

UNDERSTANDING THE BASICS OF

PUBLIC SERVICE ETHICS

Perk Issues, Including Compensation,
Use of Public Resources and Gift Laws

For Personal Use Only. Not for Distribution.

The Institute is grateful to the following firms for their commitment to public service ethics:

PLATINUM LEVEL COMMITMENT



GOLD LEVEL COMMITMENTS



JENKINS & HOGIN, LLP



Special thanks to the following individuals whose time and effort contributed to this publication:

Craig Dunn

Associate Professor, Department of Management, Western Washington University
Senior Consultant, The Centre for Organization Effectiveness

Michael Martello

City Attorney, City of Mountain View

All final decisions about the content, tone and formatting of this publication were made by the Institute for Local Government.

UNDERSTANDING THE BASICS OF PUBLIC SERVICE ETHICS: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws

© 2009 by The Institute for Local Government

1400 K Street, Suite 205

Sacramento, CA 95814

(916) 658-8208 • FAX (916) 444-7535 • www.ca-ilg.org



For Personal Use Only. Not for Distribution.

UNDERSTANDING THE BASICS OF PUBLIC SERVICE ETHICS

Perk Issues, Including Compensation Use of Public Resources and Gift Laws

About this Guide	1
What Is an “Ethics” Law?	1
Understanding Ethics Laws.....	2
Compensation Issues	3
Basic Rules	3
Counties.....	3
Special Districts.....	3
Cities	5
Charter Cities	5
General Law Cities.....	5
Special Issue: Speaking and Other Fees	6
Basic Rules	6
Penalties for Accepting Fees.....	7
Criminal Sanctions	7
Civil Sanctions.....	7
Exceptions to No-Honoraria Rules.....	8
Reimbursement of Expenses	9
Basic Rules	9
Penalties for Missteps	10
State Law Penalties	10
Federal Law Penalties.....	11
Special Issues: Certain Kinds of Expenses.....	11
Cell Phone and Internet Expenses.....	11
Vehicle and Expense Allowances.....	11
Lobbying Expenses.....	12
Gifts and Picking Up the Tab for Others.....	12
Conference Attendance and Expenses.....	13
Special Disclosure Requirement for Special Districts	13
Spouse or Domestic Partner Travel	13
Reporting Requirement When One Attends a Meeting.....	14

Other Restrictions on Use of Public Resources	15
Basic Rules	15
Use of Public Resources for Personal Purposes	15
Use of Public Resources for Campaign Purposes	15
Penalties.....	17
Special Issues: Use of Public Resources.....	17
Prohibition Against Mass Mailings at Public Expense.....	17
Use of Public Resources for Business	18
Agency Credit Cards	18
Use of Letterhead, Titles, and Logos	18
Badges.....	19
Staff Time	20
Giving Gifts.....	20
Charitable Donations.....	20
Gifts to Public Officials	23
Basic Rules	23
Penalties for Missteps	24
State Law Penalties	24
Criminal Sanctions	24
Civil Sanctions.....	24
Administrative Fines	24
Federal Law Penalties.....	25
Honest Services Fraud.....	25
Extortion	25
Income Tax Violations	25
Exceptions to Rules.....	26
What to Do about Unwanted Gifts?.....	27
Special Issues	28
Tickets to Fundraising Events Given to Public Officials	28
Tickets to 501(c)(3) Fundraisers	28
Tickets to All Other Nonprofit Fundraisers.....	28
Tickets to Political Fundraisers.....	28
Gifts of Travel Expenses	29
Basic Rules	29
Exceptions to the Rules	29

Gifts to an Agency	31
General Reporting Requirements	31
Tickets Given to an Agency.....	31
Penalties.....	33
Criminal Sanctions	33
Civil Sanctions.....	33
Use of Campaign Funds	35
Basic Rule	35
Penalties.....	35
Criminal Sanctions	35
Civil Sanctions.....	35
Endnotes	37
Resources for Further Information.....	44
General Websites	44
Publications	45
Index	46

About This Guide

What Is an “Ethics” Law?

Defining the subgroup of laws that constitute “ethics” laws is an imprecise undertaking. For those involved in public service, “ethics laws” tend to be those laws whose central purpose is to protect the public’s *trust* in its public institutions and those who serve in them. Trustworthiness is a key ethical value.¹

Many of these ethics laws are *prohibitions*: they forbid certain actions that would undermine the public’s trust that decisions are being made to benefit the public’s interests (as opposed to the personal or political interests of the decision-maker). Making decisions in the public’s interest is also a key *responsibility* of public service (responsibility is another key ethical value).² Prohibitions deter betrayals of the public’s trust by creating penalties for such betrayal.

Laws against misusing public resources are a form of prohibitory law, as are laws that prevent a decision-maker from being involved in a decision if the decision-maker has a real or perceived conflict of interest. Laws against bribery or other forms of “pay to play” are another important ethics law prohibition.

Other ethics laws simply require *transparency*: they provide the public and the media with information on how the public’s business is being conducted, who is receiving campaign contributions and gifts from whom, and what kinds of financial interests a public official has. With transparency laws, the public judges whether a public official or group of public officials is acting in a trustworthy fashion—typically as part of the elections process. Transparency laws also encourage trustworthy behavior by reminding public officials that their actions will likely be scrutinized and judged.

Other ethics laws require that public agency decision-making processes meet minimum standards of *fairness*. Fairness is another key ethical value.³

Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even so, it is important to keep in mind that these standards are only *minimum* standards: it is simply not possible or practical to write laws that prevent all actions that might diminish the public’s trust. For this reason, the laws should be viewed as a floor for conduct, not a ceiling. Just because a given course of conduct is legal does not

mean that it is ethical (or the public will perceive it as such).

Understanding Ethics Laws

California has a complex set of ethics laws to guide local officials in their service to their communities. How does the well-intentioned local official keep track of them all?

This guide focuses on laws relating to public officials and *personal advantages and perks*. These laws are both complex and sometimes counter-intuitive. A key goal of this guide is to alert local officials to when to ask for legal advice on how these laws apply in a particular situation.

Keeping four core principles in mind helps:

- Public officials may not use their offices for **personal financial gain**.
- Holding public office does not entitle one to **personal advantages and perks**.
- **Transparency** is an important element of public service.
- Merit-based decision-making based on **fair processes** produces the best results for the public.

A COMPLETE LIBRARY ON PUBLIC SERVICE ETHICS ISSUES

As part of its *Understanding the Basics of Public Service Ethics*, the Institute for Local Government offers California local officials a series of resources designed to help them meet both the law's and the public's expectations for public service:

- *Personal Financial Gain Laws*
- *Perk Issues, Including Compensation, Use of Public Resources and Gift Laws*
- *Transparency Laws*
- *Fair Process Laws and Merit-Based Decision-Making*
- *Promoting Personal and Organizational Ethics*

In addition, as part of its "Everyday Ethics" series, the Institute regularly analyzes situations local officials face from both a legal and ethical perspective.

To access these resources, visit www.ca-ilg.org/trust.

Compensation Issues

Basic Rules

Typically there is a legal limit on public official compensation levels, either in state or local statutes. Public officials, particularly elected ones, may only receive such compensation that the law allows.⁴ Any extra compensation must be refunded.⁵ Moreover, as protectors of the public purse, courts generally take a strict approach to public official compensation limits.⁶

► **WITH MONEY COMES EDUCATION**

If a local agency provides any type of compensation or payment of expenses to members of a legislative body, then all of the members are required to have two hours of ethics training within one year of entering public service and every two years thereafter.⁷

Counties

County boards of supervisors set their salaries; supervisors' salaries are subject to referendum.⁸

Special Districts

State law sets the salaries for members of special district governing boards—typically in the law that creates the particular kind of special district.⁹ Salaries usually are tied to the days a public official spends participating in meetings or other district-related work, with a maximum number of compensated days per month. The chart on page 4 contains examples.



Special Districts		
Type of District	Per Day Maximum	Maximums
Park and recreation districts	\$100	\$500 per month ¹⁰
Sanitation districts	\$100 per day for board meetings or service provided at the request of the board	Not to exceed six days per month ¹¹
Harbor districts	No per day salary	\$600 per month ¹²
Utility districts	\$100 per day	\$600 per month ¹³
Irrigation Districts		
Irrigation districts of less than 500,000 acres	\$100 per day	Not to exceed six days of compensated service ¹⁴
Irrigation districts of less than 500,000 acres that produce or deliver electricity	\$100 per day OR \$600 per month	An annual cap of \$15,000 ¹⁵
Irrigation districts of 500,000 acres or more	No per day salary	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 ¹⁶
Water Districts		
Water district directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month ¹⁷
California water district officials (as defined)	\$100 per day	No maximum ¹⁸
County water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month ¹⁹
Contra Costa County Water District directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month ²⁰
Municipal water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month ²¹

For Personal Use Only. Not for Distribution.

What kinds of meetings and days of work may a district official be compensated for? Typically:

- A meeting of any “legislative body” as defined by the state’s open meetings laws
- A meeting of an advisory body
- Conference attendance or educational activities, including ethics training²²

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.²³ Note that these parameters don’t apply when the district does not pay compensation based on number of days doing district business, but instead pays a more salary-like form of compensation.²⁴



Cities

Charter Cities

For charter cities, elected official compensation is a matter of local concern which may be addressed in the city’s charter.²⁵

General Law Cities

Broadly speaking in general law cities, city council members’ baseline compensation is set by ordinance; such compensation is tied to parameters established in state law in the 1980s.²⁶

The starting points are: ²⁷

General Law Cities	
City Size by Population	Baseline Per Month Salary
Up to and Including 35,000	\$300
Over 35,000 Up to and Including 50,000	\$400
Over 50,000 Up to and Including 75,000	\$500
Over 75,000 Up to and Including 150,000	\$600
Over 150,000 Up to and Including 250,000	\$800
Over 250,000 Population	\$1,000

General law cities may increase these amounts by up to five percent per year from the date of any prior adjustments.²⁸

When a city council votes to increase compensation, the increase takes effect in the future—not during the deciding council members’ current terms.²⁹

Elected mayors may receive additional compensation.³⁰

These amounts compensate city council members for their service on the council, including any commission, committee, board, authority, or similar body on which the city council member serves, unless state law authorizes additional compensation.³¹ For example,³²

- If community has a community development commission to oversee redevelopment functions, commissioner compensation may not exceed \$75 per commissioner per meeting, with a maximum of two meetings (\$150) per month.³³
- If a community has a community development commission that oversees both redevelopment and housing authority functions, commissioner compensation may not exceed \$150 per commissioner per meeting, with a maximum of two meetings (\$300) per month.³⁴

If state law provides for additional council member compensation for serving on a commission—but that statute does not specify an amount of compensation—the compensation is \$150 per month.³⁵



Special Issue: Speaking and Other Fees

Basic Rules

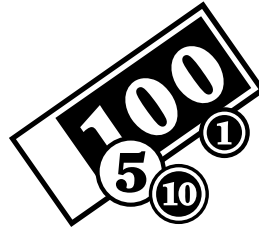
State law also regulates the degree to which public officials may receive payments for giving a speech, writing an article or attending a public or private conference, convention, meeting, social event, meal or similar gathering.³⁶ No local elected office holder, candidate for local elected office, or designated employee may accept such payments—which are known as honoraria.³⁷ The notion is such communications are part of a public official's service.

