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## CHAPTER 3:

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

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- » *This chapter:* [www.ca-ilg.org/perks](http://www.ca-ilg.org/perks)
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## Chapter 3: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws

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## 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.<sup>1</sup> Any extra compensation must be refunded.<sup>2</sup> Moreover, as protectors of the public purse, courts generally take a strict approach to public official compensation limits.<sup>3</sup>

#### 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 must have two hours of ethics training within one year of entering public service. Subsequent trainings must occur every two years after that.<sup>4</sup>

For more information on these requirements, see [www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance).

### Counties

County boards of supervisors set their salaries; supervisors' salaries are subject to referendum.<sup>5</sup>



### Special Districts

California law sets the salaries for members of special district governing boards—typically in the law that creates the particular kind of special district.<sup>6</sup> 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 below contains examples.

Special Districts		
Type of District	Per Day Maximum	Maximums
Park and recreation districts	\$100	\$500 per month <sup>7</sup>
Sanitation districts	\$100 per day for board meetings or service provided at the request of the board	Not to exceed six days per month <sup>8</sup>
Harbor districts	No per day salary	\$600 per month <sup>9</sup>
Utility districts	\$100 per day	\$600 per month <sup>10</sup>
Irrigation Districts		
Irrigation districts of less than 500,000 acres	\$100 per day	Not to exceed six days of compensated service <sup>11</sup>
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 <sup>12</sup>
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 <sup>13</sup>

Water Districts		
Type of District	Per Day Maximum	Maximums
Water district directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month <sup>14</sup>
California water district officials (as defined)	\$100 per day	No maximum <sup>15</sup>
County water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month <sup>16</sup>
Contra Costa County Water District directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month <sup>17</sup>
Municipal water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month <sup>18</sup>

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 California’s open meeting laws;
- » A meeting of an advisory body; and
- » Conference attendance or educational activities, including ethics training.<sup>19</sup>

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.<sup>20</sup> 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.<sup>21</sup>



## Cities

### Charter Cities

For charter cities, elected official compensation is a matter of local concern which may be addressed in the city’s charter.<sup>22</sup>

### 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 California law in the 1980s.<sup>23</sup> The starting points are:<sup>24</sup>

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.<sup>25</sup> When a city council votes to increase compensation, the increase takes effect in the future—not during the deciding council members’ current terms.<sup>26</sup>

Elected mayors may receive additional compensation.<sup>27</sup>

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 California law authorizes additional compensation.<sup>28</sup> If California 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.<sup>29</sup>

#### DISCLOSURE REQUIREMENTS WHEN MAKING COMPENSATED APPOINTMENTS

From time to time, a decision-making body will be asked to appoint one or more of its members to certain positions. If that appointment involves additional compensation, the agency must make a special disclosure.<sup>30</sup>

The disclosure is on a form provided by the Fair Political Practices Commission and must be posted on the agency's website.<sup>31</sup>

#### Local Agency Chief Executives and Staff

Governing bodies must approve all contracts with local agency chief executives (as defined) in open session, which must be reflected in the minutes.<sup>32</sup> In addition, salaries, salary schedules and fringe benefits must be approved at a regular (as opposed to a special) meeting of the body.<sup>33</sup>

Copies of contracts are public documents must be made available on request<sup>34</sup> (although some agencies elect to post these documents on their websites in the spirit of transparency).

Beginning in 2012, California law prohibits local agencies<sup>35</sup> from approving contracts for chief executives or department heads (as defined<sup>36</sup>) that contain automatic renewal clauses that provide for automatic compensation adjustments that exceed the cost of living.<sup>37</sup>

Contracts must also comply with California law restrictions on the amount of severance an agency pays if it becomes necessary to terminate a contract with a local agency employee.<sup>38</sup> Copies of severance agreements are public documents.<sup>39</sup>

If an employee is subsequently convicted of abuse of position (as defined<sup>40</sup>), the employee must reimburse 1) any severance payments paid,<sup>41</sup> and 2) any paid leave provided pending charges.<sup>42</sup>



#### FOR MORE INFORMATION

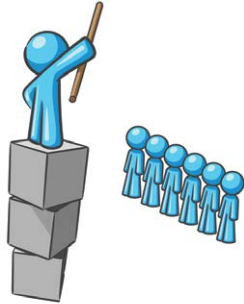
On executive compensation issues, see [www.ca-ilg.org/post/executive-compensation-issues](http://www.ca-ilg.org/post/executive-compensation-issues).

