilities by Role
  - Personal Liability
  - General Law vs. Charter Counties / Cities

# Roles and Responsibilities

Treasury and Investment Positions	Fiduciary Responsibility	Personal Liability
County Treasurer	X	X
City Treasurer/Finance Director	X	X
Chief Investment Officer	X	X
Investment Officer	X	X
Investment Analyst	X	X
Treasury Oversight Committee	X	
Finance/Investment Committee	X	
Board of Supervisors/City Council	X	
City Manager	X	X
Staff Accountants		
Auditors – External/Internal		
Investment/Financial Advisors	X	

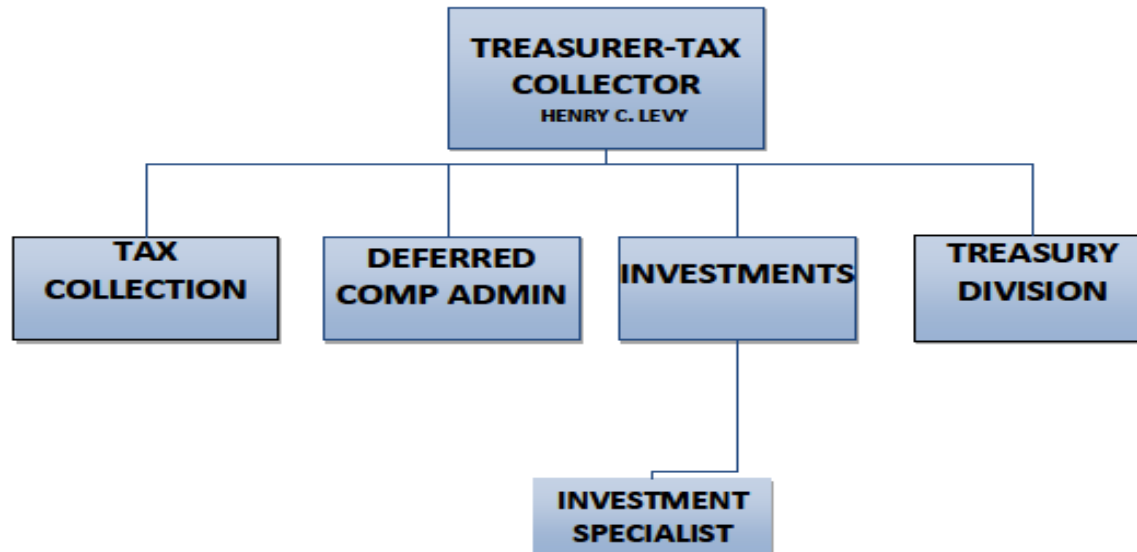
# Alameda County Org Chart

## ALAMEDA COUNTY GOVERNMENT OVERVIEW

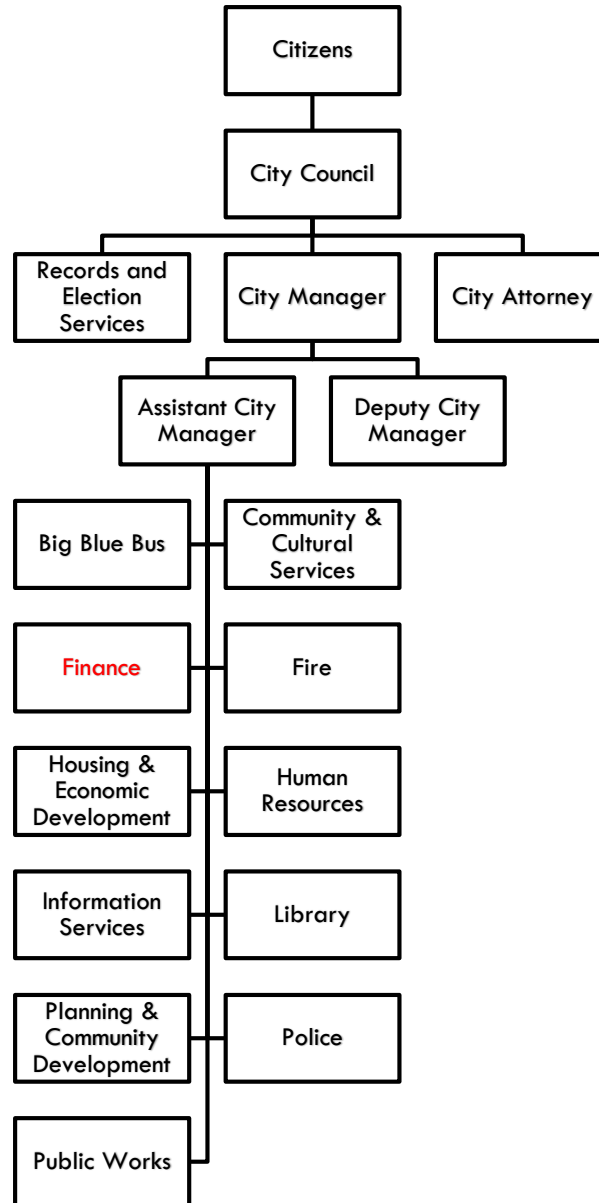


# Alameda County

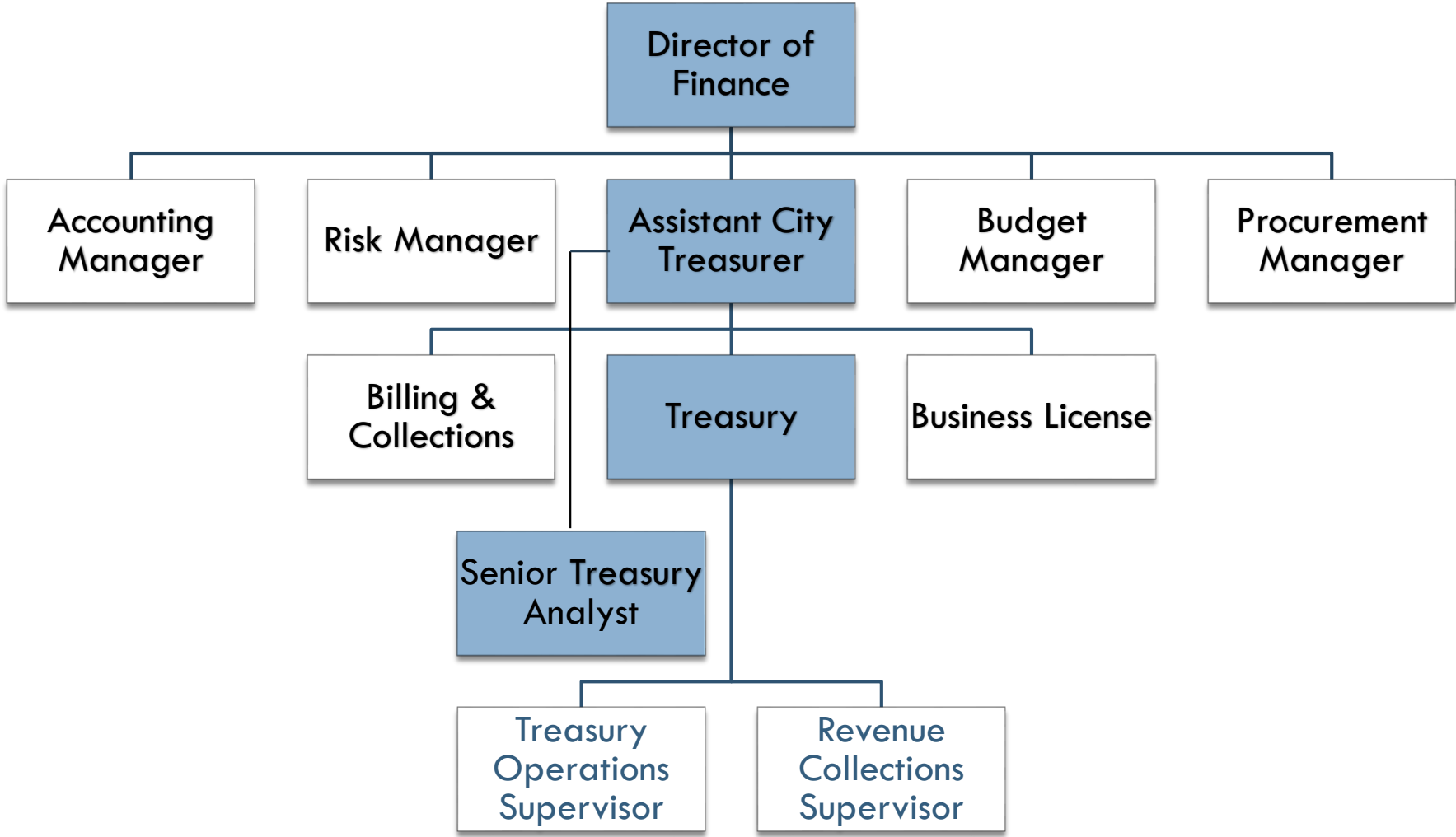
## Office of the Treasurer-Tax Collector



# City of Santa Monica Org. Chart



# City of Santa Monica Finance Dept.



# Legal & Fiduciary Responsibilities

## County Treasurer

- Criteria for filing declarations of candidacy (if adopted by ordinance by the county), must meet one of the following:
  - Served in a senior financial management capacity in a public agency for at least three years
  - Possesses a valid bachelors, masters or doctoral degree from an accredited institution in business administration, public administration, economics, finance or accounting with 16 semester units in accounting, auditing or finance
  - Possesses a valid California Certified Public Accountant certificate
  - Has a valid Chartered Financial Analyst charter from the Institute of Chartered Financial Analysts and meets the 16 hour requirement above
  - Has a valid Certified Cash Manager certificate issued by the Treasury Management Association and meets the 16 hour requirement above