There are narrow exceptions to the honoraria prohibitions discussed on page 8.

If one receives an honorarium from someone who is unaware of the rules, there is a 30-day time limit for returning it.³⁸

Penalties for Accepting Fees

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.³⁹



POLITICAL REFORM ACT PENALTIES

Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor. A person convicted of a misdemeanor⁴⁰ under the Political Reform Act may not be a candidate for elective office for four years following the conviction.⁴¹ Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties⁴² or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.⁴³ Jail time is also a possibility.⁴⁴

Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.⁴⁵

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.⁴⁶

Exceptions to No-Honoraria Rules

Some gestures in connection with speaking or writing engagements are allowed. These include:

- **Payments Voluntarily Made to Charitable and Similar Organizations.** An organization may recognize a public official's speech, article or meeting attendance by making a direct contribution to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization.⁴⁷ A public official may not make such donations a condition for the speech, article or meeting attendance. In addition, the official may not claim the donation as a deduction for income tax purposes. Nor may the donation have a reasonably foreseeable financial effect on the public official or on any member of the official's immediate family. The official may not be identified to the nonprofit organization in connection with the donation.
- **Payments Deposited in Local Agency General Fund.** An honorarium may be paid to the local agency's general fund, without being claimed by an official as a deduction from income for income tax purposes.⁴⁸
- **Income from Bona Fide Occupation.** An official may be paid income for personal services if the services are provided in connection with a bona fide business, trade, or profession (such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting) and the services are routinely provided in connection with the trade, business or profession.⁴⁹ This exception does not apply, however, when the main activity of the business or profession is making speeches.
- **Some Payments in Connection with a Speech or Panel Discussion.** An official may accept certain gestures when the official gives a speech, participates in a panel or seminar, or provides a similar service. These are exempt from the honoraria ban and are not considered "gifts" by the Political Reform Act. These include free admission to the event, refreshments and similar non-cash nominal benefits received at the event, necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, and transportation (within California) to the event.⁵⁰

Reimbursement of Expenses

There is no dispute that the stipends most elected officials receive cannot compensate them adequately for the time they spend on official duties. It is also well known that those who make careers in public service (for example, city managers and county or district executives) usually can earn more in the private sector.

To close the gap, it can be tempting to look at the opportunity to travel and incur other expenses as a “perk” of office — particularly for those familiar with norms in the private sector. Fortunately, it’s rare for public officials to fall into this trap.

The difficulty is that those who do usually attract unfavorable attention and give all public officials a bad name. Moreover, the media can portray even legitimate expenditures in a way that makes the agency look bad. Added to all of this is a general public distrust of how government spends money.⁵¹



Basic Rules

State law contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials’ “actual and necessary” expenses.⁵² As a general matter, local agencies must:

- Adopt expense reimbursement policies that specify the kinds of activities that will be reimbursable;⁵³
- Identify a “reasonable time” within which requests for reimbursement must be submitted in those policies;⁵⁴
- Use expense report forms; and
- Require that all expenses must be documented with receipts⁵⁵ (these documents are public records subject to disclosure).⁵⁶

Local reimbursement policies may specify what constitutes reasonable rates for travel, meals, lodging and other expenses. If a local policy does not specify reimbursement rates, then the reimbursable rates default to Internal Revenue Service guidelines.⁵⁷ It is also advisable for such policies to include findings as to the necessity of all types of expenditures that are reimbursable in light of the requirement that reimbursable expenses must have met legal standards for having been necessary.⁵⁸

All expense reimbursement requests and supporting documentation are public records.⁵⁹

If a public official wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek prior approval for such reimbursement from the governing body (before incurring the expense).⁶⁰

Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.⁶¹

State law requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to "reimbursements of members of a legislative body."⁶² Although charter cities may not be subject to this requirement given their home rule authority, many charter cities have such policies as a matter of sound practice.⁶³

For consistency and ease of administration, some local agencies have elected to adopt policies that govern expense reimbursements for staff as well as elected and appointed officials. Another option is to have the policies address expenses other than those are, strictly speaking, "reimbursed" (for example, those expenses that are paid by the agency in the first instance).

For more information on the issue of state law requirements relating to expense reimbursement policies, see

the Everyday Ethics for Local Officials column "Buying Meals for Others on the Public's Dime" (see www.ca-ilg.org/dime). The Institute also offers a sample reimbursement policy as a starting point for local officials at www.ca-ilg.org/reimbursementpolicy.

Penalties for Missteps

State Law Penalties

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies include:⁶⁴

- Loss of reimbursement privileges
- Restitution to the local agency
- Civil penalties of up to \$1,000 per day and three times the value of the resource used⁶⁵
- Criminal prosecution and a lifetime bar from public office⁶⁶

At some point, personal use of public resources becomes embezzlement—a form of theft.⁶⁷ Embezzlement may constitute "willful misconduct" which warrants the removal from office of a public officer, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement is guilty of a felony punishable by imprisonment; in addition, that person is ineligible thereafter to hold public office within California.⁶⁸

Federal Law Penalties

Federal prosecutors have been known to treat the receipt of illegitimate expense reimbursements or advances as income to the official. Because the official has not typically reported these payments as such on the official's tax returns, the official then becomes subject to an action for income tax evasion.

The Internal Revenue Code is notoriously complex and its penalty sections are no exception. The general penalty for willful income tax evasion is a fine of up to \$100,000 and up to five years in prison, or both. Those convicted are also responsible for paying the costs of prosecution.⁶⁹ Failure to report information to the tax authorities is punishable by fines of up to \$25,000 and/or a year in federal prison, plus the costs of prosecution.⁷⁰

If the postal service was used in any way, such use can also become the basis for a charge of mail fraud.⁷¹ Mail fraud is punishable by up to five years in federal prison per violation and/or a fine of the greater of 1) twice the gain to the violator or 2) \$250,000 per violation.⁷²

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement will also apply.⁷³

Special Issues: Certain Kinds of Expenses

Cell Phone and Internet Expenses

Cell phone and Internet expenses can be reimbursed according to local agency policy with documentation.⁷⁴ In terms of kinds of documentation, one agency requires that telephone bills be submitted and that the official identify which calls were made on agency business. For cellular calls when the official has a particular number of minutes included in the official's plan, then the agency asks the official to identify the percentage of calls made on public business. For Internet access, the official submits an estimate of the percentage of agency-related usage for the period in question and proof of the amount of bill for such access.

Vehicle and Expense Allowances

Some agency attorneys believe that the requirement that expenses be reimbursed after the fact based on receipts means that vehicle and other expense allowances are not permitted.⁷⁵ Some local agencies had previously reimbursed auto expenses through an allowance, based on statute and case law⁷⁶ that seemed to permit allowances when based on empirically demonstrable information that the allowance matched actual and necessary expenses incurred.⁷⁷

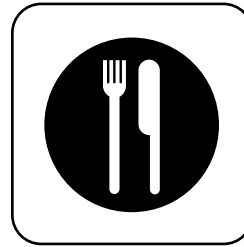
A factor to keep in mind with expense allowances is that they may be taxable (and subject to withholding) if the official cannot document that his or her actual expenses met or exceeded the allowance.⁷⁸

An alternative to vehicle allowances is to make agency vehicles available for official use.

A request for an Attorney General opinion on this topic is pending.

Lobbying Expenses

There are also statutes that allow public officials to be reimbursed expenses associated with lobbying the legislature.⁷⁹ The Attorney General has concluded that the statutory authorization, on its own, does not extend to purchases of meals for others when lobbying.⁸⁰ If an agency governing body believes it is in the community's interest to purchase such meals, it should explain why in its expense reimbursement policy.



Gifts and Picking Up the Tab for Others

It is common for business people to extend hospitality and make gifts and charitable contributions to generate goodwill for the company. However, California's constitution specifically prohibits "gifts" of public resources.⁸¹ This prohibition also applies to an agency making gifts to its officials and employees.⁸²

The Attorney General has concluded payment of expenses for other people's meals, even when the purpose of the meal is to discuss agency business or legislative issues, is not a "necessary" expense for a public official.⁸³ An expense policy with appropriate findings by the agency governing body may address the Attorney General's concerns. A sample policy is available at www.ca-ilg.org/reimbursementpolicy.

RESOURCE FOR FURTHER INFORMATION

For more information, see the Everyday Ethics for Local Officials column "Buying Meals for Others on the Public's Dime" (see www.ca-ilg.org/dime).

Conference Attendance and Expenses

The courts have concluded that conference expenses are reimbursable as a “proper municipal purpose.”⁸⁴

The law specifies certain thresholds for what constitutes reasonable levels of expenses. For example, for lodging in connection with conferences, the rate may not exceed the maximum group rates published for the conference.⁸⁵ 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.⁸⁶ Local agency officials must use group or government rates for non-conference-related lodging and transportation services.⁸⁷

What happens if an official travels to a conference at public expense but then does not attend the conference sessions? Since the purpose for the expenditure is to assist the official in the performance of his or her official duties, not attending the conference sessions is both unethical and arguably unlawful, either as a personal use of public resources or official misconduct.⁸⁸

RESOURCES FOR FURTHER INFORMATION

For more information, see the *Everyday Ethics for Local Officials* column “Attending Conferences” (see www.ca-ilg.org/conferences).

Special Disclosure Requirement for Special Districts

Special districts must, at least annually, disclose all reimbursements of \$100 or more.⁸⁹ 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.⁹⁰ 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.⁹¹

Spouse or Domestic Partner Travel

In the private sector, company officials sometimes travel with their spouses on business trips at company expense. Not so 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.⁹² 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. It just means the spouse's expenses are a personal expense as opposed to a public agency expense.

