



Understanding the New Travel-Related Exceptions to California's Gift Rules

www.ca-ilg.org/TravelRelatedGiftExceptions

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Related Resources

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Also visit these links to view other related documents:

- ILG's resources on gifts at www.ca-ilg.org/GiftCenter
- "Special Issues Around Expenses and Expense Reimbursement" available at www.ca-ilg.org/PublicResourcesSpecialIssues

Question: *I heard that California's Fair Political Practices Commission (FPPC) recently made changes to the rules related to receiving free or discounted travel. What do I need to know about these changes? Part of the reason for asking is that I have been invited by a trade association to speak on one of my policy initiatives at its yearly conference. The association has offered to pay for my airfare and hotel costs. I also won't be paying for admission to the conference. In addition, one of my fellow elected officials has been asked by our agency to travel to another part of the state to view a new state-of-the-art recycling facility. The developer of this facility has offered to pay the agency to send someone to tour the facility, and our community is considering contracting to build a similar facility.*

Answer: Yes, the FPPC reorganized and — in some instances — relaxed the rules on when a public official may accept free or discounted travel. The changes take effect January 1, 2014.

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The travel rules are part of a larger body of rules related to gifts. For more information about the gift rules in general, see the Gift Resource Center section on the Institute for Local Government website (www.ca-ilg.org/GiftCenter). The center suggests that local officials ask a series of questions to assist them in seeking advice on how the gift rules might apply with respect to a certain gesture (see "Compliance Strategy: Questions for Public Officials to Ask About Nice Gestures" on page 2).

General Rule

Travel payments are one of those "special rules" areas of the gift rules (see question 4 in the "Compliance Strategy" section on page 2). Anytime a public official travels at a free or discounted rate, he or she must consider how the travel rules apply. Payments for travel include transportation, lodging, meals and other expenses associated with being on the road.¹

Generally, payments for travel to an official are gifts that must be reported on his or her Statement of Economic Interests and are subject to the annual gift limit. (For 2013–14 the annual gift limit is \$440.²)

Receiving such a payment may result in disqualification from participating in a public agency decision involving the payer.³

Payments for Travel that are Not Gifts (Thus Not Reportable or Subject to Limits)

Some forms of travel are not considered gifts.

Transportation Provided to an Official in a Vehicle Owned by Another Official Traveling to the Same Event.

The travel regulations now contain a specific exemption for ride sharing among public agency officials. Ride sharing does not constitute a gift when the officials are going to the same event as representatives from their respective offices.⁴

According to the FPPC, this issue has come up when the ride was in a private airplane owned by one of the officials. Prior to this exception, accepting such a flight would constitute a gift over the gift limit. Such travel is no longer a gift subject to gift reporting and limits.

Payments Made in Conjunction with Official Agency Business.

Many of the changes in the travel regulations relate to situations in which someone provides resources to an agency to enable someone to travel for a purpose that benefits the agency. The theory is these payments are for an official agency purpose and are in lieu of using agency funds.⁵ As such, the payment does not confer a personal benefit on the traveling official⁶ and is more akin to a gift to a public agency.

In order to qualify under this exception to the gift rules, the payment must:

- Be used for official agency business, with the agency deciding who will do the traveling;
- Be made directly to the government agency or by making arrangements with the government agency to make payments directly to the transportation or lodging providers;
- Provide no personal benefit to the individual who uses the payment; and
- Be reported publicly by the agency.⁷

Compliance Strategy: Questions for Public Officials to Ask About Nice Gestures Made by Others in the Context of Conducting Agency Business

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

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

When does travel qualify as use for official agency business? When, for example, the travel is to:

- Perform regulatory inspections;
- Provide training or educational information directly related to the duties of the agency;
- Receive training directly related to an official's duties; or
- View an operation, structure or facility to help make a decision whether to enter into a contract regarding a similar operation.⁸

The travel can be no longer than necessary to accomplish the official business purpose.¹²

The payment of your colleague's travel to tour the new recycling facility likely falls into this category. Because the payment was made to the agency and the agency asked your colleague to make the trip, this payment for travel is not considered a gift (as long as, of course, the travel is no longer than necessary).