# Legal & Fiduciary Responsibilities

## County Treasurer

- Must complete 24 hours of a continuing education program relating to specific treasury management, tax collection, public finance, public administration, governmental accounting provided by a recognized state or national association, university or CDIAC every 2 years.
- Receive and keep safely all money belonging to the county

# Legal & Fiduciary Responsibilities County Treasurer

- May be delegated the authority to invest or reinvest the funds of the county and the funds of other depositors in the county
  - Becomes the fiduciary if investment is delegated and subject to the prudent investor standard for both county funds and funds deposited by other agencies.
  - May accept excess funds deposits from local agencies into county treasury
- Shall apportion at least quarterly interest derived from investment of funds.

# Legal & Fiduciary Responsibilities

## County/City Treasurer

- When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

# Legal & Fiduciary Responsibilities

## County/City Treasurer

- Select the depository bank of the local agency
- Enter into agreements with depositories concerning the terms and conditions of any part of the money deposited
- May render to the governing body and any oversight body an annual statement of investment policy and quarterly reports with specific requirements submitted within 30 days following the end of the quarter (no longer mandated since 1-1-2010)

# Legal & Fiduciary Responsibilities

## County/City Treasurer

- Investment objectives
  - Safety
  - Liquidity
  - Yield
- A governmental investor including City and County Treasurers who exercises investment discretion over public funds in excess of \$10 million
- Each securities transaction done for a governmental investor by an investment manager under a soft dollar and directed brokerage arrangement as defined in Section 28(e) of the SEC Act of 1934 shall be executed at the lowest responsible transaction cost available

# Legal & Fiduciary Responsibilities

## County/City Treasurer

- Any written contract entered into between a governmental investor and an investment manager that includes a soft dollar and directed brokerage arrangement shall contain the following:
  - The investment manager shall maintain complete and detailed records of all billed services
  - The services shall be clearly defined
  - The investment manager shall disclose a list of all billed services, the justification for providing each of those services, an annual statement of all billed services and a determination of whether each service is proprietary or is being shared by other clients of the investment manager
- A soft dollar and directed brokerage arrangement is not subject to any statutory competitive bidding requirements

# Legal & Fiduciary Responsibilities

## City Treasurer

- Shall receive and safely keep all money coming into his/her hands as treasurer
- Shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in his/her possession.
- Shall submit to the City Clerk, at least once each month, a written report and accounting of all receipts, disbursements, and fund balances and file a copy with the legislative body.
- May be delegated by the legislative body the authority to invest funds for a one year period, to be renewed annually.

# Legal & Fiduciary Responsibilities

## Investment Officer

- Investment Officer may be Treasurer or other individual delegated the authority by the Treasurer and/or legislative body
- When investing, reinvesting or managing public funds, the primary objective of a trustee shall be:
  - Safeguard the principal of the funds under its control.
  - The secondary objective shall be to meet the liquidity needs of the depositor.
  - The third objective shall be to achieve a return on the funds under its control.



# Legal & Fiduciary Responsibilities

## Investment Officer

- Moneys in a sinking fund or monies in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in approved investments.
- Investment may be made by direct purchase of any issue of eligible securities at their original sale or after they have been issued.
- Trustee may sell, or exchange for other eligible securities, and reinvest the proceeds of, the securities purchased.

# Legal & Fiduciary Responsibilities Investment Officer

- May sell the securities so that the proceeds may be applied to the purposes for which the original purchase money was placed in the sinking fund or the treasury of the local agency.

# Legal & Fiduciary Responsibilities

## Treasury/Finance Oversight

### California Government Code, Sections 27130 - 27137

- Section 27131(a) states that the board of supervisors in any county that invests surplus money may establish a treasury oversight committee. If established, the committee must consist of three to eleven members.
- Sections 27134 and 27137 limit the oversight committee's functions to monitoring and reviewing the county treasury's compliance with the investment policy and reporting provisions of the Gov. Code through an annual audit.
- No legal requirements for local agencies to have oversight committees.

# Legal & Fiduciary Responsibilities Treasury/Finance Oversight (cont.)

- Review and monitor the Treasurer's Investment Policy statement, highlighting elements such as:
  - List of securities or other instruments.
  - Maximum term of securities.
  - Criteria for selecting dealers and brokers.
  - The manner of calculating and apportioning the costs of handling or managing the funds.