Reporting Requirement When One Attends a Meeting

State law requires members of a legislative body to report on "meetings" attended at public expense at the next meeting of the legislative body.⁹³ "Meetings" for purposes of this section are tied to the state's open meeting law's definition:⁹⁴ 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.⁹⁵ Qualifying expenses include reimbursement to the member for meals, lodging, and travel.⁹⁶

An example of when a brief report is required is when a city council member or supervisor represents his or her agency on a joint powers agency board and the city pays for the official's expenses in serving in that representative capacity.

Presumably the report can be either written or oral. The report must be made at the next meeting of the legislative body that paid for its member to attend the meeting.⁹⁷

IF I GET INTO TROUBLE, CAN THE AGENCY PAY MY DEFENSE?

Don't count on it. To provide a defense in a criminal action, for example, the agency must find that:

1. The criminal action or proceeding is brought on account of an act or omission in the official's service to the public entity;⁹⁸
2. Such defense would be in the best interests of the public entity; and
3. The individual's actions were in good faith, without actual malice and in the apparent interests of the public entity.

If the issue is the personal use of public resources, it may be particularly difficult for the agency to make the last finding, which is that the use was in the apparent interests of the public entity. Moreover, even if the agency could make these findings, it doesn't have to. There may be strong political pressures not to.

Similarly, an agency may refuse to provide a defense in a civil action if it finds the actions in question related to corruption or fraud.⁹⁹ Also, public agencies are not responsible for damage awards designed to punish or make an example of someone.¹⁰⁰

Note that, in these situations, the agency's attorney is not an individual public official's attorney, with attendant protections for attorney-client confidences. The agency attorney's obligations are to the entity as a whole — not to any one official in that agency.¹⁰¹

Other Restrictions on Use of Public Resources

Basic Rules

Using public resources for either personal or political purposes is illegal.¹⁰²

Use of Public Resources for Personal Purposes

“Personal” use of public resources means activities that are for personal enjoyment, private gain or advantage.¹⁰³

“Public resources” include such things as 1) staff time, 2) office equipment (telephones, fax machines, photocopiers, and computers), and 3) office supplies (stationery, stamps, and other items).

“Use” means the use of public resources that is substantial enough to result in a gain in advantage for the user and a loss to the local agency that can be estimated as a monetary value.¹⁰⁴ The statute penalizes both intentional and negligent violations.¹⁰⁵

There are very narrow exceptions for “incidental and minimal” use of resources. These exceptions prevent traps for the unwary; they do not constitute an affirmative authorization for personal use of public resources. An “occasional telephone call” is an

example of an incidental and minimal use of public resources.¹⁰⁶

Use of Public Resources for Campaign Purposes

The same statutes that prohibit the use of public resources for personal benefit also prohibit the use of such resources for campaign purposes.¹⁰⁷ The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures. Schools and community colleges are also subject to restrictions on and penalties for the use of school property for political purposes.¹⁰⁸

Again, “public resources” include such things as 1) staff time, 2) office equipment (telephones, fax machines, photocopiers, and computers), and 3) office supplies (stationery, stamps, and other items).

Taking advantage of one’s office for political gain also may run afoul of the state constitution’s prohibition against gifts of public funds¹⁰⁹ and the limitation on expense reimbursement to those that are reasonable and necessary.¹¹⁰

USE OF PUBLIC RESOURCES ON BALLOT MEASURE-RELATED ACTIVITIES

Local agencies may take positions on ballot measures, as long as they do so in an open meeting where all points of view can be heard.¹¹¹ They generally may **not**, however, use public resources to engage in campaign-type advocacy with respect to the agency's position. Materials that urge voters to either "vote yes" or "vote no" on a measure constitute campaign advocacy;¹¹² so are materials whose style, tone and timing indicate that their purpose is advocacy as opposed to informational.¹¹³

Local agencies may objectively analyze the effect of a ballot measure¹¹⁴ and share that analysis upon request or through regular agency communication channels according to usual agency practice.¹¹⁵ In drafting this analysis, it is important to emphasize the facts relating to the ballot measure and avoid argumentative or inflammatory rhetoric.¹¹⁶

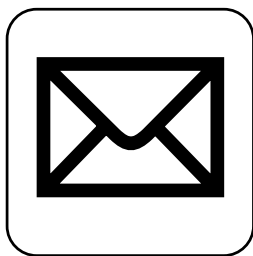
Local agencies may also spend funds to engage in voter registration activities¹¹⁷ and pre-election legal challenges of a ballot measure,¹¹⁸ as long as these activities do not involve efforts to persuade the voters to vote one way or another. A local agency may also use public resources to put a measure on the ballot.¹¹⁹

Local agencies engaged in activities related to ballot measures should also be mindful of campaign expenditure reporting requirements when the agency produces materials which either expressly advocate or unambiguously urge a particular result in a ballot measure election.¹²⁰ For state and local agencies, the Fair Political Practices Commission says that expenditures are reportable unless the communications constitute a fair and impartial presentation of facts relating to the measure.¹²¹ Exceptions include the costs of making staff reports on ballot measures available at the request of a member of the public, discussing the measure and taking a position at an agency meeting (and reporting that action in the minutes) and preparing ballot arguments.¹²²

Penalties

Public officials face both criminal and civil penalties for using public resources for personal or political benefit.¹²³ Criminal penalties include a two- to four-year state prison term and permanent disqualification from public office.¹²⁴ Civil penalties include a fine of up to \$1,000 for each day the violation occurs, plus three times the value of the resource used.¹²⁵

At some point, personal use of public resources becomes embezzlement — a form of theft.¹²⁶ Embezzlement may constitute “willful misconduct” which warrants the removal from office of a public officer, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement is guilty of a felony punishable by imprisonment; in addition, that person is ineligible thereafter to hold public office within California.¹²⁷



Special Issues: Use of Public Resources

Prohibition Against Mass Mailings at Public Expense

The law reflects the notion it is unfair for public officials to use public resources to enhance their visibility and name identification with potential voters. For this reason, state law forbids sending mass mailings at public expense.¹²⁸ The Fair Political Practices Commission has defined “mass mailings” as sending more than 200 substantially similar pieces that contain the name, office or pictures of elected officials except as part of a standard letterhead.¹²⁹

The rules on what constitute a mass mailing are quite complex. Make sure to consult with agency counsel whenever sending out materials that contain elected officials’ names, offices or pictures (for example, newsletters). Also, there are some exceptions to the prohibition (for example, legal notices and directories).

These restrictions are part of the Political Reform Act, which means the Act’s civil and criminal sanctions may apply (misdemeanor for knowing or willful violations,¹³⁰ fines of up to \$5,000 per violation,¹³¹ and possible reimbursement for the costs of any litigation initiated by private individuals, including reasonable attorney’s fees).¹³²

For more information, see the Everyday Ethics for Local Officials column “Career-Saving Tips on Mass Mailings” (see www.ca-ilg.org/massmailing).

Use of Public Resources for Business

The prohibition against the personal and political use of public resources was the basis for a conviction of a county supervisor who, among other things, used county facilities for her private law practice.¹³³ On appeal, the supervisor argued that the jury should have been allowed to consider whether she had reimbursed the county for the use of public resources. The court said “no,” noting that the statute making it a crime to misuse public resources must be strictly construed.¹³⁴

Although the court decision was not published (which means that it cannot be cited as precedent in other cases), it stands for the factual proposition that officials are prosecuted for misuse of public resources and that reimbursement may not be a defense.

Agency Credit Cards

The risk of agency credit card misuse, either intentional or inadvertent, is high. Because of this, a number of agencies have stopped issuing credit cards to officials or employees. In fact, the Association of California Water Agencies has recommended against issuance of credit cards to water agency board members.

If one has an agency credit card, the safest practice is to *never* use the card for personal purchases — even if one plans to subsequently reimburse the agency. As mentioned above, one court rejected reimbursement as a defense. (Of course, even more risky is incurring such personal expenses and then not taking steps to reimburse until there is some kind of public inquiry about the propriety of such expenses.)

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. All other expenses are either on a reimbursement or cash advance basis.

Use of Letterhead, Titles, and Logos

Agencies differ on the extent to which public officials have access to and use of agency letterhead for correspondence. For example, some agencies prohibit any use of letterhead or the agency logo without governing body approval.¹³⁵ Others prohibit the use of letterhead (or logo) for certain purposes, for example, personal purposes or endorsement of candidates.¹³⁶ Some provide agency officials with more informal note cards or personal stationery for individual correspondence.

An agency policy is the first source of guidance for a public official. Even if a particular use of agency letterhead is not prohibited, the ethical question for an official to consider is whether the use of agency letterhead leads the reader to believe that the agency itself has endorsed the statements contained in the correspondence. A similar question is whether the recipient of the correspondence might infer from the use of official letterhead that the correspondence has some official imprimatur or endorsement (for example, on a letter of recommendation). Similar questions apply to the use of titles and agency logos. These issues are why some agencies simply prohibit all use of agency letterhead and logos without governing body approval.

Some things to consider:

- To avoid any misunderstanding, many elected officials whose agencies allow them to use agency letterhead will specifically note that the opinions in the correspondence are their own and not those of the agency.
- If a public official finds it appropriate to use official stationery for a political purpose (and the agency permits such use), it is wise to note on the correspondence that the correspondence was not produced or sent with public funds. Other Political Reform Act requirements may also apply, for example, placing the name

of the committee or candidate on the outside of the envelope.¹³⁷

Some agency codes of ethics address this issue. For example, the City of Santa Clara's code allows its officials to their title only when conducting official agency business, for information purposes, or as an indication of background and expertise; the code also encourages its' official to carefully consider whether they are exceeding or appearing to exceed their authority.

For more information, see the Everyday Ethics for Local Officials column "The Ethics of Speaking One's Mind" (see www.ca-ilg.org/mind).

Badges

Most agencies will issue their elected officials either business cards or some other form of identification that may be useful from time to time. Some agencies issue officials "badges" that look similar to those used by law enforcement officials.

This practice has fallen out of favor for a number of reasons. State law forbids anyone from using a badge to impersonate a police officer.¹³⁸ The issuance of badges has also been the basis of a number of prosecutions and embarrassing incidents involving public officials.

It is not clear what purpose such badges serve in light of the fact that most agencies issue other forms of identification to their officials. It is also

not clear what the legal authority is to issue such badges. Most importantly, there is a significant risk that someone seeing the badge might mistakenly think the official has some relationship to law enforcement.