For specific questions, please contact agency counsel.

## Special Issue: Speaking and Other Fees

### Basic No-Honoraria Rule

California 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.<sup>43</sup> No local elected office holder, candidate for local elected office, or designated employee may accept such payments—which are known as honoraria.<sup>44</sup> The notion is such communications are part of a public official's service.



If one receives an honorarium from someone who is unaware of the rules, there is a 30-day time limit for returning it.<sup>45</sup>

### 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.<sup>46</sup> A public official may not make such donations a condition for the speech, article or meeting attendance.<sup>47</sup> In addition, the official may not claim the donation as a deduction for income tax purposes.<sup>48</sup> Nor may the donation have a reasonably foreseeable financial effect on the public official or on any member of the official's immediate family.<sup>49</sup> The official may not be identified to the nonprofit organization in connection with the donation.<sup>50</sup>

- » **Payments Deposited in Local Agency General Fund.** An honorarium given to an official that is unused may be deposited into the local agency's general fund within 30 days of receipt, so long as it is not claimed by an official as a deduction from income for income tax purposes.<sup>51</sup>
- » **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.<sup>52</sup> This exception does not apply, however, when the main activity of the business or profession is making speeches.<sup>53</sup>
- » **Some Gestures 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.<sup>54</sup>

## Penalties

The restrictions against accepting fees are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>55</sup>



These penalties can include any or all of the following:

- » Immediate loss of office;<sup>56</sup>
- » Prohibition from seeking elected office in the future;<sup>57</sup>
- » Fines of up to \$10,000 or more depending on the circumstances;<sup>58</sup> and
- » Jail time of up to six months.<sup>59</sup>



### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).



## Reimbursement of Expenses

### Basic Rules

California law contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses.

### When May Expenses Be Reimbursed?

The core test on whether an expense is reimbursable is whether the expense was "actual and necessary" in the official's performance of official duties.<sup>60</sup> Local agencies must adopt



expense reimbursement policies that specify which kinds of activities are reimbursable for decision-making body members.<sup>61</sup> Many also have policies that govern employee reimbursements. Such policies are an opportunity for a local agency to make findings on why reimbursable activities are necessary to the individual's performance of their duties.<sup>62</sup>

Of course, if one has already received a cash advance or other form of payment for an expense, one may not request reimbursement. Double-charging a public agency for expenses misappropriates public resources and is a crime.<sup>63</sup>

### Process Requirements

For decision-making body member reimbursements, local agencies must:

- » Use expense report forms;<sup>64</sup>
- » Identify a "reasonable time" within which these forms must be submitted;<sup>65</sup> and
- » Require that all expenses be documented with receipts.<sup>66</sup>

Those requesting reimbursement must show their request falls within the agency's parameters for use of public resources.<sup>67</sup> Many local agencies have also adopted similar policies for employee reimbursements.

All expense reimbursement requests and supporting documentation are public records.<sup>68</sup>

### Amounts

Local reimbursement policies may specify what constitutes reasonable rates for travel, meals, lodging and other expenses. For decision-making body reimbursements, if a local policy does not specify reimbursement rates, then the reimbursable rates default to Internal Revenue Service guidelines.<sup>69</sup>

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).<sup>70</sup> Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.<sup>71</sup>

California law requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to "reimbursements of members of a legislative body."<sup>72</sup> 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 good practice.<sup>73</sup>

Again, many local agencies have adopted policies that govern 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

See the following resources:

