

Gifts to Public Officials

Basic Rules

Receiving gifts can present a host of issues for public officials. Of course, making demands for gifts in exchange for official action violates California and federal laws prohibiting bribery and extortion.¹⁰³ Such demands also deprive the public of its right to honest services from public officials.¹⁰⁴



Gifts that are not requested present other issues. California law puts an annual limit on the aggregate value of gifts a public official can receive from a single source; gifts over a certain amount also must be reported on a public official's Statement of Economic Interests.

Generally speaking, California public officials must:

- » Report gifts worth \$50 or more on their Statement of Economic Interests.¹⁰⁵ Gifts from a single source must be added up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of a series of gestures from a single gift-giver reaches \$50 or more.
- » Not receive gifts that exceed \$440 (2013-14) from a single source per calendar year.¹⁰⁶ This limit can be exceeded by accepting a single large gesture or a series of gestures over the course of a calendar year from the same gift-giver that total more than \$440 (2013-14).¹⁰⁷
- » Having accepted gifts may keep a public official from participating in the decision-making process. If a public official accepts gestures with a value of more than \$440 (2013-14) from a single gift-giver in the twelve months preceding the official's involvement in a decision affecting that gift giver, the official may have to disqualify himself from participating in that decision-making process.¹⁰⁸

More detail on these rules is available at www.ca-ilg.org/GiftCenter. These rules apply to elected officials, top level managers and others who are covered in the agency's local conflict of interest code or make governmental decisions.¹⁰⁹

Putting aside what the rules allow, public officials are well-advised to look beyond what the law allows in any situation involving a nice gesture. This includes considering how residents will view a public official's actions.

COMPLIANCE STRATEGY: Questions for Public Officials to Ask About Nice Gestures

One way to analyze one's likely obligations under California's gift rules is to ask:

1. Did I or my family receive something of value?
2. What's its value?
3. Who gave it to me?
4. Did I do something in exchange for what I received?
5. What kind of gift is it and do special rules apply as a result?
6. Which of the permitted courses of action do I want to take with respect to the gift?

Explanations of each of questions are available at www.ca-ilg.org/GiftCenter.

Unless one of the exceptions applies¹¹¹ (see chart on page 39), a public official receives a gift for purposes of California's gift rules any time the official receives anything that:

- » Has a monetary value
- » Provides the official with a personal benefit
- » For which the official doesn't pay full value.¹¹²

Exceptions/Gifts Subject to Special Rules

Certain kinds of gestures either are exempt from California's gift rules or are subject to special treatment. More information on each of these is available at www.ca-ilg.org/GiftCenter.

Special Rules Relating to Who Receives the Gift (Question 1 at www.ca-ilg.org/GiftCenter)

- ✓ Gifts to family members¹¹⁵

Gifts Subject to Special Valuation Rules (Question 2 at www.ca-ilg.org/GiftCenter)

- ✓ Air transportation¹¹⁶
- ✓ Nonprofit or political fundraiser tickets¹¹⁷
- ✓ Other tickets and passes¹¹⁸
- ✓ Invitation only events¹¹⁹

Special Rules for Certain Sources of Gifts (Question 3 at www.ca-ilg.org/GiftCenter)

- ✓ Someone who is an intermediary for another¹²⁰
- ✓ Group gifts¹²¹
- ✓ Family gifts¹²²
- ✓ Gestures received in the context of certain relationships:
 - » Bona fide dating relationships¹²³
 - » Existing personal or business relationship¹²⁴
 - » Long term relationships¹²⁵
- ✓ Acts of neighborliness¹²⁶
- ✓ Agency gifts¹²⁷
 - » Gifts from public agencies to agency officials¹²⁸
 - » Agency provided tickets or passes¹²⁹
 - » Agency raffles or gift exchanges¹³⁰

Gestures that Are Part of An Exchange (Question 4 at www.ca-ilg.org/GiftCenter)

- ✓ Gifts paid for (reimbursed) in full¹³¹ or in part¹³²
- ✓ Gifts exchanged on occasions like birthdays or holidays¹³³

- ✓ Trading off who pays for meals or activities ("reciprocal exchanges")¹³⁴
- ✓ Employee gift exchanges¹³⁵
- ✓ Barter transactions¹³⁶
- ✓ Presentations, event attendance and articles written¹³⁷
- ✓ Ceremonial functions¹³⁸
- ✓ Employment-related gestures¹³⁹
- ✓ Business gestures¹⁴⁰
- ✓ Gestures in connection with volunteer nonprofit service¹⁴¹
- ✓ Prizes in bona fide competitions¹⁴²

Additional Special Rules Based on Type of Gift (Question 5 at www.ca-ilg.org/GiftCenter)

