

Question 6: What Are My Options After Receiving a Gift?

<http://www.ca-ilg.org/GiftsQuestion6>

Basic Obligations

An official who receives a gift must take certain steps to comply with California's gift rules. This includes

1. **Reporting gifts worth \$50 or more on his or her [Statement of Economic Interests](#).**¹
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 receiving gifts that exceed \$440 from a single source per calendar year.**²
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 \$440.³
3. **Having accepted gifts may also 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.⁴

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

Determining whether one must take one or more of the steps above can be a complex task. 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.

These rules apply to elected officials, top level managers and others who make governmental decisions and are covered in their agency's conflict of interest code.⁵

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.

Alternative Options

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 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.⁶ 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.⁷
- Donate the gift, unused, within thirty (30) 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 gifts 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.)⁸
- Reimburse the donor for the fair market value of the gift within 30 days of receiving it.⁹ 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.

When Are These Requirements Triggered?

A gift is both received and accepted when the official or the official's family member does any of the following:

- Knowingly takes actual possession of the gift

- Uses the gift or is provided the benefit of the gift
- Takes any action exercising direction or control over the gift.¹⁰

For rebates and discounts, those are received and accepted when the official knows that the gesture is made because of their official status and/or isn't available to the public.¹¹

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](#).**¹² 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.**¹³ 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).¹⁴
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.¹⁵

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.¹⁶

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.

Another trigger is when the gift giver is involved in a governmental decision coming before the official. When that happens, the official must look back 12 months and add up all gifts from that gift source.¹⁷ If the official has accepted gifts over \$440 in the preceding 12 months from that source, the official most likely has a disqualifying conflict of interest and cannot participate in any way in the matter.

The disqualification analysis also applies to gifts that are *promised to* the public official.¹⁸ When is a gift “promised to” an official or his or her family member?

- **The Official.** A gift has been promised on the date that it is offered to the official, provided that the official then either takes possession or exercises direction or control over it.¹⁹
- **Family Members.** The requirements are triggered once the official becomes aware of the promise, provided that the family member then either takes possession or exercises direction or control over it.²⁰

What’s a “Gift” for Purposes of the Rules?

The concept is broad. 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.²¹

Gifts can be:

- ✓ Tangible or intangible
- ✓ Real property or personal property;
- ✓ Goods or services.²²

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

Note that the Fair Political Practices Commission has recognized a variety of [exceptions](#) to what constitutes a gift.²³

For more about the rules relating to gifts to family members, see [question 1](#).

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 Cal Gov't Code § 87207(a)(1); 2 Cal. Code Regs. § 18940(a) and (d) .

² Cal. Gov't Code § 89503; 2 Cal. Code Regs. §§ 18940(a), 18940.2 (the FPPC adjusts the limit biennially, and it will remain at \$440 until the end of 2012).

³ 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 charitable organization or government agency. 2 Cal. Code Regs. § 18941(a).

⁴ Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. §§ 18940(a), (c), 18940.1(b), 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).

⁵ 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 Regs. § 18940.1(b).

⁶ 2 Cal. Code Regs. §§ 18941(c)(2).

⁷ 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.").

⁸ 2 Cal. Code Regs. §§ 18941(c)(2).

⁹ 2 Cal. Code Regs. §§ 18941(c)(3).

¹⁰ 2 Cal. Code Regs. § 1894(1)(a).

¹¹ 2 Cal. Code Regs. § 1894(1)(a).

¹² Cal Gov't Code § 87207(a)(1); 2 Cal. Code Regs. § 18940(a) and (d) .

¹³ Cal. Gov't Code § 89503; 2 Cal. Code Regs. §§ 18940(a), 18940.2 (the FPPC adjusts the limit biennially, and it will remain at \$440 until the end of 2012).

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¹⁵ Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. §§ 18940(a), (c), 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).

¹⁶ 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* §18940.1 (b)(definition of "Official").

¹⁷ *See* Cal. Gov't Code § 87102.8 (e).

¹⁸ *See* Cal. Gov't Code § 87102.8 (e).

¹⁹ 2 Cal. Code Regs. § 1894(1)(b).

²⁰ 2 Cal. Code Regs. § 1894(1)(b).

²¹ *See generally* 2 Cal. Code Regs. § 18940(a).

²² 2 Cal. Code Regs. § 18940(a).

²³ 2 Cal. Code Regs. § 18942.