



## Serving Public Education Without Violating Gift and Ethics Laws - A Legal Review for Districts and Consultants

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### It Starts Like This . . .

Chancellor and Facilities Director accept invitations to get on a bus and go to a sit-down dinner sponsored by a long time vendor for the school district...

Everyone has a great time!



## But May End Like This!

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### School officials failed to report gifts from bond firm

The state's political watchdog has proposed fining 83 California public officials for receiving lavish meals, rounds of golf and other gifts from a Los Angeles bond firm, but failing to properly report them.



## Topics

- Why is this important?
- Foundational conflict of interest concepts.
- What is a “gift”?
- Other financial conflicts of interest beyond gifts.
- Who must report, and what reporting requirements must a public official observe?
- What happens when an official fails to report a gift, accepts gifts in excess of the limit, or has a conflict of interest?
- What are recommended “best practices”?



## Why is this Important for Officials?

- It's the Law!
  - Legal limits on conflicts of interest and gifts, with consequences for violation.
    - Political Reform Act (Gov. Code, § 81000 et seq.)
    - Fair Political Practices Commission (FPPC) Regulations, Cal. Code Regs., tit. 2, § 18940 et seq.
    - School District Policies/Conflict Code
  - Gifts must be tracked and reported
- Integrity, accountability, transparency
- Public relations (Appearance of impropriety)



## Also Important to Consultants

- Duty to district client
- Commitment to/integrity of public service
- Protects client's reputation
- Protects firm reputation
- Protects existing and prospective contractual relationships and work with district



## Foundational Concepts/Conflict Laws

### General Rule – Conflicts

- No public official may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying **financial interest**. (PRA, § 87100)
  - A “financial interest” can include many things including a person or company that is a source of gifts to the official.



## Foundational Concepts/Conflict Laws

### General Rule – Disclosure

- Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.  
(PRA, § 81002(c).)
- Check District Conflict of Interest Code





## The Basic Rules: Political Reform Act Gift Rules

- “Source” of gifts subject to disclosure:
  - For 2019 and 2020, no elected official/candidate/designated employee of a local agency may accept any **gift(s)** from one source worth more than **\$500** in a single calendar year.
  - Gifts of \$50 or more or aggregating \$50 or more from a single source in a calendar year must be reported on Form 700.
- Gifts from any “source:”
  - Gifts of \$500 or more in past 12 calendar months may create “conflict of interest”



## The Basic Rules: Section 1090

- Prohibits a public official from participating in a decision to contract in which they have a financial interest
- Gifts may constitute a financial interest
- Board members are presumed to participate in any contract made by the agency; recusal does not remove conflict



## The Basic Rules: Consequences for Official

- If an official does not report gifts of \$50 or more from a single source in a calendar year:
  - Subject to payment of fines/penalties
- If an official accepts gifts in excess of \$500 from a disclosable source in a calendar year:
  - Official is subject to the payment of fines/penalties
  - District could be prohibited from entering/ extending a contract with the gift donor



## The Basic Rules: Consequences for Consultant

- If an official accepts gifts in excess of \$500 from a consultant/vendor in prior 12 months:
  - Official may be prohibited from participating in any decisions regarding the consultant/vendor
- Section 1090 may prohibit **any** contract with district if the gift was to a board member; recusal does not remedy





## Definition of Gift

- A “**gift**” is any payment made by any person of any thing of value, whether tangible or intangible, real or personal property, a good or service provided to an official that confers a personal benefit for which the official does not provide “**full consideration**” for the value received.



## Definition of Gift

- Examples -- Presents, food/beverage, tickets to sporting and entertainment events, plaques, travel, hotel stays, green fees, forgiveness of debt, or a rebate or discount not available to the general public.
- Gifts to family members count as gifts to the official unless there is a working, social, or similar relationship between the donor and family member separate from the official.
- “Family members” = spouse, domestic partner, dependent child, 18–23 year old living with parent(s).



## Exemptions: Returned, Donated, or Reimbursed Gift

- No gift reporting if official:
  - Returns gift to donor within 30 days;
  - Donates gift to 501(c)(3) charity within 30 days. Official or family member cannot hold position with charity; or
  - Reimburses the donor for the gift within 30 days.



## Exemptions

- Gifts do *not* include:
  - Campaign contributions
  - Prizes received in a manner not related to the official's status, in a bona fide competition
  - Tickets for official and 1 guest for admission to event where the official performs a ceremonial function
  - Two tickets for admission to attend a fundraiser for campaign committee or 501(c)(3)
  - Informational material**
  - Birthday/Holiday exchanges
  - Personalized plaques/trophies worth less than \$250
  - Gifts from family members (as distant as first cousins once removed, includes in-laws and former in-laws)





## Exemptions (cont.)

- Gifts do ***not*** include:
  - Bereavement offerings
  - Home hospitality
  - Reciprocal Exchanges**
  - Acts of neighborliness (“feeding your cat”)
  - Acts of human compassion
  - Gift from “BFF”**
  - Gifts exchanged between those in a dating relationship
  - Benefits of wedding attendance
  - Passes and tickets not used and not given to others



## Exemptions: Gifts To An Agency

- Gift is considered to be “to the Agency” (rather than an individual) if:
  - Agency controls use of payment/gift by staff; and,
  - Payment/gift used for official agency business; and,
  - Agency must report gift/payment using FPPC Form 801.
    - Form 801 is a public record with posting and reporting obligations where payments were \$2,500 or more in a quarter.
- Additional requirements for tickets.