For more information, see the Everyday Ethics for Local Officials column “Badges for Officeholders and Prominent Members of the Community: A Bad Idea” (see www.ca-ilg.org/badges).

Staff Time

The prohibition against personal use of public resources extends to human resources or public agency staff time. The theory is that staff time spent on personal errands for supervisors or governing body members could be used instead for public business.

Giving Gifts

The norms in the public sector can differ significantly from the private sector. It is common for business people to extend hospitality and make gifts and charitable contributions to generate goodwill for the company.

However, California’s constitution specifically prohibits “gifts” of public resources.¹³⁹ This prohibition applies to an agency making gifts to its officials and employees.¹⁴⁰ It also applies to gifts from either an agency or its officials to private citizens (for example, hosting meals).

Because this ban is in the constitution, it applies to all public agencies. The only possible exception is charter cities. Charter cities look to their charters for limits on their ability to do something. Therefore, charter city officials must consult their charters to see if they contain parallel gift restrictions.

How does one know if a gesture is okay? The test is whether there is a valid public purpose justifying the expenditure.¹⁴¹ It can be useful to address this issue in agency policies.¹⁴²

Charitable Donations

The prohibition against gifts of public funds has implications for charitable giving by public agencies.¹⁴³ As Scrooge-like as it seems, a public official should not assume it is appropriate for public agencies to make gifts to charitable organizations.

Here are some circumstances under which a public agency may contribute to a charity:

1. When the charity provides a service that complements or enhances one the public agency provides itself;
2. When there is an identifiable secondary benefit to the public agency; or
3. When the charity provides a service the public agency could provide but chooses not to.

In all instances, the governing body should make findings in the minutes about the benefits to the agency associated with providing resources to the charity. As always, concluding that expenditure may be legal is just the

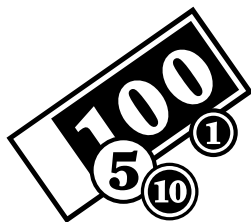
first step of the analysis; just because something is “legal” does not mean that it is the best use of resources in light of all competing demands on the agency’s treasury.

Examples of Ways to Document Benefits Associated with Charitable Support		
Relationship To Public Agency Programs	Example	Nature of Benefit(s)
1. Complementary service	Donation to Tree Foundation in return for agreement to replace street trees agency removes because of disease or old age	<p>Foundation has specialized knowledge about trees suitable for area.</p> <p>Organization shares goal of populating area with more trees, thereby saving energy and enhancing property values for residents.</p> <p>Other grants received by the Tree Foundation mean the agency and those it serves save money on replacement of trees.</p>
2. Demonstrable benefit	Boys and Girls Club’s after school programs	Such programs reduce the need for law enforcement activities in area. Programs promote public safety and law abiding youth in a positive, cost effective manner.
3. Service agency could provide but does not	Homeless shelter and associated placement programs	Such programs help end cycle of homelessness. Reducing homelessness is one of the agency’s housing element goals.

Special districts have an additional burden when it comes to charitable contributions. Not only must they demonstrate the contribution benefits the district, but they must also demonstrate that the expenditure falls within the specifically enumerated powers of that particular type of district.

Making donations to charitable causes that are far away from the jurisdiction (for example, the victims of a hurricane) also present special challenges. Because of the distance, it is much tougher to justify the contribution as creating benefits to the jurisdiction's residents. Because of this, such donations are more vulnerable to legal challenge.¹⁴⁴

Also risky is the practice that may exist in some jurisdictions where individual office holders can direct that a certain amount be given to a particular charity (possibly as part of an annual officeholder expense budget). Any decision to give public money to private charities should be made by an agency governing body, so the requisite findings on the benefit to the agency and the community it serves can be made.



One public agency's practices in this regard came under scrutiny, even though the agency put safeguards in place to make sure the funds were appropriately spent. The president of the local taxpayers' association suggested that using such monies for charitable contributions involves "a thin line" and is "almost like they're buying votes."¹⁴⁵ Although the newspaper noted that the funds could not be used for campaign purposes, the newspaper observed that such funds were used to boost officeholders' public profiles.

For more information, see the following Everyday Ethics for Local Officials columns:

- "Raising Funds for Favorite Causes" (see www.ca-ilg.org/fundraising)
- "Using Public Resources for Charitable Purposes" (see www.ca-ilg.org/charity)
- "Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder" (see www.ca-ilg.org/nonprofits)

Gifts to Public Officials

Basic Rules

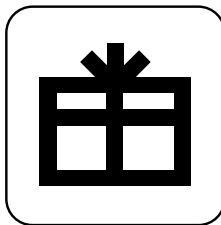
Receiving gifts can present a host of issues for public officials. Of course, making demands for gifts in exchange for official action violates state and federal laws prohibiting bribery and extortion.¹⁴⁶ Such demands also deprive the public of its right to honest services from public officials.¹⁴⁷

Gifts that are not requested present other issues. State 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, public officials must disclose all gifts received of \$50 or more.¹⁴⁸ State law sets annual limits on the value of gifts an official may accept from a single source during a calendar year. In 2009–10, the limit is \$420.¹⁴⁹ (The gift limit is modified every two years to reflect changes in the Consumer Price Index; the Fair Political Practices Commission typically has current information on the gift limitation on its website).¹⁵⁰

For the purpose of these requirements, the concept of a “gift” is broadly defined to include any payment or other benefit received by a public official unless the official provided something of equal or greater value in return.¹⁵¹ A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to an individual's public official status (such as frequent flier miles).¹⁵² Thus, a “gift” includes items people would commonly think of as a “present,” but also things like meals, receptions, travel, hotel stays, and tickets to events.

A public official may also have to disqualify him or herself from participating in a decision involving someone who has given the official gifts that exceed the gift limit in the prior 12 months.¹⁵³



Penalties for Missteps

State 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 sanctions,

depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.¹⁵⁴

POLITICAL REFORM ACT PENALTIES

Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.¹⁵⁵ A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.¹⁵⁶ Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties¹⁵⁷ or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.¹⁵⁸ Jail time is also a possibility.¹⁵⁹

Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.¹⁶⁰

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.¹⁶¹

Administrative Fines

Violations may result in civil and criminal penalties. In addition, the Fair Political Practices Commission may impose administrative penalties. The administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation.¹⁶²

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.¹⁶³ The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.¹⁶⁴ 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.¹⁶⁵

In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by gifts.¹⁶⁶ In fact, at least one court has expanded the definition of wrong-doing under federal fraud laws to include “coaxing”—defined as a more generalized pattern of gratuities to coax ongoing favorable official action.¹⁶⁷

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.¹⁶⁸

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.¹⁶⁹ 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.¹⁷⁰

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.

Officials have also been charged with income tax evasion when they embezzle or otherwise misuse public resources for personal or other purposes.¹⁷¹ This includes use of an agency credit card for personal purposes.

Income tax evasion carries with it a possible five-year prison term and a fine of up to \$100,000.¹⁷² 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.)¹⁷³ 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).¹⁷⁴

Exceptions to Rules

There are a number of exceptions to the gift limit. Officials need not disclose:

- Gifts returned (unused) to the donor, or where the donor has been reimbursed within thirty days of receiving the gift.¹⁷⁵
- Gifts donated (unused) to a nonprofit organization or a government agency within thirty days of receipt without claiming a tax deduction.¹⁷⁶
- Gifts from a spouse, domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse/domestic partner of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.¹⁷⁷
- Gifts of hospitality or occasional lodging in an individual's home when the host is present.¹⁷⁸
- Gifts of approximately equal value exchanged between an official and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions.¹⁷⁹
- Informational material provided to assist in the performance of official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.¹⁸⁰
- A bequest or inheritance.¹⁸¹
- Campaign contributions.¹⁸²
- Personalized plaques and trophies valued at less than \$250.¹⁸³
- Tickets to nonprofit (501(c)(3))¹⁸⁴ or political¹⁸⁵ fundraisers under certain circumstances: see discussion on page 28.
- Free admission, refreshments and similar non-cash benefits provided for an event where an official gives a speech, participates in a panel or seminar, or provides a similar service. Transportation within California, lodging, and food provided directly in connection with the speech are also exempt.¹⁸⁶ See discussion on pages 29–30.
- Passes or tickets to provide admission or access to facilities, goods, services or other benefits (either on a one-time or repeated basis) that are not used or not given to another person.¹⁸⁷

- Gifts provided directly to family members unless the official uses the gift, receives a personal benefit from the gift, or exercises discretion or control over its use, and there are no factors indicating that the donor intended to make a gift to the public official.¹⁸⁸
- Gifts provided to a government agency.¹⁸⁹ See discussion on pages 31–32 about specifics, including the agency’s obligation to report.
- Food, shelter, or similar assistance received in connection with a disaster relief program.¹⁹⁰

RESOURCES FOR FURTHER INFORMATION

For more information, see the *Everyday Ethics for Local Officials* column “Receiving Gifts as a Public Official” (see www.ca-ilg.org/gifts).

What to Do about Unwanted Gifts?

Some local officials and agencies have adopted and publicize a “no gift” policy to discourage gifts. For example, they place a sign on their office doors explaining that, while they appreciate the thought, their policy is to not accept gifts.

If an official receives an unwanted gift, the official may within 30 days of receiving the gift:¹⁹¹

1. Return the gift unused;
2. Deliver the gift unused, within 30 days, to a nonprofit organization without claiming the gift as a tax deduction (the nonprofit must be exempt from taxation under section 501(c)(3) of the Internal Revenue Code);
3. Donate the gift, unused, within 30 days, to a state, local or federal government agency; or
4. Reimburse the gift-giver for the fair market value of the gift.

Special Issues

Tickets to Fundraising Events Given to Public Officials

Tickets to 501(c)(3) Fundraisers

A 501(c)(3) nonprofit organization hosting a fundraising event may directly provide a single ticket each to one or more state or local public officials for the official's own use.¹⁹² The ticket will be considered to have no value and will not be reportable, subject to certain limits as discussed in the next section.

The host can only provide these zero value tickets to a public official to the extent that the aggregate value of the non-deductible portion of all such tickets received by the official from the host per calendar year does not exceed \$420, the annual gift limit for 2009–10.¹⁹³

Thus, if a nonprofit hosts six events per year, each with a ticket price of \$500 per attendee with \$400 donated to the charity, then that nonprofit can only provide free tickets to the same public official for four such events.

