



Use of Public Resources: Special Issues Around Expenses and Expense Reimbursement

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Question: *Our agency recently adopted a very austere budget, which resulted in eliminating popular services and programs. Our agency's chief executive has been quoted as saying that in the current economic environment the agency can fund only its essential functions.*

A local blogger has argued that the agency "wastes" resources on nonessential and possibly unlawful activities and this "waste" should be addressed before programs are eliminated. To document this assertion, she has requested records related to:

- *Gifts to individuals;*
- *Gifts and/or contributions to nonprofit organizations;*
- *Travel expenses; and*
- *Credit card usage.*

She apparently also has her eye on other forms of charitable fundraising. Her theory is that if the staff has time for such activity, they must not have enough "real work" to do. (She already has run a post criticizing firefighters for participating in a "Fill the Boot" campaign for a local charity.) She has asked for copies of all emails that refer to charitable fundraising on agency time and/or using agency facilities.

As part of her crusade to restore the cut programs, she has promised to involve our district attorney, who recently announced a greater focus on public integrity issues (including the misuse of public resources). Our agency is generally quite careful, but there are a few items in the records that could be embarrassing.

What's done is done, of course. But what spending guidelines might local agencies consider to reduce the likelihood of heartburn when these types of records requests arrive?

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Answer: When seeking to avoid heartburn caused by these kinds of issues, it may be helpful to step back and look at the bigger picture. What is at stake for a public agency related to travel, expense reimbursement and credit card use? Consider these key points:

- The general principle is that all of these involve the use of public resources, and public resources must be used only in ways that benefit the public; and
- What the law requires — and what the district attorney’s office will focus on — is whether public resources were unlawfully used for personal or political purposes.¹

The most reliable way to avoid heartburn is to foster an organizational culture that is sensitive to both realities and public perceptions related to how public resources are used. The front-page test can be a helpful guide. As part of that organizational culture, support for strong oversight and internal controls helps prevent missteps.

Finally, as this question demonstrates, documents related to the use of public resources (for example, reimbursement expenses and credit card bills) are public records.²

Agency Credit Cards

The risk of agency credit card misuse, whether intentional or inadvertent, is high. A number of agencies have stopped issuing credit cards to officials or employees for this reason.

If an agency issues credit cards to individuals, the safest practice is *never* to allow the card to be used for personal purchases. One court has rejected reimbursement as a defense to improper use of public resources.³ (Of course, it is even more risky to incur such personal expenses and then not take steps to reimburse the agency until some kind of public inquiry arises about the propriety of such expenses.)

Related Resources

- <http://www.ca-ilg.org/post/front-page-test-easy-ethics-standard>
- <http://www.cailg.org/document/semper-pro-populus-fiduciary-duties-and-public-service>
- <http://www.westerncity.com/Western-City/December-2012/Blind-Spots/>
- <http://www.ca-ilg.org/post/understanding-changes-gift-rules> Changes to the Gift Rules

To facilitate travel arrangements, some agencies have one agency credit card that can be used to make airline and hotel reservations. This credit card is kept in a secure place, and the authority to use it is limited to a few people with careful oversight and internal controls to prevent misuse. All other expenses are either on a reimbursement or cash advance basis.

Expense Reimbursement

Expense reimbursement is another area where having a policy in place to guide an agency’s approach to reimbursing expenses is good practice. In fact, for local agency officials and members of appointed bodies, California law *requires* that local agencies (cities, counties and special districts) have an expense reimbursement policy.⁴ Special districts must disclose — at least annually — all reimbursements of \$100 or more.⁵

For more information about state law expense-reimbursement requirements for local elected and

appointed officials (including frequently asked questions) and sample reimbursement policies (see Related Resources).

Cell Phone and Internet Expenses

A local agency may reimburse cell phone and Internet expenses according to local agency policy with documentation of why the expenses are a proper public expense.⁶ A safe approach is to issue cell phones or other mobile devices with the admonition that the devices may be used only for public agency business.

Vehicle and Expense Allowances

Some agencies reimburse auto expenses through an allowance, based on statute and case law⁷ that permits allowances when empirically demonstrable information shows that the allowance matches actual and necessary expenses incurred.⁸ The attorney general has opined that 2006 laws relating to expense reimbursement were not intended to supersede the earlier-enacted allowance statute.⁹ Attorney-general opinions are not binding on courts; however, they are given weight.¹⁰

A factor to keep in mind with expense allowances is that they may be taxable (and subject to withholding) if the official cannot document that his or her actual expenses met or exceeded the allowance.¹¹

Some agencies have pool vehicles that they allow employees and others to use. The safest approach is to allow such vehicles to be used *only* for official business. Agencies can credibly find public purposes in allowing some personal use. However, it can be helpful to consider public perception associated with employees and others using such vehicles for commuting and personal errands.¹²

Conference Attendance and Expenses

The courts have concluded that conference expenses are reimbursable as a “proper municipal purpose.”¹³ California law specifies certain thresholds for what constitutes reasonable levels of expenses for elected and appointed officials.