- » “Buying Meals for Others on the Public’s Dime,” available at [www.ca-ilg.org/dime](http://www.ca-ilg.org/dime)
- » “Expense Reimbursement Frequently Asked Questions,” available at [www.ca-ilg.org/ExpenseReimbursementFAQs](http://www.ca-ilg.org/ExpenseReimbursementFAQs)
- » Sample reimbursement policies available at [www.ca-ilg.org/SampleReimbursementPolicies](http://www.ca-ilg.org/SampleReimbursementPolicies)

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

## Penalties

### California Law Penalties

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

- » Loss of reimbursement privileges;<sup>74</sup>
- » Restitution to the local agency;<sup>75</sup>
- » Civil penalties of up to \$1,000 per day and three times the value of the resource used;<sup>76</sup> and
- » Criminal prosecution and a lifetime bar from public office.<sup>77</sup>

At some point, personal use of public resources becomes embezzlement—a form of theft.<sup>78</sup> 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.<sup>79</sup>



### 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.<sup>80</sup> 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.<sup>81</sup>

If the postal service was used in any way, such use can also become the basis for a charge of mail fraud.<sup>82</sup> 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.<sup>83</sup>

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement will also apply.<sup>84</sup>



### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## Restrictions on Use of Public Resources

### Basic Rules

#### No Personal or Political Use of Public Resources

Under California law, using public resources for either personal or political purposes is illegal.<sup>85</sup> “Public resources” include such things as:

- » Money (for example, charges made on an agency credit card or account);<sup>86</sup>
- » Staff time;
- » Equipment (for example, machinery, vehicles, technology, tools, telephones, furniture and computers); and
- » Supplies (for example, items one would otherwise purchase at office supply or hardware stores).

“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.<sup>87</sup> Using a public agency vehicle for personal errands is an example, as is using office equipment and supplies for one’s political campaign, business or family purposes (for example, the office photocopier).

There are very narrow exceptions for “incidental and minimal” use of resources. The purpose of these exceptions appears to be more to 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.<sup>88</sup>

In addition, subsequent reimbursement or payment for resources misused is not a defense.<sup>89</sup>



#### No 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.<sup>90</sup> 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,<sup>91</sup> so are materials whose style, tone and timing indicate that their purpose is advocacy as opposed to informational.<sup>92</sup>



#### FOR MORE INFORMATION

On ballot measure activities, see [www.ca-ilg.org/ballot-measure-activities](http://www.ca-ilg.org/ballot-measure-activities).

#### 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, California law forbids sending mass mailings at public expense.<sup>93</sup> 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 using the official’s name and office.<sup>94</sup>



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).



#### FOR MORE INFORMATION

On mass mailings, see the following resources:

- » "Career-Saving Tips on Mass Mailings," available at [www.ca-ilg.org/massmailing](http://www.ca-ilg.org/massmailing)
- » The Fair Political Practices Commission fact sheet on prohibited mass mailings available at [www.fppc.ca.gov/index.php?id=54#fact](http://www.fppc.ca.gov/index.php?id=54#fact)

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

## Penalties

Public officials face both criminal and civil penalties for using public resources for personal or political benefit.<sup>95</sup>



Criminal penalties include:

- » Two- to four-years in state prison;<sup>96</sup> and
- » Permanent disqualification from public office.<sup>97</sup>

Civil penalties include fines of up to:

- » \$1,000 for each day the violation occurs;
- » Three times the value of the resource used;<sup>98</sup> and
- » Possible reimbursement for the costs of any litigation initiated by private individuals, including reasonable attorney's fees.<sup>99</sup>

Additionally, the Fair Political Practices Commission may impose an administrative fine of up to \$5,000 per violation.<sup>100</sup>

Misuse of public resources is also punishable under laws prohibiting misappropriation of public resources and embezzlement.<sup>101</sup>

Both intentional and negligent violations of the law are punishable.<sup>102</sup>



#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

### ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

California's Political Reform Act requires local agencies to adopt local conflict of interest codes.<sup>110</sup> These codes supplement California law, by specifying which positions in the agency are subject to which ethics laws.

