

Reader Note:

This is a handout from a session at the 2005 League of California Cities' Executive Forum. This session was organized by the Institute for Local Government, whose mission is to develop resources to assist local officials in their service to their communities. For more information about ILG, see www.ca-ilg.org.

This handout analyzes gift-receiving issues for public officials under California law. It is not, however, legal advice. Please consult with your agency attorney or the Fair Political Practices Commission for specific advice on what to do in a given gift situation.

GIFT GUIDE FOR THE PUBLIC OFFICIAL

By Michael Martello, City Attorney, City of Mountain View

State law and sometimes local rules limit the value of gifts that may be accepted by local elected officials, local agency employees designated in the agency's conflict of interest code and candidates for these offices or positions.

NOT ALL GIFTS HAVE BOWS

Defined: The Political Reform Act broadly defines gift to include any payment or other benefit (including meals) received by a public official unless the official provides something of equal or greater value in return. The term "gift" includes a rebate or discount in the price unless the rebate or discount is available to members of the general public without regard to an individual's public official status (such as frequent flyer miles).

Receipt Defined: Except as discussed below, you have "received" or "accepted" a gift when you know you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. (Regulation 18941).

WHY AM I SO SPECIAL ALL OF A SUDDEN

The rules governing disclosure and acceptance of gifts regulate gifts irrespective of whether they were given because of the official's status. Therefore, the public official may need to publicly report gifts they would have received in the normal course of their life.

HISTORY OF GIFTS TO PUBLIC OFFICIALS

Public officials and those exercising power have probably always received gifts from those they govern. The aim of the gift to the public official is simple: it is to curry favor, patronage or special privilege. It is seldom to "thank" you. It is true that some gifts regulated by state law are not intended to nor result in same, nevertheless, it is difficult for a public official to explain the acceptance of a gift from a third party when they would not have received that gift, but for their official status.

THE HEADLINE TEST

When evaluating conflicts of interest under the Political Reform Act, there is an eight-step process. When the eight-step process is concluded and a conflict is not found, the public official must still consider whether or not their continued participation could result in “the appearance of impropriety.”

With gifts, this later evaluation may be the most important evaluation and should be considered first. Said differently, the **headline test** may be the latter consideration for the conflict analysis, however, it should be the first consideration for the ethics analysis.

EXAMPLE: A CASE OF WINE

If your roommate from college lives in another state, does no business in your jurisdiction, and has been sending you a case of wine over the holidays since graduation, and you reciprocate in kind, do not fear the headline test.

If your roommate from college lives in your jurisdiction and/or conducts business in your jurisdiction and you have been exchanging the case of wine or similar gift over the years, now you have a headline (your gift to the roommate will be in small print, if printed at all).

If you have not sent your roommate a reciprocating gift or you received a case of wine from a developer who did not know you until you became elected, you have a problem.

GIFT LIMIT AND DISQUALIFICATION

Gift Limit.

- **Elected officials**, candidates, or a local official specified in Government Code Section 87200 (city manager, city attorney, treasurer, planning commissioners and those who manage public investments) may not accept gifts of more than \$360 from any single source per calendar year.
- **Local Agency Designated Employee:** May not accept gifts from any single source totaling \$360 if required to report that source on your Form 700.

The limit is adjusted in odd-numbered years. Gifts from the same source are aggregated.

Disqualification. A public official who receives gift(s) of \$360 or more or income of \$500 or more from a third party may have a financial conflict of interest under the Act. An official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within twelve (12) months preceding the decision.

Gift Limit Versus Disqualification. The important difference between; (1) the gift limitation; and (2) the threshold for disqualification is that the gift limitation is aggregated from any single source on a calendar year basis, however, if the donor of a gift is coming before your agency, you aggregate the total amount of gifts received from that single source for the twelve (12) months prior to the decision. If the aggregated amount of the gift from this source exceeds \$360 (which it could) within twelve (12) months prior to the decision, you must disclose same on the record and disqualify yourself from participating in the decision in any manner.

Free Tickets: A local corporation offers you ten (10) free tickets to a fundraising dinner for the local Red Cross. You accept, thinking sharing the tickets with your election committee is a great way to reward their hard work. Any problems here?

EXCEPTIONS

The following are not subject to any gift limit and are not required to be disclosed on a Statement of Economic Interests (Form 700):

1. Gifts returned (unused) to the donor, or for which you reimbursed the donor, within thirty (30) days of receipt.
2. Gifts donated (unused) to a non-profit, 501(c)(3) organization or a government agency within thirty (30) days of receipt without claiming a tax deduction.
3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.
4. Gifts of hospitality or lodging in an individual's home when the host is present.
5. Gifts approximately equal in value exchanged between you and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions.
6. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.

“Informational materials” may also include scale models, pictorial representations, etc., provided that if the item's fair market value is more than \$360, you have the burden of demonstrating that the item is informational. Onsite demonstrations, tours or inspections designed specifically for public officials are considered informational materials, but this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available.

Common Sense and Reasonableness: Yes, books can be “informational material.” If someone provides you with a book signed by the author or a rare first edition, it is probably more of a gift than it is an exception to the gift limit. Use the headline test and the rule of reason.

7. A bequest or inheritance.
8. Campaign contributions.
9. Personalized plaques and trophies with an individual value of less than \$250.
10. Tickets to attend fundraisers for campaign committees or other candidates, and tickets to fundraisers for 501(c)(3) organizations.
11. Free admission, refreshments and similar non-cash nominal benefits provided to you at an event at which you give a speech, participate in a panel or seminar or provide a similar service. Transportation within California, lodging/subsistence provided directly in connection with the speech, etc., are “OK.”
12. Passes or tickets to provide admission or access to facilities, goods, services or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person.

13. Gifts provided directly to family members unless you receive direct benefit from the gift or exercise discretion and control over the use or disposition of the gift.
14. Gifts provided to your government agency.
15. Food, shelter, or similar assistance received in connection with a disaster relief program.

REPORTABLE GIFTS NOT SUBJECT TO LIMITS

The following exceptions are also applicable to gifts. You may be required to report these items on a Statement of Economic Interests (Form 700) and they may subject you to disqualification:

1. Certain payments for transportation, lodging and subsistence.
2. Wedding gifts are reportable but not subject to the \$360 gift limit. Half the value is attributable to each spouse, unless the gift is intended for one spouse.

Ethical Dilemma. You know that as a councilmember (or city manager) you can invite all the big hitters in town and those who do business with the city to your wedding or the wedding of your child. Should you?

3. A prize or an award received in a bona fide competition not related to your official status is not subject to the gift limit but is reportable as income if the value is \$500 or more.

LOAN RESTRICTIONS

Local public officials and employees may not receive any personal loan aggregating more than \$250 from an official, employee, or consultant of, or from anyone who contracts with their governmental agencies. In addition, elected officials may not receive any personal loan aggregating more than \$500 from a single lender unless certain terms of the loan are specified in writing. Under certain circumstances a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

NEW GIFT RULES

The Fair Political Practices Commission has adopted an amended regulation regarding the disclosure of certain gifts received by candidates and public officials. The amendments provide a method for determining the value of invitation-only events, testimonial dinners and ceremonial functions and identified possible exceptions or modifications thereto. One such exception has been provided for instances in which an official or candidate merely “drops in” for a limited appearance and does not receive the full benefits of attending the event.

The new regulations also provide a method for determining the value of tickets to fund raising events for non-profit or organizations where there is no ticket indicating a face value. In this case the value of the gift is the pro rata share of the cost of any food and beverages plus any other specific item presented to the attendee.

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