For example, the rate for lodging in connection with conferences may not exceed the maximum group rates published for the conference.¹⁴ If those rates are not available at the time the lodging is booked, the lodging rates must be comparable to those allowed by the Internal Revenue Service or government rates.¹⁵ Local agency officials must use group or government rates for non-conference-related lodging and transportation services.¹⁶

Reporting Requirement for Attending a Meeting

When a member of a legislative body attends a meeting (as defined by law) at public expense, California law requires them to make a brief report.¹⁷ For example, when a city council member or supervisor represents his or her agency on a joint powers agency board and the official’s agency pays for his or her expenses in serving in that representative capacity, he or she must report back. The report must be made at the next meeting of the legislative body that paid for its

member to attend the meeting.¹⁸

Spouse or Domestic Partner Travel

In the private sector, company officials sometimes travel with their spouses on business trips at company expense. This is not the case in the public sector. The attorney general has concluded this would constitute a gift of public funds because there is no direct and substantial public purpose in paying for the expenses of a public official's spouse.¹⁹ The specific question related to whether it would be proper for a hospital district to pay for a district director's spouse to attend a conference on official business. The attorney general said no.

This, of course, does not mean a spouse or partner cannot come to official functions; the spouse's expenses are a personal expense as opposed to a public agency expense.

Use of Public Resources for Business

Finally, public servants are wise to be sensitive to incurring any expenses — including using public agency facilities, equipment, supplies or staff time — for personal purposes. This includes using public resources in a way that benefits their business or political endeavors. The prohibition against the personal and political use of public resources was the basis for convicting a county supervisor who, among other things, used county facilities and staff time for her private law practice and campaign activities.²⁰

About the Institute for Local Government

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties.

For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/trust.

The Institute welcomes feedback on this resource:

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- *Mail:* 1400 K Street, Suite 205 • Sacramento, CA • 95814

References

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>.

Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

1 Cal. Gov't Code § 8314; Cal. Penal Code § 424.

2 *See, for example,* Cal. Gov't Code § 53232.3(e).

3 *People v. Bishop*, 2000 WL 520878 (2000) (unpublished opinion). The court cited *People v. Dillon*, 199 Cal. 1 (1926), a case in which convictions were upheld on facts demonstrating that the city was reimbursed for money



improperly disbursed by the defendant. While *Dillon* did not expressly reject a reimbursement defense to the charge of violating section 424, the court said the decision cannot be reconciled with such a defense.

4 Cal. Gov't Code § 53232.2.

5 See Cal. Gov't Code § 53065.5 (referring to Government Code section 56036(a) for the definition of special district). The term "special districts" include any agency of the state, formed pursuant to general or special act, for the local performance of governmental or proprietary functions within limited boundaries. See Cal. Gov't Code § 56036(a) (includes county service areas but does not include counties, the state, school or community college districts, special assessment districts, improvement districts, community facilities districts, cities and other specified forms of entities). Although the statute refers to "publishing" or "printing" the document, the legislative history indicates that the legislative author's intent was not to require "an expensive publication" but that periodically including the document in agenda packets or otherwise printing and making the document available for public inspection in an understandable format will do the job. 1993-94 Assembly Journal, page 5873 (March 24, 1994 Letter from Assembly Member Tom Umberg).

6 See Cal. Gov't Code § 53232.3(c) (elected and appointed).

7 See Cal. Gov't Code § 1223 (authorizing local officials to "contract" for an allowance or mileage rate for automobile owned, rented or used in performance of duties); *Citizen Advocates, Inc. v. Board of Supervisors*, 146 Cal. App. 3d 171, 194 Cal. Rptr. 61 (1983).

8 See *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975).

9 See 90 Cal. Ops Att'y Gen. 9 (2010). Available online at

http://ag.ca.gov/cms_attachments/opinions/pdfs/o540_08-405.pdf

10 *Napa Valley Educators' Association v. Napa Valley Unified School District*, 194 Cal. App. 3d 243, 251 (1987) (noting that, in absence of controlling authority, these opinions are persuasive since legislature is presumed to be cognizant of that construction of statute). See also *Thorning v. Hollister School District*, 11 Cal. App. 4th 1598, 1604 (1992) (observing that while the Attorney General's interpretation of statute is not controlling, it is entitled to great respect).

11 Treas. Regs. § 1.62-2T(e), § 1.3401(a)-1T.

12 See, for example, <http://losangeles.cbslocal.com/video/7885481-cbs2-investigates-caltrans-employees-who-use-taxpayer-funded-cars-for-personal-use/>.

13 See *Roseville v. Tulley*, 55 Cal. App. 2d 601, 607-08, 131 P.2d 395, 399-400 (1943) (court deferred to city's conclusion that such attendance would improve city administration). See also *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

14 Cal. Gov't Code § 53232.2(d).

15 *Id.*

16 Cal. Gov't Code § 53232.2(e).

17 Cal. Gov't Code § 53232.3(d). "Meetings" for purposes of this section are tied to the state's open meeting law's definition: Cal. Gov't Code § 53232.3(d). Any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by law, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. See Cal. Gov't Code § 54952.2. Qualifying expenses include reimbursement to the member for meals, lodging, and travel. See Cal. Gov't Code § 53232.3.

18 Cal. Gov't Code § 53232.3(d).

19 75 Cal. Op. Att'y Gen. 20 (1992) (finding paying a spouse's expenses to a conference violates both Government Code section 1090 and constitutional prohibitions against gifts of public funds). See also 65 Cal. Op. Att'y Gen.

517, 521 (1982) (finding Government Code section 36514.5 does not authorize reimbursement of the expenses of any person other than a member of the city council). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 869-870, 118 Cal. Rptr. 901 (1975) (unauthorized reimbursement is illegal gift).

20 *Bishop*, 2000 WL 520878.