



Question 4: Did I Do Something in Exchange for What I Received?

www.ca-ilg.org/GiftsQuestion-4

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This document outlines California's basic gift rules and the special rules that may apply if an official has done something in exchange for a gift. This is part four 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:

1. **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.
2. **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
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

One 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 was 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 of questions are available at www.ca-ilg.org/GiftCenter.

Did I do Something in Exchange for What I Received?

The core concept underlying the notion of a gift is that it is something someone gives another for not equal value in return. Consequently, if an official pays for what was received or otherwise exchange goods or provide services of equal or greater value for it, it does not fit within the definition of a gift.⁹

Some questions to ask to determine whether a gesture is a gift include asking whether the recipient:

- Paid money or exchanged a tangible item of equal or greater value for what was received?
- Provided services in exchange for what was received?
- Won the item in a raffle, drawing or competition?

Answering “yes” to any of these questions takes one to the analysis below to see how the rules might specifically apply.

Of course, something one must never do as a public official is use one’s influence with the agency in exchange for a nice gesture. That kind of “this for that” (sometimes referred to as a “*quid pro quo*”) is likely a very serious criminal offense.¹⁰

Did I Pay Money Or Exchange A Tangible Item Of Equal Or Greater Value For What I Received?

Payment Made. If the official paid cash, wrote a check or used a credit card to pay the full monetary value of what was received within 30 days of receipt, the official needs not report it as a gift nor count it toward the gift limit.¹¹ Alternatively, officials have the option of reimbursing the gift-giver for *a portion of the value* of one or more gifts to avoid exceeding the \$440 gift limit.¹²

Documenting the payment with a canceled check, credit card receipt or other evidence is a good practice; be aware that the check must be cashed by the recipient—it is the official’s burden to prove the donor both received and accepted the reimbursement payment.¹³

Note that to avoid the requirement that one step aside from the decision-making process (the disqualification requirement), such reimbursement must occur *before* the official begins influencing decision.¹⁴ A more last-minute option is available for those that have not made payment for the gift before the decision; check with agency counsel immediately on what steps must be taken.¹⁵

Gift Exchanges. Exchanges of gifts for occasion like birthdays or holidays are not subject to reporting requirements or the gift limit *as long as* the gifts were approximately equal in value (or in the words of the regulation “not substantially disproportionate in value”).¹⁶ Similarly, trading off who pays for meals or activities are not subject to the gift reporting requirement and limits *as long as* what the official pays is close to equal to what he receives.¹⁷ Neither of these exceptions applies if the person is a registered lobbyist with the agency.¹⁸ The “trading off” exception (called “reciprocal exchanges” in the regulations) also does not apply to big ticket expenses (anything \$440 or more).¹⁹

Gifts received through an employee gift exchange are also not subject to the gift reporting and gift limit rules, *as long as* the gifts exchanged were provided by agency employees and were of approximately equal value.²⁰

Barter Transactions. Another kind of exchange is a barter transaction – when the official exchanges an item he or she owns or provides non-governmental services that are demonstrably worth the same or more. Under such circumstances, what the official receives is not a gift subject to reporting requirements or the gift limit²¹ (although it might be income). If what the official receives is *more* than what was given, that excess value is likely a reportable gift subject to the limits. Documenting the transaction and values associated with it is a good idea, since the official has the burden of proof that the official provided something worth equal or more in the exchange.²²

Did I Provide Services In Exchange For What I Received?

Employment-Related Gestures. If what you received was part of an employment relationship unrelated to your service as a public official, the value of the gesture may be counted instead as income from your employer and disclosed pursuant to those rules.²³ If the gesture was from a public employment relationship, see the discussion related to Question 3 (see www.ca-ilg.org/GiftsQuestion-3) relating to the source of the gift (specifically the discussion related to agency gifts, including raffles).

Business Gestures. If what you received was in exchange for goods or services you provided as part of a business you operate, the gesture may instead be counted as income and disclosed pursuant to those rules.²⁴

Volunteer/Nonprofit Activities. If you serve on the board or otherwise volunteer for a nonprofit organization, you must classify benefits such as travel expenses and food as either income or gifts for reporting purposes. In order for the benefits to qualify as income, you must be able to demonstrate that you provided services of equal or greater value to the nonprofit.²⁵ If you did not provide such services, the benefits should be reported as gifts and may be subject to the \$440 gift limit.²⁶

