



Question 3: Who Is the Source of What I Received?

www.ca-ilg.org/GiftsQuestion-3

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This document outlines California's basic gift rules and the special rules that may apply based on the source of the gift. This is part three of a six part series designed to help public officials analyze their obligations under California's gift rules. The complete series can be found at www.ca-ilg.org/GiftCenter.

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 interests.

California public officials must:

- **Report gifts worth \$50 or more on their Statement of Economic Interests.** (see www.ca-ilg.org/StatementofEconomicInterests)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.
- **Not receive gifts that exceed \$440 from a single source per calendar year.**² The \$440 gift threshold 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 (2013-2014 limit).³
- **Step aside from the decision-making process if \$440 or more in gifts is received from a single source.** If a public official accepts a gesture or a series of 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

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.⁵

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

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 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 value⁶

Gifts can be:

- Tangible or intangible
- Real property or personal property
- Goods or services⁷

Under some circumstances, gifts that 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 (see www.ca-ilg.org/GiftsQuestion-5) to what constitutes a gift.⁸

Compliance Strategy: Questions for Public Officials to Ask About Gifts

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

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

Explanations of each question are available at www.ca-ilg.org/GiftCenter.

Who Is the Source of What I Received?

Identifying the *source* of a gift is important under California's gift rules, because gift reporting requirements and limits are tied to gifts from a single source. In addition, some exceptions to California's gift rules are tied to who the source of the gift is. Generally, the gift source is the person who paid for the gift.

Intermediaries

Sometimes a gesture occurs through a middle person. This is the concept of an "intermediary." An official must report the true source on the official's Statement of Economic Interests (www.ca-ilg.org/StatementofEconomicInterests).⁹

Someone is an intermediary in any of the following circumstances:

- They receive something from a gift source and the source asks that they pass it along to the official as the intended recipient of the gift
- They solicit funding with the understanding that it will be used for the primary purpose of making a gift to an official
- They receive a payment from a source after the official or the official's agent solicited it for the purpose of securing a gift for the official¹⁰

When someone is an intermediary, the law requires them to notify the recipient of who the true source of the gift is.¹¹ Thus, as a general matter, an official may presume that the gift deliverer is the source unless the deliverer informs the official otherwise or it is clear from the surrounding circumstances the deliverer is not the actual source of the gift.¹²

Gifts from Multiple Sources

When multiple people pitch in for a gift valued at \$50 or more, the question is whether anyone contributed \$50 or more.¹³ Contributors of \$50 or more must be individually named on one's Statement of Economic Interests (see www.ca-ilg.org/StatementofEconomicInterests), as must someone whose contribution to the gift puts their combined value of gifts to the official over the course of the year at \$50 or more.¹⁴

A gift from an organization is not a group gift from the members of that organization.¹⁵

Special Rules for Certain Sources

Gestures received from those one has a personal relationship unrelated to one's public position are subject to fewer restrictions. Special rules apply to the following:

- Gifts from family
- Dating-related gestures
- Existing social or business ties unrelated to one's position as a public official
- Neighborly gestures
- Gifts from one's own agency

Summaries of these special rules follow.

Gifts from Family

For purposes of the exception to California's gift rules for gifts from family, "family" includes the following:

- Spouse (including former spouse)
- Children (including stepchildren)
- In-laws: current or former parent-in-law, brother-in-law, sister-in-law
- Parents
- Grandparents, grand aunts and grand uncles
- Grandchildren, grandnieces and grandnephews
- Brothers and sisters
- Nephews and nieces
- Aunts and uncles
- First cousins or first cousins once removed
- The spouse or former spouse of any of the above (except for the spouse of *former* in-law)

This exception does not apply if the family member is acting as an intermediary for another person who is the true source of the gift.¹⁶

The exception for gifts from family members represents a policy judgment that the state will not limit gifts to public officials from their family members, nor require public disclosure of such gifts. Receipts of gifts from a family member also are not a basis for having to disqualify oneself under the conflict of interest laws.

