



Everyday Ethics for Local Officials

Buying Meals for Others on the Public's Dime

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QUESTION

Under what circumstances may an elected official take someone to lunch and get reimbursed for the expense? What about when a group of officials organize a trip to Sacramento and invite their legislator to dinner?

ANSWER

Before addressing the specifics of the questions posed, let's talk about some "first principles" in terms of the ethics associated with the use of public resources to buy meals.

Ethical Principles the Use of Public Resources

The starting point of the analysis is that public resources are just that – the *public's* resources. They represent taxpayer dollars and the fees that the agency has charged the public to provide vital local services. The power to spend these resources is a sacred trust.

As such, the public official's ongoing *responsibility* is to consider the highest and best use of those limited public resources. The key question for decision-makers to ask in making spending decisions is: what is in the public's interest? In other words, what kinds of expenditures best serve the interests of the public?

A Cost of Doing Business or a Perk of Office?

In our society, there is a cultural norm to the effect that, if one extends an invitation to dine to someone, the person making the invitation should pay. At the same time, treating someone to a meal typically is viewed as an act of generosity and hence, a form of a gift. Even though such gestures are common in the private sector, special issues arise when the public's money is being spent. So deeply embedded is this sensitivity about the use of public resources that California's constitution has an express prohibition against making gifts of public funds,¹ which includes all manner of public resources.

The right-versus-right aspect to this dilemma is that there can be instances when the most convenient time to meet to conduct business – including the public's business – is over a meal. This also can be the most effective context for a meeting, due to the fixed amount of time it takes to consume a meal and less possibility for interruptions.

Moreover, there are times when picking up the tab for one's meal companion is in the bona fide interests of the local official's community. Examples include economic development activities in which a local agency official, as part of the official's delegated responsibilities, is trying to acquaint prospective businesses with the amenities of the community. They also include meetings with legislators, when one is informing one's legislator about the impact of proposed legislation on one's community. This serves the community's interest by promoting well-informed decision-making at the state and national levels.

What is not proper is viewing one's access to public resources as a "perk" of being in elected office or one's public sector employment. In this regard, the public sector may be very different from some local officials' experiences in the private sector. (Although recent excesses in the private sector have caused the public to question the ethics those who incur lavish – and unrelated to business – expenses on the company tab.)

Local officials who view access to public resources as a "perk" of public office are headed for trouble. A "perk" is something one receives in addition to one's regular (typically miniscule) salary as a local official. By definition, if one is looking at a meal expense as a perk, the meal is not benefiting the community as a whole and is not an appropriate use of public resources. Such a mindset is also inconsistent with the laws that limit compensation for elected officials.²

The concept of not-using-public resources- for-personal- gain-or-benefit is sufficiently important that a number of cities have memorialized it in their ethics codes. Moreover, law enforcement authorities and the media have investigated and prosecuted misuses of public resources in a number of jurisdictions.

Expense Reimbursement Policies for Elected and Appointed Officials

State law imposes certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses. The general rule is that local officials may be reimbursed for *actual and necessary* expenses—a concept that historically has been interpreted fairly narrowly. For example, in 2002, the Attorney General opined that buying meals for others, including legislators, was not a "necessary" expense for local elected officials.³

Expense reimbursement policies are the opportunity for local agencies⁴ specify when expenses are, in effect, “necessary.” Under state law, local agency expense reimbursement policies must:

- Specify the *kinds of activities* that will be reimbursable;⁵
- Identify a “reasonable time” within which requests for reimbursement must be submitted in those policies;⁶
- Require use of expense report forms; and
- Require that all expenses must be documented with receipts⁷ (these documents are public records subject to disclosure⁸).

A reimbursement policy may specify what constitutes reasonable *rates* for travel, meals, lodging and other expenses. If a local policy does not specify reimbursement rates, then the reimbursable rates default to those in the Internal Revenue Service guidelines.⁹

The Institute for Local Government (ILG) has developed a sample annotated expense reimbursement policy to help local officials with this task. The policy is available online at www.ca-ilg.org/reimbursementpolicy along with samples of expense reimbursement policies adopted by other agencies. Some of the circumstances that involve incurring “necessary” expenses suggested by ILG’s sample policy include:

- Communicating with representatives of regional, state and national government on agency-adopted policy positions;
- Attending educational seminars designed to improve officials' skill and information levels;
- Participating in regional, state and national organizations whose activities affect the agency's interests;
- Attending agency events; and
- Implementing an agency-approved strategy for attracting or retaining businesses to the agency, which will typically involve at least one staff member.

Under state law, if a legislative body member wants to seek reimbursement for levels of expenses not otherwise authorized under the agency’s reimbursement policy, then the official may seek *prior* approval for such reimbursement from the governing body (before incurring the expense).¹⁰

So one answer to the question about when a local elected official can get reimbursed for taking someone to lunch is to consult one's local expense reimbursement policy. State law gives agencies some latitude to define under what circumstances such hosting of meals is necessary.

Note there may be clean-up legislation that clarifies that local officials have the option of personally paying for the difference between what an agency will reimburse and actual expense incurred.¹¹

What if the Meal Is Paid for with an Agency Credit Card or by Staff?

Strictly speaking, the state law requirements regarding having an expense reimbursement policy only extend to the issue of *reimbursing* local agency elected and appointed (board and commission members) officials. State law does not define "reimbursement." However, the usual rule of statutory construction is that, when a term is not defined, the ordinary dictionary definition applies.¹² According to the *American Heritage Dictionary*, "reimburse" means to:

- To repay (money spent); refund.
- To pay back or compensate (another party) for money spent or losses incurred.

Thus, under this definition, state law only requires local agencies to adopt policies governing those circumstances under which elected and appointed officials (for example, members of boards and commissions)¹³ seek payment from an agency for expenses incurred in the course of their service to the agency.

This gives local agencies the option to decide for themselves what practices are most prudent with respect to situations in which expenses are incurred in the first instance on a credit card or by staff. Should the same policies that apply to elected and appointed officials also apply to staff? Should they apply to expenses put on the agency credit card?

As part of their analysis of these issues, local agencies may wish to consider what kinds of practices and policies will protect the agency from allegations of misuse of public resources, as well as allegations that the agency is trying to circumvent the state law requirements by having different standards for employees and credit card use.

For consistency and ease of administration, some local agencies have elected to adopt policies that govern expense reimbursements for staff as well as elected and appointed officials. Guidelines for use of agency credit cards can also be advisable, including emphasizing that personal purchases on agency credit cards are strictly prohibited.

Regarding the group invitation to a legislator in Sacramento, local officials are frequently invited to attend meal functions organized by a group. These meals tend to be pricier because they are in hotels or private rooms of restaurants and involve larger groups of

people (which can involve extra service charges and staff time associated with organizing the event). They also will sometimes include the proportionate share of invited guest legislator's meals.

If the governing body makes the decision to attend such functions in the first instance and/or the agency pays for the charges on the agency credit card, then the expenditure may not fall within the agency's expense reimbursement policy. However there can be consistency/public perception issues that make it advisable for the agency to address these situations in their policies. The Institute's sample policy includes language that authorizes reimbursement for amounts actually paid if the meal is part of an organized event.

Some Questions to Ask

Irrespective of what their particular policies allow, some local officials take the position that it is not appropriate to use public resources for meals. This approach can sit well with both the media and the public, particularly given the constraints local agencies are facing on the financial front. Some questions to ask include:

- How would your constituents feel about the expenditure?
- Would they feel this is an appropriate use of their tax dollars?
- Or would they feel it would be more appropriate for each person at the meal to pay their own tab?

This is sometimes referred to as the "taxpayer test" and it is particularly helpful in thinking through use-of public-resources questions.

Another consideration is to keep in mind that such expenditures are subject to disclosure to the media and others under the Public Records Act. Does this expenditure pass the newspaper test-would you feel comfortable if the local newspaper featured a story about this particular meal (either who was involved or the amount of the tab) on the front page?

If you feel uncomfortable with the answer to either the taxpayer or the newspaper test, find a different way to conduct the public's business. On the other hand, public agency business can be productively conducted over a meal at which a local agency picks up the check. And, in some communities, the answer to both the newspaper and taxpayer test will be totally supportive and comfortable.

Conclusion

When viewed in a broader context, the question, both ethically and legally, is when is it proper as a general matter to use public resources for others' meals? This is a discussion that each local agency can have by reviewing its expense reimbursement policies in light

of the overarching policy and ethical principles that underlay the legal guidance that is available.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

Endnotes:

¹ See Cal. Const. art. XVI, § 6.

² The legal underpinnings of this analysis are that state law defines what local officials may receive as compensation for their service. See for example Cal. Gov't Code § 53232.1.

³ 85 Cal. Op. Att'y Gen. 210 (2002).

⁴ Local agency includes "a city, county, city and county, charter city, charter county, charter city and county, or special district." Cal. Gov't Code § 53232(c). Any local agency that reimburses any of its elected and appointed officials on legislative bodies for expenses must adopt a policy. Cal. Gov't Code § 53232.2(b). The definition of "legislative body" is tied to the Brown Act definition of legislative body. Cal. Gov't Code § 54952.

⁵ Cal. Gov't Code § 53232.2(b).

⁶ Cal. Gov't Code § 53232.3(c).

⁷ Cal. Gov't Code § 53232.3

⁸ Cal. Gov't Code § 53232.3(e).

⁹ Cal. Gov't Code § 53232.2(c).

¹⁰ Cal. Gov't Code § 53232.2(f).

¹¹ See SB 1196, 2005-2006 session (Senate Local Government Committee Omnibus Bill).

¹² See *People v. Siravo*, 17 Cal. App. 4th 555, 560, 21 Cal. Rptr. 2d 350, 352 (2d Dist. July 27, 1993), rev. denied (Oct. 21, 1993). See also *City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331, 1339, 1340, 18 Cal. Rptr. 2d 478, 481, 482 (1st Dist. 1993) (noting words of a statute must be given their ordinary meaning and looking initially to a dictionary for that meaning).

¹³ Cal. Gov't Code § 53232.2(b).