The community has a right to know about such payments, however. As a result, your agency will need to disclose the payment on a Form 801 (available at <http://www.fppc.ca.gov/index.php?id=512>). This form must be maintained as a public record.¹³

Additionally, if an agency receives \$2,500 or more in payments for travel within a calendar quarter, a copy of the reporting or a summary must be filed with the FPPC and posted on the local agency website or on the FPPC website if the agency doesn't have one.¹⁴ A local jurisdiction may require additional filings for agencies within its jurisdiction.¹⁵

Note that until January 1, 2014, your colleague (described in the question at the beginning of the article) as an elected official, would be prohibited from receiving payment from an outside source for travel. The updated regulations allow for such use if the transportation, lodging and food are directly related to the official's public duties and meet other specified requirements.¹⁶

Changes to the Strict Per Diem Rule

Until January 1, 2014, officials may accept payments only for travel consistent with the per diem limits established by their local agency. Payments in excess of those limits are reportable gifts to the official.¹⁷

The commission recognized that this strict per diem payment rule does not work in every situation. An example is when a conference is at a hotel where the rates are higher than the

Reminder: Some Forms of Travel Are Banned Altogether

The California Constitution forbids public officials from receiving free or discounted travel from a transportation company.⁹ 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.¹⁰

The penalty for accepting free transportation from transportation carriers is severe: forfeiture of office.

There are some exceptions to this rule when the free or discounted travel is available to the general public, such as frequent flyer programs, when the discounted or free travel is unrelated to the person's status as a public official.¹¹

agency's limits. The changes to the regulations address this by allowing the agency to pay for lodging or food at a widely attended meeting or conference, if the value is substantially equivalent in value to what is made available to other attendees.¹⁸ If so, the excess is not considered a gift to the person traveling. An agency would, of course, need to follow its own procedures to approve travel that exceeds its local dollar limits.

Travel in Connection with a Presentation

Some forms of travel must be reported but are not subject to the annual gift limit (\$440 in 2013–14). Travel in conjunction with making a presentation falls into this category as long as the travel is:

- Reasonably related to a legislative or governmental purpose or to an issue of state, national or international public policy;
- Limited to the day of the presentation, the day before and the day after; and
- In the United States.¹⁹

Business and Campaign Travel Regulations Unchanged

The state regulations remain largely unchanged regarding travel in connection with a bona fide business and travel in connection with campaign activities. However, the items related to business and campaign travel have been renumbered and reorganized within the regulations.

Prior to the January 1, 2014 regulatory changes, the recipient would need to determine whether this payment was a gift or income, depending on whether he or she provided services that were equal or greater in value than the payment received. Effective January 1, 2014, these payments for travel are all considered gifts and must be reported as such on a recipient's Statement of Economic Interest.²⁰

To answer your question at the beginning of the article, it looks like the trade association's offer to pay for your travel and lodging to speak at their conference would fall into this category. Thus its value is not subject to the annual gift limit (currently \$440).

What about the conference admission fee? When you give a speech, participate on a panel or make a formal presentation, you may accept free admission to the event from the conference organizer; you do not have to report the admission as either a gift or income.²¹ Similarly, food and "nominal items" provided as part of the conference registration are neither gifts nor income.²² Nominal items include small value items like pens, notepads and other advertising items.²³ They do not include a round of golf.