That, of course, raises the larger question of what an official should do when family members have business with an official's agency. No matter what the law says, public officials may be well-advised to consider public perception when a family relationship and actions as a public official may overlap. If a reasonable resident might question whether a family member may be receiving special treatment, the best course of action may be for the public official to step aside from the decision-making process.

Dating-Related Gestures

Officials who are on a date or in a dating relationship do not have to report "personal benefits" that are a common part of such situations, nor are such gestures subject to the gift limit.¹⁷

However, for local officials, if the dating interest has or may reasonably foreseeably have business with the agency, the official may have to step aside from the decision-making process if the value of the gestures reach \$440 (2012-2014 limit)¹⁸ or provide income to the official of \$500 or more.¹⁹

In terms of what kinds of potential agency business officials should be alert to, such business would include a contract, license, permit or other entitlement for use pending before the official's agency,²⁰ as well as licensing and enforcement proceedings.²¹

For contracts, licenses, permits and other entitlements, the prohibition against participation applies while the matter is pending and for 12 months after the matter is decided.²² For licensing and enforcement proceedings, the requirement to step aside applies for 12 months after the gift was made.²³

Of course, these are minimum requirements. Local officials should also consider public perception when dating interests and actions as a public official may overlap—if a reasonable resident might question what motivates an official's actions, the best course of action is to step aside irrespective of what the regulations may allow.

Existing Social or Business Ties Unrelated to One's Position as a Public Official

The purpose of the gift reporting and limit rules is to promote the public's trust that decision-makers' actions are not being influenced by others' generosity. Consistent with this purpose, there is an exception for gifts received from those with no relationship to the decision-making process.

For a gift to fall within this exception to California's gift rules, all of the following about the gift giver must be true:

- Have an existing business or personal relationship with the public official
- The relationship must be *unrelated to the official's public position*
- Cannot *have finances which will be affected* by the decision-maker in the reasonably foreseeable future
- Cannot be *a lobbyist* registered to lobby the official's agency²⁴

The specific regulatory language is that it must be "*clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.*"²⁵

A Note on Gestures from Lobbyists

As noted above, the catchall exception for gifts from social or business ties does *not* apply if the gift is from an individual "registered to lobby the official's agency."²⁶ Similarly, the exception for gift exchanges has an exception-to-the-exception if the gift giver is a "lobbyist who is registered to lobby the official's agency."²⁷

A number of counties and cities do indeed have such lobbyist registration requirements.²⁸

The Institute's August and October 2012 "Everyday Ethics" columns explore lobbying regulation at the local level: www.ca-ilg.org/LobbyingRegulation.

Interestingly, the exception-to-the-exception language as it relates to dating relationships,²⁹ acts of human compassion³⁰ and pre-existing social relationships³¹ use language that ties the exception to the exception to *state* lobbying registration requirements.³² Thus, for local officials, these gestures may be received from lobbyists registered to lobby the official's agency.

As always, local are wise to also consider public perceptions in addition to the rules in determining whether to accept gifts.

Neighborly Gestures

Favors done by neighbors may not be subject to California's gift rules.³³ The exception applies to gestures that are "acts of ordinary assistance" that "would not normally be part of an economic transaction between like participants under similar circumstances.

Examples include when an official's neighbor loans an item, gives the official an occasional ride, or lends his or her skills for a repair. When the official is away, other examples include the neighbor bringing in the mail or feeding a pet.

Gifts from One's Own Agency

In General

Before there were gift rules for public officials, there were rules relating to gifts from a public agency. For example, California's constitution generally prohibits gifts of public resources to anyone (including public officials).³⁴

In order to prevent a payment from being an improper gift of public resources, an expenditure of taxpayer dollars must serve a public purpose.³⁵ The courts tend to defer to policymakers' collective judgment on when an individual or category of expenses serve a public purpose, but the prohibition is good to keep in mind. There are a number of penalties for misusing public resources.