## Exemptions: Certain Travel & Lodging



- ▶ Travel may be considered a gift or income.
- Exemptions:
  - Payee is not a reportable source
  - Purpose of travel is personal services, or speech for legislative, government purpose or speech addressing public policy issue
  - Travel pursuant to an agency contract
  - Legislative purpose *and* if paid by agency or 501(c)(3)
  - For official agency business *and* no personal benefit
  - Paid by another agency
- Even if not a gift, may still be the source of a conflict of interest as income.



## Is it a gift?

- Vendor hosted conference dinner
  - Yes, unless official only “drops in,” and does not consume any meal, stay for any entertainment and consumes only “minimal appetizers and drinks.” (FPPC Regs., § 18946.2(e).)
- Gift baskets
  - No, if the basket is addressed to the agency and no individual employee receives \$50 or more in benefits.



## Is it a gift?

- Tickets to a sporting event
  - Yes. Gift is equal to amount of the face value.
- Working Lunch
  - Probably. No direct exemption or advice, but No. I-00-083 – “Working lunch” for agency staff was gift where paid for by private party.



## Is it a gift?

- Scholarship for official's conference admission
  - May be a gift from the conference organizer (if reportable).
  - Not a gift if conference determines who gets scholarship as part of competition.
  - May be gift if given/directed by third party.
  - May qualify as a gift to an agency.
- Raffle prize to officials at conference
  - Probably a gift unless conference/raffle is open to the public.



## Is it a gift?

- Donation to district foundation
    - Not a gift, no personal benefit.
    - If campaign contribution, will be reported by campaign.
    - If made for other legislative, governmental, or charitable purpose, may be behested payment reportable by official if:
      - \$5,000 or over;
      - Request made by elected official.
- (FPPC Regs., § 18215.3.)



## Non-Gift Conflicts of Interest

- Conflicts can also result from financial interests other than gifts:
  - Real Property
  - Business Investments
  - Income
  - Financial Effect
- Recusal from decision making that affects an official's personal financial interests can avoid a violation under the PRA and 1090, except for Board members



## Enforcement and Consequences

- Attorney General, FPPC and DA may enforce PRA through criminal sanctions, civil liability and civil penalties.
- FPPC may impose a civil fine up to \$5,000 per violation.
- A fine of up to the greater of \$10,000 or three times the amount of the benefit, the amount the person failed to report, or unlawfully contributed, expended or gave or received, may be imposed upon conviction.



## Vendor Liability?

- Private entities can be charged with:
  - Bribery
  - Corrupt practices
  - Conspiracy to defraud another of property
- Law imposes liability for anyone “who causes another person to violate or who aids and abets another person in violating” Government Code 1090



## How to Disclose: FPPC Form 700

- Aka “Statement of Economic Interests”
- Requires disclosure of personal financial interests, including income and gifts
- Signed under penalty of perjury
- Public record
- Filers defined by law and listed in Conflict of Interest Codes
  - Identifies which types of economic interests each position must disclose; categories of disclosure assigned to each position.
  - Disclosure categories linked to official’s job duties.



## When to Disclose: FPPC Form 700

- When to file:
  - Upon taking office (within 30 days)
  - Upon leaving office (within 30 days)
  - **On an annual basis (postmarked by April 1)**
- Where to file:
  - With your agency (the school district or COE)
  - File with the district’s Filing Officer





## Gift Tracking — There's an App for That!

- You can record and compile the value of meals and other gifts you receive when you accept them

### Gift Tracking Mobile App

**IOS App now available!**



#### DESCRIPTION

The app is for California state officials and employees who are required to file form 700. It helps keep track of all the gifts they receive in a calendar year and provides a quick and easy way to furnish schedule D (the gift report schedule) of the form 700. The data is not collected electronically it is fully stored on the phone. This app is available for Android Phone running version 4.0 or higher, and IOS version 6.1 and higher.

#### Features:

- Quick search for sources, with display of maximum gift value allowed before going over the limit.
- Recording gifts from multiple sources
- Export data to spreadsheet
- Contact gift sources via SMS/Call/Email



## Best Practices/Officials

- Educate all designated employees and officials about gifts and conflicts
- Set expectations for all consultants regarding gifts
- Refuse gifts of any kind during procurement process
- If you accept a gift, ask for a statement of the value from the donor
- **IT IS OK TO ACCEPT GIFTS** as long as you comply with the rules
- Consider returning, donating or reimbursing vendor for cost of gift if you don't want to have to report (30 days)





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