Admission to a charity fundraiser provided by someone other than the host is considered a gift, at the full value of admission.¹⁹⁴

The value of the gift is generally the full ticket price or the face value of the ticket for someone from the general public to attend, including the donation portion.¹⁹⁵

Tickets to All Other Nonprofit Fundraisers

The value of a ticket provided by all other types of nonprofits (for example, 501(c)(4) and (c)(6) organizations) to a fundraiser is the non-donation portion of the ticket under most circumstances.¹⁹⁶

However, that valuation method is limited to a single ticket provided directly by the nonprofit hosting the fundraiser to the public official for his or her own use.¹⁹⁷

If the ticket is instead provided by a third party, the gift must be valued at either the full ticket price available to the general public or the value of admission reflected in the actual cost to the third party.¹⁹⁸

Tickets to Political Fundraisers

A state, local or federal candidate, political party or political action committee hosting a political fundraiser may provide a single ticket per event to one or more state or local public officials for his or her own personal attendance without the ticket resulting in a gift to the official.¹⁹⁹

A ticket to a political fundraiser purchased by an individual or a company that is then provided by the purchaser to a state or local public official is a gift valued at the ticket's full face value.²⁰⁰



Gifts of Travel Expenses

Basic Rules

Travel Passes from Transportation Companies. With respect to travel provided by transportation companies, state law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.²⁰¹ This prohibition applies to all personal or business travel, whether intrastate, interstate or foreign. The prohibition applies to both elected and appointed public officers but not to employees.²⁰²

The Attorney General has opined the prohibition applies when the free or discounted travel was provided due to the person's holding of public office, but the prohibition does not apply if the official received the free or discounted travel as any other general member of the public would have.²⁰³ For example, the prohibition applied when an airline gave a first-class upgrade to a group of 20 VIPs traveling together and one of those VIPs was a mayor. Further, the mayor could not escape the prohibition by paying for the value of the upgrade after-the-fact when he learned of the prohibition.²⁰⁴

Travel Expenses from Non-Transportation Companies. Gifts of travel expenses (for example, airfare, lodging, meals and entertainment) from non-transportation companies are generally subject to the gift rules and must be reported on one's Statement of Economic Interests as such.

Exceptions to Rules

Travel Expenses from Non-Transportation Companies. Receipt of the following types of travel expenses are not subject to the maximum limitations on the receipt of gifts:

- **Travel Expenses Paid by One's Own Public Agency as Part of One's Public Service.**²⁰⁵
- **Giving a Speech in California.** Reimbursement for transportation within California directly in connection with an event at which one gives a speech or participates in a panel or seminar.²⁰⁶ These travel expenses are not reportable as gifts or income on one's Statement of Economic Interests.
- **Giving a Speech Elsewhere in the Country.** Reimbursement for travel within the United States which is:
 - Related to a legislative or governmental purpose or to an issue of state, national or international public policy, and
 - Occurs in connection with an event at which one gives a speech or participates in a panel or seminar.²⁰⁷

Note reimbursement for lodging or meals is limited to the day immediately before, the day of, and the day immediately following the speech, panel or seminar.²⁰⁸ Necessary lodging and subsistence provided directly in connection with the speech are not reportable on one's Statement of Economic Interests.²⁰⁹ Transportation costs outside California (that are related to a legislative or governmental purpose) are reportable but not subject to limits.²¹⁰

■ **Other “Nominal” Benefits for Giving a Speech.** Free admission, refreshments or similar non-cash nominal benefits one receives while attending an event at which one delivers a speech or participates in a panel or seminar is similarly exempt during the event, regardless of whether the event is inside or outside of California.²¹¹ These travel expenses are not reportable as gifts or income on one's Statement of Economic Interests.

■ **Other Government-Related Trips.** Reimbursement for travel within the United States which is

- Related to a public policy purpose; and
- Is paid for by a governmental, educational or charitable organization.²¹²

Note payment for these kinds of expenses, while not considered gifts, may be reportable as income on one's

Statement of Economic Interests. For example, the Fair Political Practices Commission has ruled provision of meals and travel expenses in conjunction with an official's service to a nonprofit local agency association is reportable as income on one's Statement of Economic Interests.²¹³

■ **Bona Fide Business Trips.** Reimbursement for travel that is reasonably necessary in connection with a bona fide business purpose and that satisfies the criteria for deduction as a business expense for income tax purposes.²¹⁴ For reporting purposes, these travel expenses are considered a part of salary and are reported as income on one's Statement of Economic Interests.²¹⁵

Travel Passes from Transportation Companies. 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.²¹⁶
- An elected official received free airline travel because he was the spouse of a flight attendant.²¹⁷
- 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.²¹⁸

Gifts to an Agency

General Reporting Requirements

A payment or provision of a good or service that benefits a public official is considered an agency gift if all the following requirements are met:²¹⁹

1. Agency Controls Use of Payment.

The agency head (or designee) determines and controls the agency's use of the payment. The donor may specify a purpose for the payment but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, must select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.²²⁰

2. Official Agency Business. The payment must be used for official agency business.²²¹

3. Agency Reports the Gift. The agency must disclose the gift using FPPC form 801 within thirty days after payment, including a description of the gift, the date received, the amount, the name and address of the donor, and the agency's use of the payment.²²² If a gift to an agency is made up of donated funds raised for the purpose of making a gift to an

agency, the names and amounts given by the underlying donors of the funds must be disclosed.²²³

Elected officials and employees subject to gift limits and reporting requirements cannot use gifts provided to the agency for travel, including transportation, lodging and meals.²²⁴

Compliance with these rules can be made easier if the agency adopts an official policy as to how it will accept, monitor and report gifts to the agency. The adopted policy should designate who is the "agency head" for purposes of determining and controlling the use of gifts.

Tickets Given to an Agency

Special rules apply if a public agency receives tickets or passes from outside entities. The threshold question is who should use the tickets. As with any use of public resources, the question turns on the agency's analysis of what identifiable, worthy public purposes might be served in how the tickets are used. For example:

- The agency might re-gift the passes by giving them to a community group or others. For example, the

The public is aware those with business before an agency will attempt to curry favor with decision-makers and these efforts may interfere with a public official's responsibility to make decisions solely based on the public's interests.

Police Athletic League might be able to enhance its program supporting physical activity, teamwork and sportsmanship if the tickets are to a sporting event involving teams that can help underscore these themes.

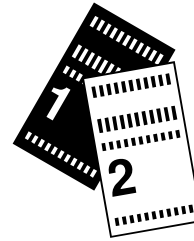
- If the agency has an “Employee of the Month” program designed to recognize superior performance and good ethics, a worthwhile public purpose might be to use the tickets to recognize such performance.
- If there are employees’ whose responsibilities require them to be at the event, then having them attend satisfies a public purpose. Note that the responsibilities must be in writing.

The key task is for the public agency to identify underlying, worthwhile public purposes for the use of any gifts of tickets in a policy that is posted on the agency’s website.²²⁵ The Fair Political Practices Commission rules explain what the policy must contain.

If such use involves public officials otherwise subject to the gift limit and reporting requirements, the tickets are not subject to the limit and reporting requirements if:

- The agency decides who should use the ticket or pass consistent with its adopted policy; and
- The gift giver plays no role in the decision on who should use the ticket.²²⁶

No matter who uses the tickets, the agency must disclose publicly on its website (using FPPC Form 802, available at [www.fppc.ca.gov/forms/802\(0209\).pdf](http://www.fppc.ca.gov/forms/802(0209).pdf)), how it used the tickets (or the FPPC’s website, if the agency doesn’t have a website).²²⁷



Penalties

Travel Passes from Transportation Companies. The penalty for violating the prohibition against accepting travel passes from transportation companies is severe—an immediate forfeiture of office.²²⁸

All Other Gift-Related Rules. The other restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.²³⁶

RESOURCES FOR FURTHER INFORMATION

For more information, the Fair Political Practices Commission has produced “Limitations and Restrictions on Gifts, Honoraria, Travel and Loans” and “Travel Guide for California Officials and Candidates,” each of which is available online at www.fppc.ca.gov. Because of the complexity of these requirements, officials should seek legal advice when faced with all but the most basic gift, travel and honoraria issues. Two sources of such advice are the Fair Political Practices Commission and agency counsel.

POLITICAL REFORM ACT PENALTIES

Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.²²⁹ A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.²³⁰ Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties²³¹ or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.²³² Jail time is also a possibility.²³³

Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.²³⁴

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.²³⁵

For Personal Use Only. Not for Distribution.

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.²³⁷ Any expenditure that confers a substantial personal benefit on an individual must be directly related to a political, legislative, or governmental purpose.²³⁸

Penalties

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.²³⁹



POLITICAL REFORM ACT PENALTIES

Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.²⁴⁰ A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.²⁴¹ Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties²⁴² or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.²⁴³ Jail time is also a possibility.²⁴⁴

Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.²⁴⁵

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney’s fees.²⁴⁶

Endnotes

- ¹ Rushworth M. Kidder, *How Good People Make Tough Choices* (Simon and Schuster, 1995).
- ² *Id.*
- ³ *Id.*
- ⁴ 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
- ⁵ *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).
- ⁶ *Id.*
- ⁷ Cal. Gov't Code §§ 53234 - 53235. See www.ca-ilg.org/ab1234compliance.
- ⁸ Cal. Const. art. XI, § 1(b).
- ⁹ See, e.g., Cal. Pub. Res. Code § 5784.15(a) and (d) (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 (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 six days service/meetings per month); Cal. Water Code § 30507.1 (Contra Costa 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).
- ¹⁰ Cal. Pub. Res. Code § 5784.15(a) and (d).
- ¹¹ Cal. Health & Safety Code § 6489.
- ¹² Cal. Harb. & Nav. Code § 6060.
- ¹³ Cal. Pub. Util. Code § 11908.1.
- ¹⁴ Cal. Water Code § 21166.
- ¹⁵ *Id.*
- ¹⁶ Cal. Water Code § 22840.
- ¹⁷ Cal. Water Code § 20201.
- ¹⁸ Cal. Water Code §§ 34740-41.
- ¹⁹ Cal. Water Code § 30507.
- ²⁰ Cal. Water Code § 30507.1.
- ²¹ Cal. Water Code § 71255.
- ²² Cal. Gov't Code § 53232.1(a).
- ²³ Cal. Gov't Code § 53232.1(b).
- ²⁴ Cal. Gov't Code § 53232.1(c).
- ²⁵ Cal. Const. art. XI, § 5(b)(4).