# Legal & Fiduciary Responsibilities

## Treasury/Finance Oversight (cont.)

- The Oversight Committee shall cause an annual audit to be conducted to determine the treasury's compliance with this article. The audit may include issues relating to the structure of the investment portfolio and risk.
- Any entity that withdraws funds for the purpose of investing or depositing those funds outside the pool, shall first submit the request for withdrawal to the county treasurer before withdrawing funds.
- Oversight Committee does not direct individual investment decisions, select individual investment advisors, brokers, or dealers, or impinge on day-to-day operations.

# Personal Liability – Public Officials

- May be criminal (payment of a fine to the state and imprisonment)
- May be civil (money damages to compensate the injured person)
- May be a criminal liability due to willful misconduct in office per Gov't code 3060 et seq (removal from public office after a plea or a finding of guilty)

# Personal Liability - Public Officials

- ❑ Public Officials are prohibited from:
  - ❑ Having an interest in a contract, becoming a vendor or purchaser at sales or dealing in evidences of indebtedness is a felony
  - ❑ Knowingly disclosing for gain confidential information acquired in the course of official duties or uses such information for purposes of gain is a misdemeanor
  - ❑ Destroying, removing or withholding official records after the expiration of a term of office is a felony
  - ❑ Depositing public funds in any manner other than that set forth in the Deposit Law (Gov't Code 53679) is subject to forfeiture of office or employment
  - ❑ Embezzlement, falsification of account, misappropriation of funds, and use of public funds for private profit are felonies punishable by imprisonment and disqualification from holding public office

# Personal Liability - Public Officials

- ❑ **Civil – Civil Code sections: 1708 and 1714**
  - ❑ Narrower exposures for treasurers because the nature of the duties are such that negligence does not usually result in injury or damage to the person or property of individual citizens
  - ❑ Responsible for acts of appointed deputies (Gov't Code 41006)
- ❑ **Statutory immunity (Gov't code section 820 et seq)**
  - ❑ May be not liable for money stolen from his/her official custody, but nothing exonerates a public employee from liability if the loss was sustained as a result of his/her own negligent or wrongful act or omission.
  - ❑ Local agency may have a duty to defend and indemnify official



# Personal Liability -Public Officials

## □ Selected Convictions and Selected Alleged Crimes

### □ Orange County Treasurer - Robert L. Citron

Convicted of 6 felony counts of financial fraud, served one year in prison (1995)

### □ City of Dixon, IL - Comptroller

Convicted of diverting \$53 million of public funds, sentenced to 19 ½ years in prison (2013)

### □ City of Placentia - Financial Services Manager

Accused of 36 felony accounts of misappropriation of public funds, 66 felony accounts of money laundering, two felony accounts of falsifying records (if convicted of all the charges, would face 97 years in prison and a fine of \$10 million) – (2016)

### □ City of Compton - Deputy Treasurer

Accused of embezzling public funds (December 2016)

# Charter vs. General Law – County Treasurer

## California Government Code, Section 36501 et seq.

- General Law counties
  - Is an elective office, but may become appointed by a majority of votes in the county
  - If elected, no term limits
  - Must take an oath of office, like other officers in the county
  - Must execute a bond to the county
- Charter counties
  - May have authority relating to the election or appointment, compensation, terms and removal of all county officers, for the powers and duties of all officers and for consolidation and segregation of county offices
  - In the County of Orange, a charter county, the voters approved that changes to retirement benefits of any employee, legislative officer or elected official must first be approved by majority of votes in 2009

# Charter vs. General Law – City Treasurer

## California Government Code, Section 36501 et seq.

- Residents can vote to have their city become a charter city and that the city's organization and manner of operation is determined by a charter, versus certain state laws
- General Law cities
  - Defined as a government officer
  - Is an elective office with a four year term unless either in the general incorporation or as a result of a proposition, the office has been made appointive.
  - Shall receive and safely keep all money coming into his/her hands as treasurer
  - Must take a constitutional oath of office, like other officers of the city
  - Must execute a bond to the city
  - Position, if appointed, may be appointed by the City Council or the City Manager and terminated without cause unless the position is made a part of the classified service under a merit or civil service system
  - Elected offices do not need to perform any duties other than statutory even if required by ordinance unless such ordinance duties relate to the collection of city taxes and license fees
- Charter cities
  - May define specific duties of the city treasurer

# Final Points

- ❑ Treasurers/Investment Officers must comply with various state codes, local ordinances, and local investment policies
- ❑ Great responsibility in being entrusted with public's money
- ❑ Legal/Fiduciary responsibilities vary based on type of organization (City vs County)
- ❑ Personal liability for malfeasance/negligence

# Sources

- Local Agency Investment Guide (LAIG)  
<https://www.treasurer.ca.gov/cdiac/LAIG/guideline.pdf>
- California Government Code
  - Sections 6930-6934
  - Sections 27000 et seq
  - Section 36501
  - Sections 41001-41007
  - Sections 53601 et seq