- ✓ Home hospitality¹⁴³
- ✓ Informational material¹⁴⁴
- ✓ Inheritances¹⁴⁵
- ✓ Leave credits¹⁴⁶
- ✓ Disaster relief payments¹⁴⁷
- ✓ Personalized plaques or trophies¹⁴⁸
- ✓ Wedding gifts¹⁴⁹
- ✓ Travel¹⁵⁰ and free transportation from transportation companies¹⁵¹
- ✓ Tickets /free admissions¹⁵²
- ✓ Payments to worthy causes made at an official's request (behested payments)¹⁵³
- ✓ Wedding guest benefits¹⁵⁴
- ✓ Bereavement offerings¹⁵⁵
- ✓ Acts of compassion¹⁵⁶

Gifts can be:

- » Tangible or intangible
- » Real property or personal property
- » Goods or services¹¹³

Under some circumstances, gifts that an official's family receives are considered gifts to the official for purposes of California's gift rules.¹¹⁴

TRAVEL PASSES FROM TRANSPORTATION COMPANIES

When an official is offered free or discounted transportation, the official is well-advised to ask, "Who is offering the travel?" Different rules may apply to gifts of travel depending on who is the source of the gift.



If the gift of travel is from a transportation carrier, a public official should be especially careful. California law forbids elected and appointed public officials from accepting free passes or discounted travel from transportation companies.¹⁵⁷

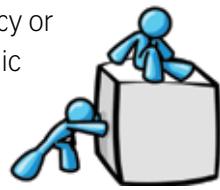
This prohibition applies to any kind of travel — personal, business or on behalf of one's public agency — to any location, near or far. The rule applies both to elected and appointed public officers but not to employees.¹⁵⁸

However, sometimes the rule doesn't apply. The chief exception is when the free or discounted travel is available to the general public and is given for reasons unrelated to the person's status as a public official.¹⁵⁹ For example, the prohibition against accepting free travel from transportation companies did not apply when:

- ✓ The elected official received a first-class airline upgrade because he was going on his honeymoon and the upgrade was given to all honeymooners.¹⁶⁰
- ✓ An elected official received free airline travel because he was the spouse of a flight attendant.¹⁶¹
- ✓ An elected official exchanged frequent flier miles for an airline ticket because the earning of frequent-flier miles is done without regard to the person's status as an officeholder.¹⁶²

What to Do About Unwanted Gifts?

Some officials have a no-gifts policy or may be concerned about the public perceptions associated with receiving gifts from certain sources (or certain kinds of gifts).



They may also just not want the gift.

Under such circumstances, an official has the following options:

- » Decline the gift in the first place or return the gift unused to the gift giver within 30 days of receiving it.¹⁶³ Documenting one's actions (for example, with a thanks-but-no-thanks note), can be helpful.
- » If the item is a pass or ticket, simply not use the pass or ticket and not let anyone else do so.¹⁶⁴
- » Donate the gift, unused, within thirty days of receipt to a 501(c)(3) tax-exempt nonprofit organization or to a government agency, without claiming a tax deduction for the donation. (Note the donation must be made within 30 days of the gift's receipt and the gift must be unused. Note too that for gifts to nonprofits, the nonprofit must be one which neither the official nor a family member holds a position.)¹⁶⁵
- » Reimburse the donor for the fair market value of the gift within 30 days of receiving it.¹⁶⁶ Keeping documentation (for example, a cancelled check) of the reimbursement is a good practice.

For gifts that are over the annual limit or would put the official over the annual limit for that gift giver, some officials also "buy down" the value of a gift (or the most recent gift in a series) to keep the value of the gift(s) from that gift giver below the annual limit.

The official then reports the fact that they received gift(s), what the gift(s) was/were, and the source of the gift(s) on their Statement of Economic Interests. Again, when paying down the gift, it is best to do so by check and then make sure the donor cashes the check.



FOR MORE INFORMATION

On gift laws, see the following resources:

- » The Institute Gift Resource Center, see www.ca-ilg.org/GiftCenter
- » The Fair Political Practices Commission fact sheet for local officials on gifts, honoraria, travel and loans, available at www.fppc.ca.gov/factsheets/LocalGiftFactSheet2013.pdf

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

Penalties

California Law Penalties



These gift limit and reporting requirements are part of the Political Reform Act.

Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.¹⁶⁷

These penalties can include any or all of the following:

- » Immediate loss of office;¹⁶⁸
- » Prohibition from seeking elected office in the future;¹⁶⁹
- » Fines of up to \$10,000 or more depending on the circumstances;¹⁷⁰ and
- » Jail time of up to six months.¹⁷¹

Federal Law Penalties

Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.¹⁷² The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.¹⁷³ That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.¹⁷⁴ Specifically, honest

services fraud refers to actions that constitute bribery and kickback schemes.¹⁷⁵ In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by gifts.¹⁷⁶

The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a \$250,000 fine.¹⁷⁷

Extortion

A demand for gifts or other benefits in exchange for official action could also constitute extortion. Extortion occurs when someone obtains money through threat of harm or under color of official right.¹⁷⁸ To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a \$250,000 fine.¹⁷⁹ A person convicted of a felony involving extortion is forever disqualified from seeking elected office in California.¹⁸⁰

Income Tax Violations

Income tax problems arise when officials receive money and other kinds of valuable items and don't report them on their income tax forms. Prosecutors don't need to show that the money or gifts were received in exchange for improper purposes—only that they were not reported on the official's income tax form.

Income tax evasion carries with it a possible five-year prison term and a fine of up to \$100,000.¹⁸¹ In addition, prosecutors can require the defendant to pay for the costs of prosecution (in addition to one's own costs associated with defending against the prosecution).¹⁸² The sometimes-related crime of filing a false tax return is punishable by a maximum three-year prison term and a fine of up to \$100,000 (along with the costs of prosecution).¹⁸³



FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Use of Campaign Funds

Basic Rule

In general, money raised to support a person's election to office may only be used for political, legislative, or governmental purposes. It's not okay to spend these monies in a way that confers a personal benefit on the candidate.¹⁸⁴ Any expenditure that confers a substantial personal benefit on an individual must be directly related to a political, legislative, or governmental purpose.¹⁸⁵ For example, using campaign funds to repair your car so you can travel to and from campaign events confers a personal benefit and is not a proper expenditure of those funds.



FOR MORE INFORMATION

On the permissible use of campaign funds, see *Campaign Disclosure Manual 2: Information for Local Candidates, Superior Court Judges, Their Controlled Committees and Primarily Formed Committees for Local Candidates, 2007*, available online at www.fppc.ca.gov.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

Penalties

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.¹⁸⁶



These penalties can include any or all of the following:

- » Immediate loss of office;¹⁸⁷
- » Prohibition from seeking elected office in the future;¹⁸⁸
- » Fines of up to \$10,000 or more depending on the circumstances;¹⁸⁹ and
- » Jail time of up to six months.¹⁹⁰



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On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Endnotes and Additional Information

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 For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1.
- 2 *County of San Diego v. Milotz*, 46 Cal. 2d 761, 767, 300 P.2d 1, 4 (1956) (action to recover fees from court reporter for faulty work).
- 3 *Id.*
- 4 Cal. Gov't Code §§ 53234-35. See www.ca-ilg.org/ab1234compliance.
- 5 Cal. Const. art. XI, § 1(b).
- 6 See, e.g., Cal. Pub. Res. Code § 5784.15(a), (b) (park and recreation district board members may be compensated a maximum of \$100 per day for board meetings and \$500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive \$100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code §§ 20201, 20202 (water district officials—as defined—may, by ordinance, provide for compensation of \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request; not to exceed 10 days service/meetings per month); Cal. Water Code §§ 34740-41 (California water districts must adopt bylaws fixing compensation paid to officers, but may not exceed \$100 per day for attendance at board meetings and for each day's service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed 10 days service/meetings per month); Cal. Water Code § 21166 (irrigation

district directors in districts of less than 500,000 acres receive 1) compensation of up to \$100 per day, not to exceed six days, 2) irrigation district directors in districts that produce or deliver electricity receive one of the following: up to \$100 per day or \$600 per month, with an annual cap of \$15,000); Cal. Water Code § 22840 (irrigation districts of 500,000 acres or more receive a salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors); Cal. Water Code § 71255 (municipal water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/meetings per month).

- 19 Cal. Gov't Code § 53232.1(a).
- 20 Cal. Gov't Code § 53232.1(b).
- 21 Cal. Gov't Code § 53232.1(c).
- 22 Cal. Const. art. XI, § 5(b)(4).
- 23 See Cal. Gov't Code § 36516.
- 24 See Cal. Gov't Code § 36516(a).
- 25 *Id.*
- 26 See Cal. Gov't Code § 36516.5 (providing a change of compensation does not apply during the same term but allowing adjustment when one or more members serving staggered terms begin new terms).
- 27 See Cal. Gov't Code § 36516.1.
- 28 See Cal. Gov't Code § 36516(d).
- 29 Cal. Gov't Code § 36516(c).
- 30 2 Cal. Code Regs. § 18705.5(c).
- 31 2 Cal. Code Regs. § 18705.5(c)(3). The form is called "Form 806." More information is available from the Fair Political Practices Commission website: <http://www.fppc.ca.gov/index.php?id=635>.
- 32 Cal. Gov't Code § 53262 (a) ("All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes").