

Question 1: Did I or My Family Receive Something of Value?

<http://www.ca-ilg.org/GiftsQuestion1>

Unless one of the exceptions applies,¹ a public official receives a gift for purposes of California's gift rules (see summary on next page) any time the official receives anything that

- ✓ Has a monetary value and
- ✓ Provides the official with a personal benefit
- ✓ For which the official doesn't pay full value.²

Gifts can be:

- ✓ Tangible or intangible
- ✓ Real property or personal property;
- ✓ Goods or services.³

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

Examples of Gifts

The following list illustrates the kinds of gestures to be alert to.

- **Money:** Gifts of cash, particularly from those who have matters pending before one's agency, are particularly risky (they can look like bribes to both law enforcement officials and the public).
- **Loans and Debt Forgiveness:** Loans can also be gifts if not made at market rates.⁴ Similarly, if someone forgives a loan or waives all or part of timely payment of amount due, such gestures would be a gifts.⁵ Loans from those who work at an agency are prohibited outright.⁶

California's Basic Gift Rules

The goal underlying California's gift rules is to prevent either the perception or the reality of gifts influencing public officials' actions. This is because public agency actions should always promote the *public's* interests, as opposed to narrow personal or political interests.

As a result, California public officials must:

1. **Report gifts worth \$50 or more on their [Statement of Economic Interests](#).**⁷ 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.
2. **Not receive gifts that exceed \$440 from a single source per calendar year.**⁸ 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 (2013-2014 amount).⁹
3. **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 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.¹⁰

More detail on these rules is available at www.ca-ilg.org/GiftCenter. These rules apply to elected officials, top level managers and others who are covered in the agency's local conflict of interest code or make governmental decisions.¹¹

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.

- **Tangible Items.** Gift items include such gestures as receiving free or discounted meals, beverages, bottles of wine or liquor, food items, sporting equipment, furniture, appliances, art, office equipment or supplies, computers, media, electronics, jewelry, fancy pens, automobiles, watercraft, books, clothes and tools.
 - **Note:** The *use* of an item without paying the full market value of that use can be a gift (for example, the use of a vehicle or art object). Anytime you borrow an item or receive something on loan can be a gift if one doesn't pay for it.

- **Activities.** Gifts of activities include free or discounted access to 1) sporting or entertainment events and 2) recreational facilities (for example, golf courses/greens fees, free memberships in clubs, and lift tickets for skiing and snowboarding). Certain kinds of free or discounted travel expenses can be a gift, including transportation (including in privately-owned vehicles) and lodging (including in privately-owned homes).
- **Services:** Receiving free or discounted services can also be a gift. Examples include free or discounted utility services (including phone, cable and internet) or personal services (including construction, accounting, legal, interior design, real estate, consulting, property maintenance, information technology, personal care or grooming).
- **Winning Prizes and Drawings.** If the prize is related to someone's status as a public servant (for example, a drawing at a meeting of local officials), the prize is a gift and is subject to the reporting and limit requirements.¹² Otherwise, the prize needs to be reported as income.¹³ Winning an agency raffle also involves receiving a gift if the prize came from someone outside the agency.¹⁴
- **Receiving Lodging and Other Uses of Real Property.** Free or discounted lodging, rent, stays at vacation properties and purchases of property can be gifts.
- **Discounts or Rebates Not Available to Others.** A rebate or a discount in the price of anything of value unless the rebate or discount is offered in the ordinary course of business without regard to official status.¹⁵

Note that the Fair Political Practices Commission has recognized a variety of [exceptions](#) to what constitutes a gift.¹⁶

Gifts to Family Members Can Be a Gift to Official

The rules also recognize that people might try to curry favor with public servants by giving gifts to their family members. As a result, gifts given to an official's family may be considered a gift to the official for the full value of the gift.¹⁷ The regulation defines "family" for this purpose (which generally includes spouses, partners and dependent children).¹⁸

There may be exceptions under some circumstances if the official can demonstrate an established working, social or other relationship between the family member and the gift giver.¹⁹ In addition, there must not be evidence suggesting that the gift giver intended to influence the official.²⁰ Such evidence can include:

- ✓ The gift giver is involved in an action or decision before the official's agency or a decision before the agency in the prior twelve (12) months;
- ✓ The gift giver has a contract or is engaged in a business that regularly seeks contracts with the agency; or
- ✓ The gift giver is engaged in a business that regularly comes before the agency for the purpose of receiving a license, permit or other entitlement.²¹

The Fair Political Practices Commission's regulations have more detail about the kinds of circumstances that suggest a gift giver gave a gift to an official's family member with the purpose of influencing the official.²²

Compliance Strategy: Questions for Public Officials to Ask About Nice Gestures

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

1. [Did I or my family received 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.

About This Resource

This document is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities.

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on gift rules public officials go to <http://www.ca-ilg.org/GiftCenter>.

As part of its mission of promoting good government at the local level, the Institute tries to help local officials understand those rules.

These informational materials, however, are not legal advice. Attorneys can and do disagree on how to interpret the rules in this area. In addition, the rules can and do change over time.

Officials are encouraged to consult with an attorney or relevant regulatory authorities for up-to-date information and advice on specific situations.

References and Resources

Note: The Fair Political Practices Commission Regulations are available from <http://www.fppc.ca.gov/index.php?id=496> (the gift regulations start at section 18940).

¹ See generally 2 Cal. Code Regs. § 18942 (list of exceptions in the regulations).

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

³ 2 Cal. Code Regs. § 18940(a).

⁴ Fair Political Practices Commission, *Vahedi* Advice Letter, No. I-00-111 (2000) (“... a loan *may* be considered a “gift” and not income to the extent that the interest rate of the loan is less than the fair market interest rate.”).

⁵ 2 Cal. Code Regs. § 18940(a).

⁶ Cal. Gov't Code § 87460.

⁷ Cal Gov't Code § 87207(a)(1).

⁸ Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2 (the FPPC adjusts the limit biennially, and it will remain at \$440 until the end of 2012).

⁹ 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(a).

¹⁰ 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 gift limit from someone affected by that decision. Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2(a).

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

¹² *See* 2 Cal. Code Regs. § 18942(a)(13).

¹³ 2 Cal. Code Regs. § 18942(a)(13).

¹⁴ 2 Cal. Code Regs. § 18944.2 (b) (the agency is the intermediary for the gift under such circumstances).

¹⁵ 2 Cal. Code Regs. § 18940.

¹⁶ 2 Cal. Code Regs. § 18942.

¹⁷ *See generally* 2 Cal. Code Regs. § 18943.

¹⁸ 2 Cal. Code Regs. § 18943(b).

¹⁹ 2 Cal. Code Regs. § 18943(c)(1).

²⁰ 2 Cal. Code Regs. § 18943(c)(2).

²¹ 2 Cal. Code Regs. § 18943(c)(2).

²² 2 Cal. Code Regs. § 18943.

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