The Fair Political Practices Commission supplements this set of rules by, in essence, saying that expenditures for gestures that do not serve a public purpose are also subject to California's gift rules.³⁶

General Rules for Gifts Donated to Agency

A variation on the concept of an intermediary is the situation in which someone gives something to an agency that the agency then allows an official or staff member to use. The "something" can be money, goods, services or other gesture that confers a benefit on the agency.³⁷

If a benefit originating from an outside source is used by an official, the benefit must be reported and is subject to gift limits³⁸ unless the gift is used only for official agency business and handled in a specific way.³⁹ (Note that this exception generally does not apply to travel, meals and lodging for elected officials which is subject to special rules.⁴⁰) For example, the agency, not the gift-giver, must determine which official will use the gift.⁴¹ If the gift provides a personal benefit to the user, the agency head cannot decide that he or she should use it.⁴²

The agency must make a public record of who gave the gift, how the gift was used and the identity of the official who used it.⁴³ The agency does this on a form provided by the FPPC—Form 801 (see www.fppc.ca.gov/index.php?id=5122). The agency must maintain the form as a public record and post it on the local agency website, or if none, forward it for posting on the FPPC's website.⁴⁴

For donated travel payments, the donations cannot be used by elected officials (or, if they are, they are reportable gifts and subject to the gift limits), except when all of the following apply:

- The transportation, lodging and food are directly related to the official's public duties
- The payment is for a purpose that would ordinarily be paid for by the agency
- The travel is authorized in the same manner as travel payments made by one's agency
- Meets the other requirements for travel payments made to an agency⁴⁵

For more information about payments made for travel, see "Understanding California's New Travel-Related Exceptions to the Gift Rules," available at www.ca-ilg.org/TravelRelatedGiftExceptions.

The payment amounts cannot exceed those allowed under the agency's travel reimbursement policies.⁴⁶ The exception is when food is provided as part of admission to an event or for lodging or food provided at the site of a widely attended meeting or conference (the value must be substantially equivalent to what is made available to other attendees).⁴⁷

Additional rules govern gifts to support university research.⁴⁸

Special Rules for Agency Tickets and Passes

From time to time, a local official may receive tickets or passes to events through his or her public agency. This can be because the tickets or passes are either:

- **Donations to Agency.** Someone has given the agency the tickets.⁴⁹
- **Non-Donations.** The agency receives the tickets (i) as the result of an agreement to use public property (for example, a sports or entertainment facility), (ii) because the agency controls the event (for example, a county fair), or (iii) the agency purchased the ticket at fair market value.⁵⁰

These can be treated as gifts subject to the usual rules⁵¹ or an official can simply pay for the ticket by reimbursing the agency for its fair market value.⁵²

Another option is for the agency to adopt a policy governing its ticket distributions.⁵³ When an agency does so, certain restrictions and disclosure requirements apply, but the provision of the ticket or pass is not considered a gift to the official.⁵⁴

Fair Political Practices Commission rules explain what the policy must contain.⁵⁵ Note that these exceptions for agency-provided tickets and passes apply only to admissions to entertainment, amusement, recreational, or similar events or facilities – not to tickets to fundraising breakfast, lunch or dinner events.⁵⁶

If public officials otherwise subject to the gift limit and reporting requirements receive tickets under the agency’s policy, the tickets are not subject to the gift limit and reporting requirements if both of the following are true:

- The agency decides who should use the ticket or pass consistent with its adopted policy that complies with the Fair Political Practices Commission’s requirements⁵⁷
- The agency received the tickets from an outside entity, that entity played no role in deciding who should use the ticket⁵⁸

As an alternative, the official receiving the ticket or pass can treat its value as income under state and federal tax laws.⁵⁹

Either way, the agency must document the provision of tickets on a form provided by the FPPC—Form 802 (see www.fppc.ca.gov/index.php?id=524).⁶⁰ The agency must maintain the form as a public record and forward it for posting on the FPPC’s website.⁶¹

Special Rules for Agency Raffles

When a prize for an agency raffle or drawing is furnished by an outside party, the official who wins the prize must report the outside party as the source of the gift and the agency as the intermediary.⁶² The fair market value of the prize is reduced by the amount the official paid to enter the raffle, and the value counts toward the gift limit for that source.⁶³

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.

The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: [Question 3: Who is the Source of What I Received?](#)
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

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 Cal Gov't Code § 87207(a)(1).
- ² 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 2014).
- 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 501(c)(3) charitable organization or government agency. 2 Cal. Code Regs. § 18941(a).
- ⁴ 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).
- 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 of Regs. § 18940.1 (definition of "official").
- ⁶ *See generally* 2 Cal. Code Regs. § 18940(a).
- ⁷ 2 Cal. Code Regs. § 18940(a).
- ⁸ *See* 2 Cal. Code Regs. § 18942 (as adopted August 22, 2013).
- ⁹ Cal. Gov't Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(b) (the source of the payment is the source of the gift).
- ¹⁰ Cal. Gov't Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(a)(1)-(3).
- ¹¹ Cal. Gov't Code §§ 87210, 87313.
- ¹² Cal. Gov't Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(d).
- ¹³ 2 Cal. Code Regs. § 18945.2.
- ¹⁴ 2 Cal. Code Regs. § 18945.2.
- ¹⁵ 2 Cal. Code Regs. § 18945.2.
- ¹⁶ 2 Cal. Code Regs. § 18942(a)(3) (as adopted August 22, 2013).
- ¹⁷ 2 Cal. Code Regs. § 18942(a)(18)(A) (as adopted August 22, 2013).
- ¹⁸ 2 Cal. Code Regs. § 18940.2 (setting this threshold).
- ¹⁹ 2 Cal. Code Regs. § 18703.3 (defining source of income).
- ²⁰ 2 Cal. Code Regs. § 18942(a)(18)(D)(ii) (as adopted August 22, 2013).
- ²¹ 2 Cal. Code Regs. § 18942(a)(18)(D)(iii) (as adopted August 22, 2013).
- ²² 2 Cal. Code Regs. § 18942(a)(18)(D)(ii) (as adopted August 22, 2013).
- ²³ 2 Cal. Code Regs. § 18942(a)(18)(D)(iii) (as adopted August 22, 2013).
- ²⁴ 2 Cal. Code Regs. § 18942(a)(19) (as adopted August 22, 2013).
- ²⁵ 2 Cal. Code Regs. § 18942(a)(19) (as adopted August 22, 2013) (emphasis added).
- ²⁶ 2 Cal. Code Regs. § 18942(a)(19) (as adopted August 22, 2013).
- ²⁷ 2 Cal. Code Regs. § 18942(a)(8) (as adopted August 22, 2013).
- ²⁸ The following cities and counties have adopted some form of lobbyist registration (not inclusive): Fairfield, Fresno, Irvine, Long Beach, Los Angeles, Malibu, Milpitas, Oakland, Orange, Richmond, Sacramento, San Diego, San Francisco, San Jose, San Louis Obispo, Santa Ana, Santa Rosa, Santa Clarita, Los Angeles County, Orange County, San Diego County.
- ²⁹ 2 Cal. Code Regs. § 18942(a)(18)(A) (as adopted August 22, 2013) (cross referencing the list of exceptions in 18942(a)(18)(D)(i)-(iii)).