- ²⁶ See Cal. Gov't Code § 36516.
- ²⁷ See Cal. Gov't Code § 36516(a).
- ²⁸ See Cal. Gov't Code § 36516(c).
- ²⁹ 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).
- ³⁰ See Cal. Gov't Code § 36516.1.
- ³¹ See Cal. Gov't Code § 36516(d).
- ³² These limits were enacted in 2006. They apply to those whose terms commenced on and after January 1, 2006. They do not apply to those officials who were in office prior to January 1, 2006, so as to reduce those officials' salaries prior to the expiration of their terms. See 89 Cal. Op. Att'y Gen 135 (2006) (interpreting 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).
- ³³ See Cal. Health & Safety Code § 34130.5(b).
- ³⁴ Cal. Health & Safety Code § 34130.5(c).
- ³⁵ Cal. Gov't Code § 36516(d).
- ³⁶ See Cal. Gov't Code § 89501 (definition of honorarium).
- ³⁷ See Cal. Gov't Code § 89502 (general prohibition).
- ³⁸ See Cal. Gov't Code § 89501(b)(2).
- ³⁹ See generally Cal. Gov't Code §§ 91000 and following.
- ⁴⁰ See Cal. Gov't Code § 91000(a).
- ⁴¹ See Cal. Gov't Code § 91002.
- ⁴² See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- ⁴³ Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- ⁴⁴ See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- ⁴⁵ Cal. Gov't Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- ⁴⁶ Cal. Gov't Code § 91012.
- ⁴⁷ See 2 Cal. Code Regs. § 18932.5 (direct charitable contributions excluded from honorarium definition).
- ⁴⁸ See Cal. Gov't Code § 89501(b)(2).
- ⁴⁹ See Cal. Gov't Code § 89501(b)(1).
- ⁵⁰ 2 Cal. Code Regs. § 18950.3.
- ⁵¹ See Mark Baldassare, Dean Bonner, Jennifer Paluch, and Sonja Petek, *The State of California Voters*, Public Policy Institute of California (September 2008).
- ⁵² Cal. Gov't Code § 53232.2.
- ⁵³ Cal. Gov't Code § 53232.2(b).
- ⁵⁴ Cal. Gov't Code § 53232.3(c).
- ⁵⁵ Cal. Gov't Code § 53232.3.
- ⁵⁶ Cal. Gov't Code § 53232.3(e).
- ⁵⁷ Cal. Gov't Code § 53232.2(c).
- ⁵⁸ 65 Cal. Op. Att'y Gen. 516, 522 (1982) (citing *Collins v. Riley*, 24 Cal. 2d 912, 918, 152 P.2d 169 (1944) and determining that the expenses of a handicapped council member met this standard); 61 Cal. Op. Att'y Gen. 303 (1978) (citing *Gibson v. Sacramento County*, 37 Cal. App. 523, 174 P. 935 (1918)); *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).
- ⁵⁹ Cal. Gov't Code § 53232.3(e).
- ⁶⁰ Cal. Gov't Code § 53232.2(f).
- ⁶¹ Cal. Gov't Code § 53232.2(g).
- ⁶² Cal. Gov't Code § 53232.2(b).
- ⁶³ Cal. Const. art. XI, § 5. *County of Sonoma v. Commission on State Mandates*, 84 Cal. App. 4th 1264, 101 Cal. Rptr. 784 (2000).
- ⁶⁴ See Cal. Gov't Code § 53232.4.
- ⁶⁵ See Cal. Gov't Code § 8314.
- ⁶⁶ See Cal. Penal Code § 424.
- ⁶⁷ Cal. Penal Code § 504.
- ⁶⁸ Cal. Penal Code § 514.
- ⁶⁹ See 26 U.S.C. § 7201.
- ⁷⁰ See 26 U.S.C. § 7203.
- ⁷¹ See generally 18 U.S.C. §§ 1341 and following.
- ⁷² See generally 18 U.S.C. § 3571(b) and (d).
- ⁷³ See, for example, 18 U.S.C. §§ 641 (crime of embezzlement against the United States), 648 (misuse of public funds).
- ⁷⁴ Cal. Gov't Code § 53232.3(c).
- ⁷⁵ Cal. Gov't Code § 53232.3.

- ⁷⁶ 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).
- ⁷⁷ See *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975).
- ⁷⁸ Treas. Regs. § 1.62-2T(e), § 1.3401(a)-1T.
- ⁷⁹ See Cal. Gov't Code § 50023 (legislative bodies of cities and counties may directly or through a representative attend legislative bodies and meet with representatives of executive agencies, and present information; cost and expense incident to such meetings are proper charges against the local agency); § 53060.5 (cost of “attending” the Legislature and presenting information are proper charges against special districts; each district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).
- ⁸⁰ 85 Cal. Op. Att’y Gen. 210 (2002).
- ⁸¹ See Cal. Const. art. XVI, § 6 (“nor shall it [the Legislature] have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; . . .”). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 870, 118 Cal. Rptr. 901, 902 (1975) (making the connection between council member expenses and the prohibitions against a gift of public funds). Although the prohibition is directed to the Legislature, the courts’ theory is that, since general law cities, counties and special districts derive much of their authority from the Legislature, such local agencies also do not have the power to make gifts of public funds.
- ⁸² There is an additional prohibition against granting extra compensation for work already performed by public officers, public employers or contractors. See Cal. Const. art. IV, § 17; art. XI, § 10.
- ⁸³ 85 Cal. Op. Att’y Gen. 210 (2002).
- ⁸⁴ 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).
- ⁸⁵ Cal. Gov't Code § 53232.2(d).
- ⁸⁶ *Id.*
- ⁸⁷ Cal. Gov't Code § 53232.2(e).
- ⁸⁸ See Cal. Gov't Code § 3060 (providing grand jury may investigate claims of willful or corrupt misconduct in office, which can lead to removal from office). See also *People v. Tice*, 144 Cal. App. 2d 750, 310 P.2d 588 (1956) (phrase misconduct in office is broad enough to include willful malfeasance, misfeasance and nonfeasance).
- ⁸⁹ See Cal. Gov't Code § 53065.5 (referring to Government Code section 56036(a) for the definition of special district).
- ⁹⁰ 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).
- ⁹¹ 1993–94 Assembly Journal, page 5873 (March 24, 1994 Letter from Assemblymember Tom Umberg).
- ⁹² 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).
- ⁹³ Cal. Gov't Code § 53232.3(d).
- ⁹⁴ Cal. Gov't Code § 53232.3(d).
- ⁹⁵ See Cal. Gov't Code § 54952.2.
- ⁹⁶ See Cal. Gov't Code § 53232.3.
- ⁹⁷ Cal. Gov't Code § 53232.3(d).
- ⁹⁸ See Cal. Gov't Code § 995.8. See also *Los Angeles Police Protective League v. City of Los Angeles*, 27 Cal. App. 4th 168, 32 Cal. Rptr. 2d 574 (1994) (finding city was not required to provide the defense of police officers accused of vandalism and conspiracy to commit vandalism).
- ⁹⁹ See Cal. Gov't Code § 995.2 (public agency may refuse defense of civil action if, among other reasons, the agency finds the official acted because of “actual fraud, corruption or actual malice.”) See also Cal. Gov't Code § 822.2 (immunity from liability for misrepresentation does not apply in instances of corruption).

- ¹⁰⁰ See Cal. Gov't Code § 818.
- ¹⁰¹ California Rules of Professional Conduct for Lawyers, Rule 3-600(A); *Ward v. Superior Court*, 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is county, not assessor in his individual capacity).
- ¹⁰² See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ¹⁰³ Cal. Gov't Code § 8314(b)(1).
- ¹⁰⁴ Cal. Gov't Code § 8314(b)(4).
- ¹⁰⁵ Cal. Gov't Code § 8314(c)(1).
- ¹⁰⁶ 28 Cal. Gov't Code § 8314(b)(1).
- ¹⁰⁷ Cal. Penal Code § 424; *People v. Battin*, 77 Cal. App. 3d 635, 143 Cal. Rptr. 731 (1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superseded on other grounds by *People v. Conner*, 34 Cal. 3d 141, 193 Cal. Rptr. 148 (1983). See also Cal. Gov't Code § 8314 (“‘Campaign activity’ means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. ‘Campaign activity’ does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls and visitors to private political entities.”).
- ¹⁰⁸ Cal. Educ. Code § 7054 (school or community college funds, services, supplies or equipment may not be used to support a ballot measure or a candidate).
- ¹⁰⁹ See Cal. Const. art. XVI, § 6 (“nor shall it [the Legislature] have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; ...”). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 870, 118 Cal. Rptr. 901, 902 (1975) (making the connection between council member expenses and the prohibitions against a gift of public funds). Although the prohibition is directed to the Legislature, the courts’ theory is that, since general law cities, counties and special districts derive much of their authority from the Legislature, such local agencies also do not have the power to make gifts of public funds.
- ¹¹⁰ 85 Cal. Op. Att’y Gen. 210 (2002).
- ¹¹¹ *Vargas v. City of Salinas*, 46 Cal. 4th 1, 35-37, 92 Cal. Rptr. 3d 286, (2009), see also *Choice-in-Education League v. Los Angeles Unified School Dist.*, 17 Cal. App. 4th 415, 429-431, 21 Cal. Rptr. 3d 303 (1993) (school district did not illegally expend public funds by holding and broadcasting school board meeting at which the board took position opposing a statewide ballot initiative). *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, 203 Cal. App. 3d 529, 560, 250 Cal. Rptr. 3d 161 (1988). See also Cal. Elect. Code § 9282.
- ¹¹² Cal. Gov't Code § 54964(b)(3).
- ¹¹³ *Vargas*, 46 Cal. 4th at 40, citing *Stanson v. Mott*, 17 Cal. 3d 206, 130 Cal. Rptr. 697 (1976).
- ¹¹⁴ Cal. Elect. Code § 9212(a).
- ¹¹⁵ *Vargas*, 46 Cal. 4th at 40.
- ¹¹⁶ *Id.*
- ¹¹⁷ *Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 118 Cal. Rptr. 2d 330 (2002).
- ¹¹⁸ *Yes on Measure A v. City of Lake Forest*, 60 Cal. App. 4th 620, 625-626, 70 Cal. Rptr. 2d 517 (1997).
- ¹¹⁹ *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, 203 Cal. App. 3d 529, 250 Cal. Rptr. 161 (1988); *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*, 167 Cal. App. 4th 1229, 84 Cal. Rptr. 3d 714 (2008). See also Cal. Elect. Code § 9140 [county board of supervisors] & § 9222 [legislative body of municipality].
- ¹²⁰ Cal. Gov't Code §§ 82013(b), 84200; 2 Cal. Code Regs., § 18225(b)(2). See also *Yes on Measure A v. City of Lake Forest*, 60 Cal. App. 4th at 625-626.
- ¹²¹ 2 Cal. Code Regs. § 18420.1(a).
- ¹²² 2 Cal. Code Regs. § 18420.1(c).
- ¹²³ See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ¹²⁴ Cal. Penal Code § 424.
- ¹²⁵ Cal. Gov't Code § 8314(c)(1).
- ¹²⁶ Cal. Penal Code § 504.
- ¹²⁷ Cal. Penal Code § 514.
- ¹²⁸ See Cal. Gov't Code § 89001.
- ¹²⁹ See 2 Cal. Code Regs. § 18901.