Presentations, Event Attendance and Articles Written. The Political Reform Act forbids elected officials from accepting compensation for giving a speech, writing an article or attending a public or private conference or other event.²⁷ Certain exceptions exist for presentations and articles in connection with a business or an employment relationship unrelated to your public service.²⁸ Such prohibitions may apply to employees through local conflict of interest codes.²⁹ For more information, see the Fair Political Practices Commission piece on honoraria, available at www.fppc.ca.gov/index.php?id=226.³⁰ Note the exception for free admission, refreshments and similar non-cash nominal benefits at events at which the official participates in a presentation has been eliminated.³¹

Ceremonial Functions. If an official performs a ceremonial role at a function, the value of the admission to the event is not a gift.³² The Fair Political Practices Commission's regulations explain what constitutes a "ceremonial role" for this purpose, which can be limited or expanded by local policy.³³

In addition, the agency must make a public record of the fact that the official participated in the event on a form provided by the FPPC—Form 802(see www.fppc.ca.gov/index.php?id=524). The agency must maintain the form as a public record and forward it for posting on the FPPC's website.³⁴

Did I Win the Item?

A prize or award received in a bona fide contest, competition or game of chance *not* related to the recipient's status as an official or candidate must be reported as income.³⁵ Prizes and awards that are received due to official status must be reported as gifts and are subject to the gift limits and disqualification rules.³⁶

See the discussion related to Question 3(see www.ca-ilg.org/GiftsQuestion-3) relating agency raffles.

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.

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.

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 www.ca-ilg.org/GiftCenter.

The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: [Question 4: Did I Do Something in Exchange for 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 2 Cal. Code Regs. § 18942.
- ⁹ *See* Cal. Gov't Code § 82028(a); 2 Cal. Code Regs. § 18940(a).
- ¹⁰ *See* Cal. Penal Code §§ 7 (definition #6), 68A, 86; 19 USC §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services fraud).
- ¹¹ *See* Cal. Gov't Code § 82028(a).
- ¹² 2 Cal. Code Regs. § 18941(c)(3).
- ¹³ *See* Cal. Gov't Code § 82028(a).
- ¹⁴ 2 Cal. Code Regs. § 18941(d)(1).
- ¹⁵ 2 Cal. Code Regs. § 18941(d)(2).
- ¹⁶ 2 Cal. Code Regs. § 18942(a)(8)(A).
- ¹⁷ 2 Cal. Code Regs. § 18942(a)(8)(B).
- ¹⁸ 2 Cal. Code Regs. § 18942(a)(8).
- ¹⁹ 2 Cal. Code Regs. § 18942(a)(8)(B).
- ²⁰ 2 Cal. Code Regs. § 18944.2(c) (does not apply to tickets or passes that come from someone outside the agency).
- ²¹ *See* Cal. Gov't Code § 82028(a).
- ²² *See* Cal. Gov't Code § 82028(a).
- ²³ *See* Cal. Gov't Code §§ 82030, 82030.5, 87207.
- ²⁴ *See* Cal. Gov't Code §§ 82005, 87207, 87209.
- ²⁵ *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).
- ²⁶ Services that may qualify include giving a speech or participating on a panel or seminar. If you did not provide services, any benefits received from a non-501(c)(3) nonprofit are subject to the gift limit. Travel expenses paid by 501(c)(3) nonprofits are subject to special rules. *See* Institute for Local Government, *Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder*, at 7 (2008).
- ²⁷ Cal. Gov't Code §§ 89501, 89502.
- ²⁸ 2 Cal. Code Regs. § 18932. For a list of the other exceptions to the honoraria prohibition, see Cal. Gov't Code § 18932.4; Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria,*

Travel and Loans: A Fact Sheet for Local Elected Officers and Candidates for Local Elective Offices, Local Officials Specified in Government Code Section 87200, Judicial Candidates, Designated Employees of Local Government Agencies, at 9-10 (2014), available at <http://www.fppc.ca.gov/factsheets/LocalGiftFactSheet2014.pdf>.

- ²⁹ 2 Cal. Code of Regs. § 18730(b)(8)(A) (“No . . . designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official. . . .”)
- ³⁰ See Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Elected Officers and Candidates for Local Elective Offices, Local Officials Specified in Government Code Section 87200, Judicial Candidates, Designated Employees of Local Government Agencies*, at 9-10 (2014), available at <http://www.fppc.ca.gov/factsheets/LocalGiftFactSheet2014.pdf>.
- ³¹ See former 2 Cal. Code Regs. § 18942(a)(11) (repealed effective 1/1/12).
- ³² 2 Cal. Code Regs. § 18942(a)(13).
- ³³ 2 Cal. Code Regs. § 18942.3.
- ³⁴ 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.
- ³⁵ 2 Cal. Code Regs. § 18942(a)(14).
- ³⁶ See Fair Political Practices Commission, *Pavlovich* Advice Letter, No. A-94-391(1995) (gift basket won at League of California Cities meeting is reportable as gift).

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