**For more information**, see "About Local Conflict of Interest Codes" (see <http://www.ca-ilg.org/local-conflict-of-interest-codes>) and the Fair Political Practices Commissions materials on adopting local conflict of interest codes (see [www.fppc.ca.gov/index.php?id=228](http://www.fppc.ca.gov/index.php?id=228)).

## Gifts to Public Officials

### Basic Rules

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



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

Generally speaking, California public officials must:

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

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

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

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

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

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

Explanations of each of questions are available at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter).

Unless one of the exceptions applies<sup>111</sup> (see chart on page 39), a public official receives a gift for purposes of California's gift rules any time the official receives anything that:

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

## Exceptions/Gifts Subject to Special Rules

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

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

- ✓ Gifts to family members<sup>115</sup>

### Gifts Subject to Special Valuation Rules (Question 2 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

- ✓ Air transportation<sup>116</sup>
- ✓ Nonprofit or political fundraiser tickets<sup>117</sup>
- ✓ Other tickets and passes<sup>118</sup>
- ✓ Invitation only events<sup>119</sup>

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

- ✓ Someone who is an intermediary for another<sup>120</sup>
- ✓ Group gifts<sup>121</sup>
- ✓ Family gifts<sup>122</sup>
- ✓ Gestures received in the context of certain relationships:
  - » Bona fide dating relationships<sup>123</sup>
  - » Existing personal or business relationship<sup>124</sup>
  - » Long term relationships<sup>125</sup>
- ✓ Acts of neighborliness<sup>126</sup>
- ✓ Agency gifts<sup>127</sup>
  - » Gifts from public agencies to agency officials<sup>128</sup>
  - » Agency provided tickets or passes<sup>129</sup>
  - » Agency raffles or gift exchanges<sup>130</sup>

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

- ✓ Gifts paid for (reimbursed) in full<sup>131</sup> or in part<sup>132</sup>
- ✓ Gifts exchanged on occasions like birthdays or holidays<sup>133</sup>

- ✓ Trading off who pays for meals or activities ("reciprocal exchanges")<sup>134</sup>
- ✓ Employee gift exchanges<sup>135</sup>
- ✓ Barter transactions<sup>136</sup>
- ✓ Presentations, event attendance and articles written<sup>137</sup>
- ✓ Ceremonial functions<sup>138</sup>
- ✓ Employment-related gestures<sup>139</sup>
- ✓ Business gestures<sup>140</sup>
- ✓ Gestures in connection with volunteer nonprofit service<sup>141</sup>
- ✓ Prizes in bona fide competitions<sup>142</sup>

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

- ✓ Home hospitality<sup>143</sup>
- ✓ Informational material<sup>144</sup>
- ✓ Inheritances<sup>145</sup>
- ✓ Leave credits<sup>146</sup>
- ✓ Disaster relief payments<sup>147</sup>
- ✓ Personalized plaques or trophies<sup>148</sup>
- ✓ Wedding gifts<sup>149</sup>
- ✓ Travel<sup>150</sup> and free transportation from transportation companies<sup>151</sup>
- ✓ Tickets /free admissions<sup>152</sup>
- ✓ Payments to worthy causes made at an official's request (behested payments)<sup>153</sup>
- ✓ Wedding guest benefits<sup>154</sup>
- ✓ Bereavement offerings<sup>155</sup>
- ✓ Acts of compassion<sup>156</sup>



Gifts can be:

- » Tangible or intangible
- » Real property or personal property
- » Goods or services<sup>113</sup>

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

### TRAVEL PASSES FROM TRANSPORTATION COMPANIES

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



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

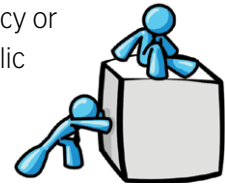
This prohibition applies to any kind of travel — personal, business or on behalf of one's public agency — to any location, near or far. The rule applies both to elected and appointed public officers but not to employees.<sup>158</sup>

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

- ✓ The elected official received a first-class airline upgrade because he was going on his honeymoon and the upgrade was given to all honeymooners.<sup>160</sup>
- ✓ An elected official received free airline travel because he was the spouse of a flight attendant.<sup>161</sup>
- ✓ 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.<sup>162</sup>

### What to Do About Unwanted Gifts?

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



They may also just not want the gift.

Under such circumstances, an official has the following options:

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

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

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



### FOR MORE INFORMATION

On gift laws, see the following resources:

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

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

## Penalties

### California Law Penalties

These gift limit and reporting requirements are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>167</sup>

These penalties can include any or all of the following:

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

### 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.<sup>172</sup> The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.<sup>173</sup> 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.<sup>174</sup> Specifically, honest



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

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.<sup>177</sup>

### *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.<sup>178</sup> 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.<sup>179</sup> A person convicted of a felony involving extortion is forever disqualified from seeking elected office in California.<sup>180</sup>

### Income Tax Violations

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

Income tax evasion carries with it a possible five-year prison term and a fine of up to \$100,000.<sup>181</sup> 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).<sup>182</sup> 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).<sup>183</sup>



### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).



## Use of Campaign Funds

### Basic Rule

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



#### FOR MORE INFORMATION

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

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

### Penalties

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



These penalties can include any or all of the following:

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



#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## Endnotes and Additional Information

**Note:** Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at [www.fppc.ca.gov/index.php?id=52](http://www.fppc.ca.gov/index.php?id=52). A source for case law information is [www.findlaw.com/cacases/](http://www.findlaw.com/cacases/) (requires registration)

- 1 For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which *permits* a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1.
- 2 *County of San Diego v. Milotz*, 46 Cal. 2d 761, 767, 300 P.2d 1, 4 (1956) (action to recover fees from court reporter for faulty work).
- 3 *Id.*
- 4 Cal. Gov't Code §§ 53234-35. See [www.ca-ilg.org/ab1234compliance](http://www.ca-ilg.org/ab1234compliance).
- 5 Cal. Const. art. XI, § 1(b).
- 6 See, e.g., Cal. Pub. Res. Code § 5784.15(a), (b) (park and recreation district board members may be compensated a maximum of \$100 per day for board meetings and \$500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive \$100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code §§ 20201, 20202 (water district officials—as defined—may, by ordinance, provide for compensation of \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request; not to exceed 10 days service/meetings per month); Cal. Water Code §§ 34740-41 (California water districts must adopt bylaws fixing compensation paid to officers, but may not exceed \$100 per day for attendance at board meetings and for each day's service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed 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).
- 7 Cal. Pub. Res. Code §§ 5784.15(a), (d).
- 8 Cal. Health & Safety Code § 6489.
- 9 Cal. Harb. & Nav. Code § 6060.
- 10 Cal. Pub. Util. Code § 11908.1.
- 11 Cal. Water Code § 21166.
- 12 *Id.*
- 13 Cal. Water Code § 22840.
- 14 Cal. Water Code §§ 20201, 20202.
- 15 Cal. Water Code §§ 34740-41.
- 16 Cal. Water Code § 30507.
- 17 Cal. Water Code § 30507.1.
- 18 Cal. Water Code § 71255.
- 19 Cal. Gov't Code § 53232.1(a).
- 20 Cal. Gov't Code § 53232.1(b).
- 21 Cal. Gov't Code § 53232.1(c).
- 22 Cal. Const. art. XI, § 5(b)(4).
- 23 See Cal. Gov't Code § 36516.
- 24 See Cal. Gov't Code § 36516(a).
- 25 *Id.*
- 26 See Cal. Gov't Code § 36516.5 (providing a change of compensation does not apply during the same term but allowing adjustment when one or more members serving staggered terms begin new terms).

- 27 See Cal. Gov't Code § 36516.1.
- 28 See Cal. Gov't Code § 36516(d).
- 29 Cal. Gov't Code § 36516(c).
- 30 2 Cal. Code Regs. § 18705.5(c).
- 31 2 Cal. Code Regs. § 18705.5(c)(3). The form is called "Form 806." More information is available from the Fair Political Practices Commission website: <http://www.fppc.ca.gov/index.php?id=635>.
- 32 Cal. Gov't Code § 53262 (a) ("All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.").
- 33 Cal. Gov't Code § 54956(b) ("Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.").
- 34 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").
- 35 Cal. Gov't Code § 3511.1(c) (defining local agency as "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency").
- 36 Cal. Gov't Code § 3511.1(d) (defining "local agency executive" as "any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:
- (1) The person is the chief executive officer of the local agency.
  - (2) The person is the head of a department of a local agency.
- 37 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:
- (a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.").
- 38 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:...
- (b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.") See also Cal. Gov't Code § 53260(a) ("All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.")

39 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").

40 Cal. Gov't Code § 53243.4 ("For purposes of this article, 'abuse of office or position' means either of the following:

    - (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.
    - (b) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.").

41 Cal. Gov't Code §§ 53243.2 ("On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").

- 42 Cal. Gov't Code §§ 53243 ("On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").
- 43 See Cal. Gov't Code § 89501 (definition of honorarium).
- 44 See Cal. Gov't Code § 89502 (general prohibition).
- 45 See Cal. Gov't Code § 89501(b)(2).
- 46 See 2 Cal. Code Regs. §18932.5(a)(1) (direct charitable contributions excluded from honorarium definition).
- 47 See 2 Cal. Code Regs. §18932.5(a)(2).
- 48 See 2 Cal. Code Regs. §18932.5(a)(3).
- 49 See 2 Cal. Code Regs. §18932.5(a)(4).
- 50 See 2 Cal. Code Regs. §18932.5(a)(5).
- 51 See Cal. Gov't Code § 89501(b)(2).
- 52 See Cal. Gov't Code § 89501(b)(1).
- 53 *Id.*
- 54 2 Cal. Code Regs. §§ 18932.4(e), 18950.3 (under review by FPPC).
- 55 See generally Cal. Gov't Code §§ 91000-14.
- 56 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).
- 57 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 58 Cal. Gov't Code § 91000(b).
- 59 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 60 Cal. Gov't Code § 53232.2.
- 61 Cal. Gov't Code § 53232.2(b).
- 62 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).
- 63 See *People v. Bradley*, 208 Cal. App. 4th 64 (2012), reh'g denied (2012), rev. denied (2012) (upholding the conviction of city manager and council member of misappropriating public funds –Penal Code section 424--when they made charges on city credit card for expenses that they had also received cash advances for).
- 64 Cal. Gov't Code § 53232.3(a).
- 65 Cal. Gov't Code § 53232.3(c).
- 66 *Id.*
- 67 Cal. Gov't Code § 53232.3(b).
- 68 Cal. Gov't Code § 53232.3(e).
- 69 Cal. Gov't Code § 53232.2(c).
- 70 Cal. Gov't Code § 53232.2(f).
- 71 Cal. Gov't Code § 53232.2(g).
- 72 Cal. Gov't Code § 53232.2(b).
- 73 Cal. Const. art. XI, § 5. *County of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th 1264, 101 Cal. Rptr. 784 (2000).
- 74 See Cal. Gov't Code § 53232.4.
- 75 *Id.*
- 76 See Cal. Gov't Code § 8314.
- 77 See Cal. Penal Code § 424. See also Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).
- 78 Cal. Penal Code § 504.
- 79 Cal. Penal Code § 514. See also Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).
- 80 See 26 U.S.C. § 7201.
- 81 See 26 U.S.C. § 7203.
- 82 See generally 18 U.S.C. §§ 1341-46.
- 83 See generally 18 U.S.C. § 3571(b), (d).
- 84 See, for example, 18 U.S.C. §§ 641 (crime of embezzlement against the United States), 648 (misuse of public funds).
- 85 See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- 86 See *People v. Bradley*, 208 Cal. App. 4th 64 (2012) (upholding the conviction of city manager and council member of misappropriating public funds – Penal Code section 424 – when they made personal charges on city credit card).
- 87 Cal. Gov't Code § 8314(b)(4).
- 88 Cal. Gov't Code § 8314(b)(1).
- 89 See *People v. Bradley*, 208 Cal. App. 4th at 81-82 (holding restitution was not a defense because misappropriation occurs as soon as credit card was used for personal purpose or unused cash advances were not promptly returned; this is particularly the case when restitution is prompted by a criminal investigation).

90 *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.

91 Cal. Gov't Code § 54964(b)(3).

92 *Vargas*, 46 Cal. 4th at 40, citing *Stanson v. Mott*, 17 Cal. 3d 206, 130 Cal. Rptr. 697 (1976).

93 *See* Cal. Gov't Code § 89001.

94 *See* 2 Cal. Code Regs. § 18901.

95 *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.

96 Cal. Penal Code § 424

97 *See* Cal. Penal Code § 424. *See also* Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).

98 Cal. Gov't Code § 8314(c)(1).

99 Cal. Gov't Code § 91012.

100 Cal. Gov't Code § 83116.

101 Cal. Penal Code § 424 (“(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law . . .”).

102 Cal. Gov't Code § 8314(c)(1).

103 Cal. Penal Code §§ 68(a), 518; 18 U.S.C. §§ 201, 872-880.

104 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).

105 Cal. Gov't Code § 87207(a)(1). For more information, see <http://www.ca-ilg.org/StatementofEconomicInterests>.

106 Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2 (the FPPC adjusts the limit biennially).

107 If the limit is exceeded one has several options, any of which must be exercised within 30 days of receiving the gift. One may return the gift unused to the donor, reimburse the donor for all or a portion of the value of the gift or donate the gift, without claiming a tax deduction, to a 501(c)(3) charitable organization or government agency. 2 Cal. Code Regs. § 18941(c).

108 Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. § 18703.4. This is because public officials may not make, participate in making, or influence governmental decisions which affect their personal financial interests. Cal. Gov't Code § 87100. The law makes a judgment that one is financially self-interested in a decision when one accepts gifts exceeding the \$440 (2013-14) gift limit from someone affected by that decision. Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2(a).

109 2 Cal. Code Regs. §§ 18940(d), 18730(b)(8.1)(A) (application of the gift disclosure rules). *See also* 2 Cal. Code Regs. §§ 18701(a), 18730(b)(9)(A) (application of the disqualification/conflict of interest rules). *See also* 2 Cal. Code Regs. § 18940.1(b) (definition of “official”).

110 Cal. Gov't Code § 87300.

111 *See generally* 2 Cal. Code Regs. § 18942 (list of exceptions in the regulations).

112 *See generally* 2 Cal. Code Regs. § 18940(a).

113 2 Cal. Code Regs. § 18940(a).

114 *See generally* 2 Cal. Code Regs. § 18943.

115 2 Cal. Code Regs. § 18943.

116 2 Cal. Code Regs. § 18946.5.

117 2 Cal. Code Regs. § 18946.4.

118 2 Cal. Code Regs. § 18946.1.

119 2 Cal. Code Regs. § 18946.2.

120 Cal. Gov't Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(b) (the source of the payment is the source of the gift).

121 2 Cal. Code Regs. § 18945.2.

122 2 Cal. Code Regs. § 18942(a)(3).

123 2 Cal. Code Regs. § 18942(a)(17)(A).

124 2 Cal. Code Regs. § 18942(a)(18).

125 2 Cal. Code Regs. § 18942(a)(17)(C).

126 2 Cal. Code Regs. § 18942(a)(16).

127 2 Cal. Code Regs. § 18944.

128 2 Cal. Code Regs. § 18944.3.

129 2 Cal. Code Regs. § 18944.1.

130 2 Cal. Code Regs. § 18944.2.



- 131 See Cal. Gov't Code § 82028(a).
- 132 2 Cal. Code Regs. § 18941(c)(3).
- 133 2 Cal. Code Regs. § 18942(a)(8)(A).
- 134 2 Cal. Code Regs. § 18942(a)(8)(B).
- 135 2 Cal. Code Regs. § 18944.2(d) (does not apply to tickets or passes that come from someone outside the agency).
- 136 See Cal. Gov't Code § 82028(a).
- 137 Cal. Gov't Code §§ 89501, 89502.
- 138 2 Cal. Code Regs. §§ 18942(a)(12), 18942.3.
- 139 See Cal. Gov't Code §§ 82030, 82030.5, 87207.
- 140 See Cal. Gov't Code §§ 82005, 87207, 87209.
- 141 See Cal. Gov't Code § 82028(a); Institute for Local Government, Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder, at 7 (2008). Available at [www.ca-ilg.org/document/commitment-nonprofit-causes-and-public-service-some-issues-ponder](http://www.ca-ilg.org/document/commitment-nonprofit-causes-and-public-service-some-issues-ponder).
- 142 2 Cal. Code Regs. § 18942(a)(13).
- 143 2 Cal. Code Regs. § 18942(a)(7).
- 144 2 Cal. Code Regs. §§ 18942(a)(1), 18942.1.
- 145 2 Cal. Code Regs. § 18942(a)(5).
- 146 2 Cal. Code Regs. § 18942(a)(9).
- 147 2 Cal. Code Regs. § 18942(a)(10).
- 148 2 Cal. Code Regs. § 18942(a)(6).
- 149 2 Cal. Code Regs. §§ 18946.3, 18942(b)(2).
- 150 2 Cal. Code Regs. §§ 18950-18950.4 (under review by FPPC).
- 151 See Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .").
- 152 2 Cal. Code Regs. §§ 18946.4, 18946.1, 18946.2, 18942(a)(12), 18942.1.
- 153 See Cal. Gov't Code § 82015 (note the behested payment reporting requirement also applies to candidates). For more information, see [www.ca-ilg.org/BehestedPayments](http://www.ca-ilg.org/BehestedPayments).
- 154 2 Cal. Code Regs. § 18942(a)(14).
- 155 2 Cal. Code Regs. § 18942(a)(15).
- 156 2 Cal. Code Regs. § 18942(a)(17)(B).
- 157 See Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .").
- 158 See 3 Cal. Op. Att'y Gen. 318 (1944).
- 159 74 Cal. Op. Att'y Gen. 26 (1991).
- 160 74 Cal. Op. Att'y Gen. 26 (1991).
- 161 67 Cal. Op. Att'y Gen. 81 (1984).
- 162 80 Cal. Op. Att'y Gen. 146 (1997).
- 163 2 Cal. Code Regs. § 18941(c)(2).
- 164 2 Cal. Code Regs. § 18946.1 (b)(3) ("A pass or ticket has no reportable value unless it is ultimately used or transferred to another person.").
- 165 2 Cal. Code Regs. § 18941(c)(2).
- 166 2 Cal. Code Regs. § 18941(c)(3).
- 167 See generally Cal. Gov't Code §§ 91000-14.
- 168 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).
- 169 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 170 Cal. Gov't Code § 91000(b).
- 171 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 172 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 173 *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).
- 174 *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).
- 175 See *Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC §1346, defining "scheme or artifice to defraud," only criminalizes bribes and kick-back schemes).
- 176 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005).
- 177 18 U.S.C. §§ 1341 ("...shall be fined under this title or imprisoned not more than 20 years, or both."). 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both."). See generally 18 U.S.C. § 3571(b), (d).
- 178 18 U.S.C. § 1951.
- 179 18 U.S.C. § 1951(a). See generally 18 U.S.C. § 3571(b).
- 180 See Cal. Elect. Code § 20 (making those convicted of a felony involving bribery, embezzlement, extortion or theft of public money ineligible for public office).
- 181 26 U.S.C. § 7201.
- 182 *Id.*
- 183 26 U.S.C. § 7206(1).
- 184 See Cal. Gov't Code §§ 89510-22. 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).

- 185 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).
- 186 See generally Cal. Gov't Code §§ 91000-14.
- 187 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).
- 188 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 189 Cal. Gov't Code § 91000(b).
- 190 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).

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