Travel Paid for by a Public, Charitable or Educational Organization

Another form of travel that must be reported as a gift but is not subject to the annual gift limit (\$440 in 2013–14) includes travel that is:

- Provided by a public agency, educational institution or charitable organization (as defined by law); and

- Reasonably related to a legislative or governmental purpose or to an issue of state, national or international public policy.²⁴

These payments for travel must be reported on a recipient's Statement of Economic Interest.²⁵

Conclusion

The goal underlying California's gift rules — including the rules about gifts of travel — is to prevent either the perception or the reality that gifts influence 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 always, however, the rules represent minimum standards for local officials' actions. The first steps of any analysis are to:

- Satisfy oneself that accepting a certain form of travel is legally allowed; and
- Determine what one (or one's agency) needs to do about reporting receipt of such travel.

The next step is to consider whether accepting the travel is a wise thing to do, including what the public's perception might be.

The relaxation of the travel rules makes this step all the more important. The new travel rules emphasize disclosure of travel payments. Such disclosure invites the public and the media to judge whether an official will in fact be influenced by having their travel paid for by others, as well as whether the agency and its officials are maintaining an arm's length relationship with those who either do business with the agency or need approvals from the agency. Public officials will want to be on the right side of both their own standards and those of the public on such judgments.

About the Institute for Local Government

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The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *Understanding the New Travel-Related Exceptions to California's Gift Rules*
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References and Resources

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

- ¹ See 2 Cal. Code Regs. 18950(b)(1) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ² 2 Cal. Code Regs. § 18940.2.
- ³ Cal. Gov't Code §§ 87100, 87103(e).
- ⁴ 2 Cal. Code Regs. § 18950(c)(3) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ⁵ 2 Cal. Code Regs. § 18950.1 (As adopted August 22, 2013, effective Jan. 1, 2014).
- ⁶ See 2 Cal. Code Regs. § 18950.1 (As adopted August 22, 2013, effective Jan. 1, 2014).
- ⁷ 2 Cal. Code Regs. § 18950.1 (As adopted August 22, 2013, effective Jan. 1, 2014).
- ⁸ See 2 Cal. Code Regs. § 18950.1(c) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ⁹ 2 Cal. Code Regs. § 18950.1(h)(2) (as adopted August 22, 2013, effective for travel occurring after January 1, 2014). See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .”).
- ¹⁰ See 3 Cal. Op. Att’y Gen. 318 (1944).
- ¹¹ 74 Cal. Op. Att’y Gen. 26 (1991).
- ¹² 2 Cal. Code Regs. § 18950.1(a)(5) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹³ 2 Cal. Code Regs. § 18950.1(f) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹⁴ 2 Cal. Code Regs. § 18950.1(f) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹⁵ 2 Cal. Code Regs. § 18950.1(f) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹⁶ 2 Cal. Code Regs. § 18950.1(h) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹⁷ 2 Cal. Code Regs. § 18944(d) (Amended Jan. 1, 2014).
- ¹⁸ 2 Cal. Code Regs. § 18950.1(g) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ¹⁹ 2 Cal. Code Regs. § 18950(a) (As adopted August 22, 2013, effective Jan. 1, 2014); Cal. Gov’t Code § 89506(a)(1).
- ²⁰ 2 Cal. Code Regs. § 18950(a) (As adopted August 22, 2013, effective Jan. 1, 2014).
- ²¹ 2 Cal. Code Regs. § 18942 (As adopted August 22, 2013, effective Jan. 1, 2014).
- ²² 2 Cal. Code Regs. § 18942 (As adopted August 22, 2013, effective Jan. 1, 2014).
- ²³ 2 Cal. Code Regs. § 18950.3 (As adopted August 22, 2013, effective Jan. 1, 2014) (“For purposes of this subdivision, nominal means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.”).
- ²⁴ 2 Cal. Code Regs. § 18950(a) (As adopted August 22, 2013, effective Jan. 1, 2014); Cal. Gov’t Code § 89506(a)(2).
- ²⁵ Cal. Gov’t Code § 89506(c). See also Cal. Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*, 11-12 (2013), available at www.fppc.ca.gov/factsheets/LocalGiftFactSheet2013.pdf.