- ¹³⁰ See Cal. Gov't Code § 91000(a).
- ¹³¹ Cal. Gov't Code § 83116.
- ¹³² Cal. Gov't Code § 91012.
- ¹³³ *People v. Bishop*, 2000 WL 520878 (2000) (unpublished opinion). Another element of the prosecution was the use of county resources for campaign purposes.
- ¹³⁴ The court cited *People v. Dillon*, 199 Cal. 1, 248 P.2d 30 (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.
- ¹³⁵ See, for example, San Diego County Water Authority Administrative Code, § 1.08.10(d) (“The official seal and any emblem, symbol, logo or other distinctive mark of the Authority shall be used solely for Authority purposes and programs, unless otherwise authorized by the Board. Private, commercial or non-commercial use of the official seal, mark, name or identity of the Authority is prohibited.”). The code is available online at: www.sdewa.org/about/who-admincode.phtml.
- ¹³⁶ See, for example, City of Lawndale, Resolution 2090 (1981).
- ¹³⁷ See Cal. Gov't Code § 84305.
- ¹³⁸ Cal. Penal Code § 538d (b)(2) (making it a misdemeanor to use a badge that would deceive an ordinary reasonable person into thinking the person is a law enforcement official). See also 90 Cal. Op. Att’y Gen. 57 (2007).
- ¹³⁹ See Cal. Const. art. XVI, § 6 (“nor shall it [the Legislature] have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individuals, municipal or other corporation whatever;...”). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 870, 118 Cal. Rptr. 901, 902 (1975) (making the connection between council member expenses and the prohibitions against a gift of public funds). Although the prohibition is directed to the Legislature, the courts’ theory is that, since general law cities, counties and special districts derive much of their authority from the Legislature, such local agencies also do not have the power to make gifts of public funds.
- ¹⁴⁰ There is an additional prohibition against granting extra compensation for work already performed by public officers, public employers or contractors. See Cal. Const. art. IV, § 17; art. XI, § 10.
- ¹⁴¹ *City and County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 103-04, 248 Cal. Rptr. 290, 295 (1988). See also McQuillin, *Municipal Corporations*, § 39.19 (3d ed.) (all expenditures must be for a public purpose).
- ¹⁴² See *Roseville v. Tulley*, 55 Cal. App. 2d 601, 608-09, 131 P. 2d 395, 400 (1942) (finding that judicial second-guessing of a city’s determination of what constitutes a public purpose would be an unwarranted intrusion into the legislative function of a city council).
- ¹⁴³ See generally McQuillin, *Municipal Corporations*, § 39.25 (3d ed.) (“Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.”)
- ¹⁴⁴ See 64 Cal. Op. Att’y Gen. 478 (1981) (noting that grants to other agencies must serve the interests or purposes of the residents of the granting agency).
- ¹⁴⁵ “Here’s \$50,000 – Spend it Well,” *Sacramento Bee*, November 23, 2003, page B1, B6.
- ¹⁴⁶ Cal. Penal Code §§ 68(a), 518; 18 U.S.C. §§ 201, 871 and following.
- ¹⁴⁷ Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials. 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services). The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary. *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law). 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. *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- ¹⁴⁸ Cal. Gov't Code § 87207(a)(1).
- ¹⁴⁹ 2 Cal. Code Regs. § 18940.2; Cal. Gov't Code § 89503.
- ¹⁵⁰ Cal. Gov't Code § 89503(f).
- ¹⁵¹ Cal. Gov't Code § 82028(a).

- 152 *Id.*
- 153 2 Cal. Code Regs. § 18703.4.
- 154 *See generally* Cal. Gov't Code §§ 91000 and following.
- 155 *See* Cal. Gov't Code § 91000(a).
- 156 *See* Cal. Gov't Code § 91002.
- 157 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 158 Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- 159 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- 160 Cal. Gov't Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- 161 Cal. Gov't Code § 91012.
- 162 Cal. Gov't Code § 83116.
- 163 Now 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 164 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 165 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 166 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005).
- 167 *U.S. v. Woodward*, 149 F.3d 46, 55 (1st Cir. 1998) (company's ongoing pattern of gifts and entertainment to chair of key legislative committee constituted intent to deprive citizens of chair's honest services), citing *U.S. v. Sawyer*, 85 F.3d 716, 730 (1st Cir. 1996).
- 168 18 U.S.C. § 1341 (“... shall be fined under this title or imprisoned not more than 20 years, or both.”).
18 U.S.C. § 1343 (“shall be fined under this title or imprisoned not more than 20 years, or both.”).
- 169 18 U.S.C. § 1951.
- 170 18 U.S.C. § 1951(a).
- 171 Press Release, U.S. Attorney's Office, Eastern District of California, “Former Northridge Water Board Assistant General Manager Pleads Guilty To Tax Evasion And Mail Fraud,” October 25, 2004 (available online at www.usdoj.gov/tax/usaopress/2004/txdv0410-25-04ness.pdf).
- 172 26 U.S.C. § 7201.
- 173 *Id.*
- 174 26 U.S.C. § 7206(1).
- 175 2 Cal. Code Regs. § 18943(a)(1).
- 176 2 Cal. Code Regs. § 18943(a)(2) and (3).
- 177 Cal. Gov't Code § 82028(b)(3); 2 Cal. Code Regs. § 18942(a)(3).
- 178 2 Cal. Code Regs. § 18942(a)(7).
- 179 2 Cal. Code Regs. § 18942(a)(8).
- 180 Cal. Gov't Code § 82028(b)(1).
- 181 Cal. Gov't Code § 82028(b)(5).
- 182 2 Cal. Code Regs. § 18942(a)(4).
- 183 Cal. Gov't Code § 82028(b)(6).
- 184 2 Cal. Code Regs. § 18946.4(b).
- 185 2 Cal. Code Regs. § 18946.4(c).
- 186 2 Cal. Code Regs. § 18942(a)(11).
- 187 2 Cal. Code Regs. § 18946.1 (a pass or ticket has no value unless it is ultimately used or transferred to another person).
- 188 2 Cal. Code Regs. § 18944 (Also noting that a gift to a family member is not a gift to an official if the official can show in specified ways that there was no donor intent to make a gift to the official).
- 189 2 Cal. Code Regs. §§ 18944.2 (general); 18944.1 (passes or tickets).
- 190 2 Cal. Code Regs. § 18942(a)(10).
- 191 Cal. Gov't Code § 82028(b)(2); 2 Cal. Code Regs. § 18943.
- 192 2 Cal. Code Regs. § 18946.4.
- 193 2 Cal. Code Regs. § 18946.4(b).
- 194 *See Tickets to Nonprofit and Political Fundraisers: FPPC Regulation 18946.4 as Amended* (October 2008).
- 195 2 Cal. Code Regs. § 18946.1.
- 196 2 Cal. Code Regs. § 18946.4(a).
- 197 2 Cal. Code Regs. § 18946.4.
- 198 *See Tickets to Nonprofit and Political Fundraisers: FPPC Regulation 18946.4 as Amended* (October 2008).
- 199 2 Cal. Code Regs. § 18946.4(c).
- 200 *See Tickets to Nonprofit and Political Fundraisers: FPPC Regulation 18946.4 as Amended* (October 2008).

- ²⁰¹ See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .”).
- ²⁰² See 3 Cal. Op. Att’y Gen. 318 (1944).
- ²⁰³ 74 Cal. Op. Att’y Gen. 26 (1991).
- ²⁰⁴ 76 Cal. Op. Att’y Gen. 1 (1993).
- ²⁰⁵ See Cal. Gov’t Code § 89506(d)(2); 2 Cal. Code Regs. § 18950.1(d).
- ²⁰⁶ 2 Cal. Code Regs. § 18950.3.
- ²⁰⁷ See Cal. Gov’t Code § 89506(a).
- ²⁰⁸ See Cal. Gov’t Code § 89506(a)(1).
- ²⁰⁹ See 2 Cal. Code Regs. § 18950.3.
- ²¹⁰ 2 Cal. Code Regs. § 18950.1.
- ²¹¹ 2 Cal. Code Regs. § 18950.3.
- ²¹² See Cal. Gov’t Code §§ 89506(a)(2), (d)(2), 82030(b)(2); 2 Cal. Code Regs. § 18950.1(b), (d).
- ²¹³ See *Benninghoven Advice Letter*, No. I-98-177 (Nov. 12, 1998).
- ²¹⁴ See Cal. Gov’t Code § 89506(d)(3).
- ²¹⁵ *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Elected Officers and Candidates for Local Elective Offices, Local Officials Specified in Government Code Section 87200, Judicial Candidates, Designated Employees of Local Government Agencies*, Fair Political Practices Commission (2007).
- ²¹⁶ 74 Cal. Op. Att’y Gen. 26 (1991).
- ²¹⁷ 67 Cal. Op. Att’y Gen. 81 (1984).
- ²¹⁸ 80 Cal. Op. Att’y Gen. 146 (1997).
- ²¹⁹ 2 Cal. Code Regs. § 18944.2(c).
- ²²⁰ 2 Cal. Code Regs. § 18944.2(c)(1).
- ²²¹ 2 Cal. Code Regs. § 18944.2 (c)(2).
- ²²² See FPPC Form 801 Questions and Answers at www.fppc.ca.gov/forms/FS18944.2.pdf.
- ²²³ 2 Cal. Code Regs. § 18944.2(c)(3).
- ²²⁴ 2 Cal. Code Regs. § 18944.2(d).
- ²²⁵ 2 Cal. Code Regs. § 18944.1(c).
- ²²⁶ 2 Cal. Code Regs. § 18944.1(b)(2).
- ²²⁷ 2 Cal. Code Regs. § 18944.1(d).
- ²²⁸ See Cal. Const. art. XII, § 7 (“...acceptance of a pass or discount by a public officer...shall work a forfeiture of that office...”).
- ²²⁹ See Cal. Gov’t Code § 91000(a).
- ²³⁰ See Cal. Gov’t Code § 91002.
- ²³¹ See Cal. Gov’t Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- ²³² Cal. Gov’t Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- ²³³ See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- ²³⁴ Cal. Gov’t Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- ²³⁵ Cal. Gov’t Code § 91012.
- ²³⁶ See generally Cal. Gov’t Code §§ 91000 and following.
- ²³⁷ See Cal. Gov’t Code §§ 89510 et seq. Campaign funds include “any contributions, cash, cash equivalents, and other assets received or possessed” by a campaign committee. Cal. Gov’t Code § 89511(b)(1).
- ²³⁸ Cal. Gov’t Code § 89512 (an expenditure of campaign funds must be reasonably related to a legislative or governmental purpose, unless the expenditure confers a substantial personal benefit, in which case such expenditures must be directly related to a political, legislative or governmental purpose). “Substantial personal benefit” means a campaign expenditure which results in a direct personal benefit with a value of more than \$200. Cal. Gov’t Code § 89511(b)(3).
- ²³⁹ See generally Cal. Gov’t Code §§ 91000 and following.
- ²⁴⁰ See Cal. Gov’t Code § 91000(a).
- ²⁴¹ See Cal. Gov’t Code § 91002.
- ²⁴² See Cal. Gov’t Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- ²⁴³ Cal. Gov’t Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- ²⁴⁴ See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- ²⁴⁵ Cal. Gov’t Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- ²⁴⁶ Cal. Gov’t Code § 91012.