- ³⁰ 2 Cal. Code Regs. § 18942(a)(18)(B) (as adopted August 22, 2013) (cross referencing the list of exceptions in 18942(a)(18)(D)(i)-(iii)).
- ³¹ 2 Cal. Code Regs. § 18942(a)(18)(C) (as adopted August 22, 2013) (cross referencing the list of exceptions in 18942(a)(18)(D)(i)-(iii)).
- ³² 2 Cal. Code Regs. § 18942(a)(18)(D)(i) (as adopted August 22, 2013) (which refers to “[a] lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official’s agency”—emphasis added).
- ³³ 2 Cal. Code Regs. § 18942(a)(17) (as adopted August 22, 2013).
- ³⁴ Cal. Const. art. XVI, §6.
- ³⁵ *See County of Alameda v. Janssen*, 16 Cal. 2d 276 (1940); *Board of Supervisors v. Dolan*, 45 Cal. App. 3d 237 (1975).
- ³⁶ 2 Cal. Code Regs. § 18944.3.
- ³⁷ *See* 2 Cal. Code Regs. § 18944(b)(1) (“‘Payment’ means a payment as defined in Section 82044 including the payment for, or provision of , fees, goods or services to an agency where the person providing the payment has no legal obligation to do so.”).
- ³⁸ *See* 2 Cal. Code Regs. § 18944(c) (as adopted August 22, 2013) (“A payment to an agency as described in subdivision (a)[made to a state or local agency and used for official agency business], *is not a gift or income to the official* who receives the use of the payment if it meets all of the following requirements: . . .”) (emphasis added).
- ³⁹ 2 Cal. Code Regs. § 18944(c) (as adopted August 22, 2013).
- ⁴⁰ 2 Cal. Code Regs. § 18944(a) (as adopted August 22, 2013, effective for travel occurring after January 1, 2014).
- ⁴¹ 2 Cal. Code Regs. § 18944(c)(2) (as adopted August 22, 2013).
- ⁴² 2 Cal. Code Regs. § 18944(c)(2) (as adopted August 22, 2013).
- ⁴³ *See* FPPC, Form 801 Gift to Agency Report, *available at* <http://www.fppc.ca.gov/index.php?id=512>.
- ⁴⁴ 2 Cal. Code Regs. § 18944(d) (as adopted August 22, 2013).
- ⁴⁵ 2 Cal. Code Regs. § 18950.1(h)(1) (as adopted August 22, 2013, effective for travel occurring after January 1, 2014).
- ⁴⁶ 2 Cal. Code Regs. § 18950.1(e)(2) (as adopted August 22, 2013, effective for travel occurring after January 1, 2014).).
- ⁴⁷ 2 Cal. Code Regs. § 18950.1(g)(as adopted August 22, 2013).
- ⁴⁸ 2 Cal. Code Regs. § 18944(e) (as adopted August 22, 2013).
- ⁴⁹ 2 Cal. Code Regs. § 18944.1(b)(1).
- ⁵⁰ 2 Cal. Code Regs. § 18944.1(b)(2).
- ⁵¹ *Fletcher Advice Letter*, No. I-09-050 (2009) (If an agency doesn’t have the required policy in place, the tickets are treated as a gift subject to the usual reporting and limit requirements).
- ⁵² 2 Cal. Code Regs. § 18944.1(b).
- ⁵³ 2 Cal. Code Regs. § 18944.1(c).
- ⁵⁴ *See* 2 Cal. Code Regs. §§ 18944.3 (“Except as provided in Regulations 18944 [gifts to agency] and 18944.1 [agency provided tickets and passes], a payment by a government agency (for) . . . entertainment . . . to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys”); 18944.1(b)(2) (finding that an official will have in essence provided something of equal or greater value in exchange for the ticket if certain requirements are met, including compliance with the agency’s ticket distribution policy).
- ⁵⁵ 2 Cal. Code Regs. § 18944.1(c)(1)-(3).
- ⁵⁶ 2 Cal. Code Regs. § 18944.1.
- ⁵⁷ 2 Cal. Code Regs. § 18944.1(c).
- ⁵⁸ 2 Cal. Code Regs. § 18944.1(b)(1).
- ⁵⁹ 2 Cal. Code Regs. § 18944.1(a)(1).
- ⁶⁰ *See* <http://www.fppc.ca.gov/index.php?id=524>.
- ⁶¹ 2 Cal. Code Regs. § 18944.1(d). Beginning January 1, 2012, agencies must send the Form 802 to the FPPC at E-mail: form802@fppc.ca.gov, or 428 J Street, Suite 620, Sacramento, CA 95814, or Fax: 916-322-0886.
- ⁶² 2 Cal. Code Regs. § 18944.2(b)(1).
- ⁶³ 2 Cal. Code Regs. § 18944.2(b)(1).