References for Further Information

General Websites

Fair Political Practices Commission

www.fppc.ca.gov/

Institute for Local Government

www.ca-ilg.org

Office of the Attorney General

<http://ag.ca.gov/>



Publications

Open Government

League of California Cities

Open and Public IV: A Guide to the Ralph M. Brown Act (2007)
(www.cacities.org/openandpublic).

The People's Business: A Guide to the California Public Records Act (2008)
(www.cacities.org/PRAGuide)

Office of the Attorney General

The Brown Act: Open Meetings for Local Legislative Bodies, 2003.

Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to <http://ag.ca.gov/publications/brownAct2003.pdf>.

Summary of the California Public Records Act, 2004. Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Public Records") or go to http://ag.ca.gov/publications/summary_public_records_act.pdf.

General

Institute for Local Government

Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethics (2009). Explains the role that values and public perception play in public service ethics (www.ca-ilg.org/ppoe).

Ethics Law Compliance Best Practices (2005). Enables agencies to engage in a self-assessment of ethics law compliance practices (www.ca-ilg.org/bestpractices).

Walking the Line: What to Do if You Suspect an Ethics Problem (2005). Answers a frequently-posed question with an eight-step process (www.ca-ilg.org/whattodo).

Ethics Culture Assessment (2006). Enables local agencies and their leaders to assess and reflect on the agency's ethics culture (www.ca-ilg.org/culturechecks).



Index

A

Agency Gift	31
Agency Vehicles	12
Attorney General	12-13, 29, 44-45
Attorney-Client Confidences.....	14

B

Badges	19-20
Books.....	26
Bribery	1, 23
Business Trips	13, 30
Buying Meals.....	10, 12

C

Campaign Contributions	1, 26
Campaign Funds	35, 43
Campaigns	15
Charitable Contributions ...	12, 20, 22, 38
Charter Cities.....	5, 10, 20
Codes of Ethics	19
Community Colleges	15
Compensation	2-3, 5-6, 37-39, 41
Cities.....	5, 10, 20, 37, 39-41, 45, 50
Community Development Commission.....	6
Counties	3, 39-41, 50
Conference Attendance	5, 13
Conferences	13, 26
Contracts	25
County Boards of Supervisors.....	3
Credit Cards	18

D

Disaster Relief Program	27
Disclosure.....	9, 13
Disqualification	17
Donations to Charitable	8, 20, 22
Causes	22

E

Elected Mayors.....	6
Embezzlement.....	10-11, 17, 38
Exceptions	6, 8, 15-17, 26, 29
Expense Reimbursement Policies...	9-10
Extortion	23, 25

F

Falsifying Expense Reports.....	10
Family	8, 27, 42
Frequent Flier Miles.....	23

G

General Law Cities	5, 37, 39-41
Gift Limit	23-24, 26, 28, 32
Gifts	1, 8, 12, 15, 20, 23, 25-27, 29-33, 39-43
Gifts of Public Funds	20, 39-41
Gifts of Public Resources	12, 20
Grand Jury.....	7, 24, 33, 35, 38-39, 42-43

H

Honest Services Fraud.....	25
Honoraria.....	6, 8, 33, 43
Hotel Stays.....	23

I

Income Tax Evasion.....	11, 25
Inheritance.....	26
Internet.....	11
Irrigation Districts.....	4, 37

L

Letterhead.....	17-19
Lobbying Expenses.....	12
Lodging.....	8-9, 13-14, 26, 29-31

M

Mail Fraud.....	11, 25, 41-42
Mass Mailings at Public Expense.....	17
Meals.....	9-10, 12, 14, 20, 23, 29-31

P

Personal Errands.....	20
Personal Use of Public Resources.....	10, 13-15, 17, 20
Plaques.....	26
Political Reform Act.....	7-8, 17, 19, 24, 33, 35
Political Use of Public Resources.....	18
Public Records.....	9-10, 45

R

Receptions.....	23
Restitution.....	10

S

Salaries.....	3, 38
Schools.....	15
Special Districts.....	3, 4, 13, 22, 39-41
Speeches.....	8
Statement of Economic Interests.....	23, 29-30
Stationery.....	15, 18-19

T

Tickets Given to an Agency.....	31
Tickets to Fundraising Events.....	28
Travel.....	9, 13-14, 18, 23, 29-31, 33, 39, 43
Travel Expenses.....	29-30
Travel Passes from Transportation Companies.....	29-30, 33
Trophies.....	26

U

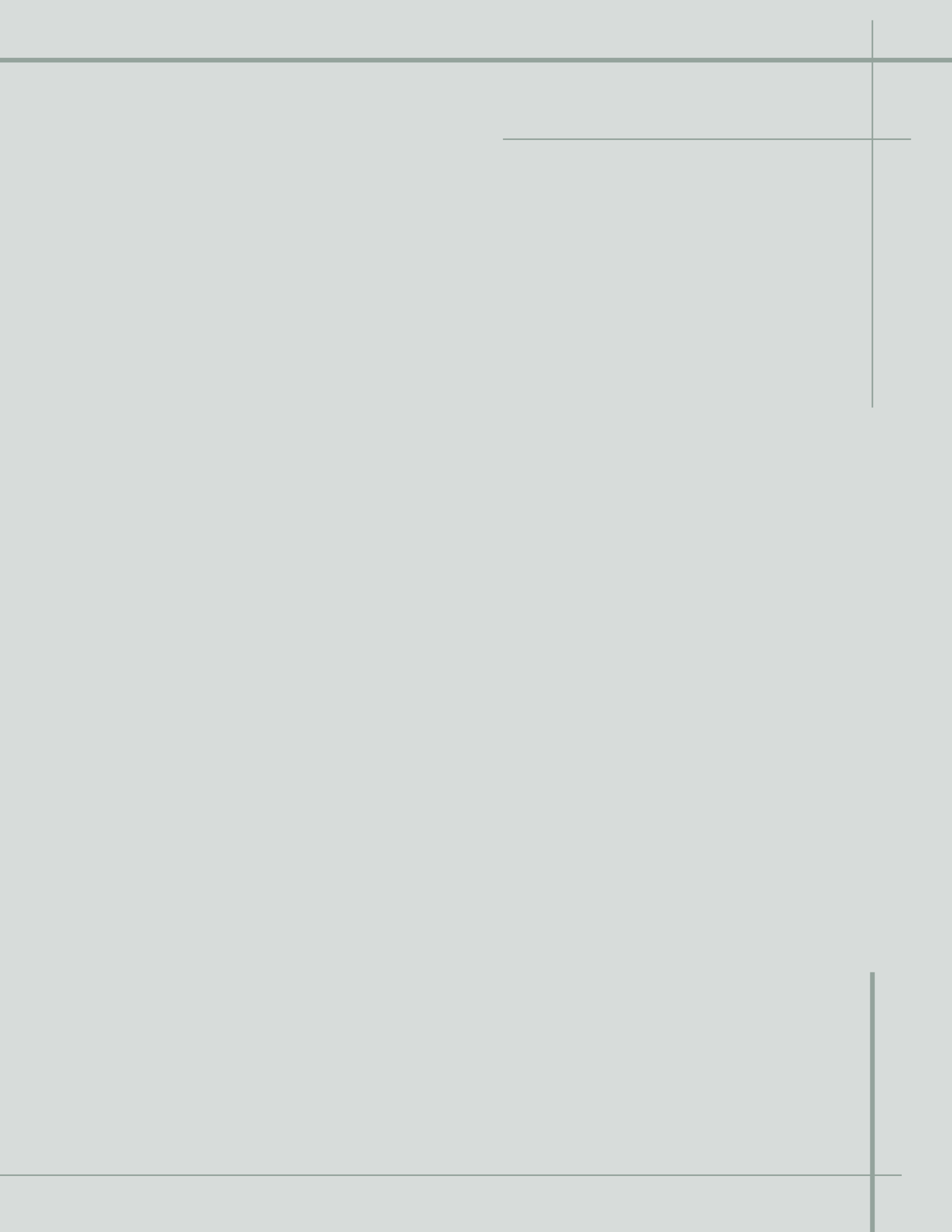
Unwanted Gifts.....	27
Use of Letterhead, Titles, and Logos..	18
Use of Public Resources.....	2, 10, 13-18, 20, 31, 40

V

Vehicle Allowances.....	12
-------------------------	----

W

Water Districts.....	4, 37
Wire Fraud.....	41-42



The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Intergovernmental Conflict Resolution
- Healthy Communities
- Land Use and Environment
- Local Government 101
- Public Service Ethics



1400 K Street, Suite 205
Sacramento, California 95814
Telephone: 916.658.8208 Fax: 916.444.7535
www.ca-ilg.org

For additional copies of this publication, please call 916.658.8208 or visit www.ca-ilg.org/ilgpubs

SKU: 1935 Price: \$10