



School Business Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

November 13, 2008

WHEN IS A GIFT TO YOUR DISTRICT NOT A GIFT? NEW FPPC REGULATION ADDRESSES NON-REPORTABLE GIFTS TO AGENCIES

As you know, the Political Reform Act restricts and in some instances even prohibits the receipt of gifts by public officials if the value of gifts received from that source during the calendar year exceeds the statutory amount, which is adjusted for inflation and is currently set at \$390. Acceptance of a gift in excess of this amount is not only a violation of the Act, it can prohibit the official from participating in any decision involving the donor. (Refer to your local Conflict of Interest Code – for K-12 districts using CSBA templates, see Board Bylaw 9270.) Gifts valued at \$50 or more must be reported by board members and designated employees on Form 700, unless an exception applies.

Where the gift is not given to an individual official, but rather to the agency itself, the prohibitions and restrictions on gifts may not be triggered under certain circumstances, even though the gift benefits an individual official. The Fair Political Practices Commission recently amended its regulations on this subject, imposing stringent new requirements. The new regulation, found at Title 2 California Code of Regulations section 18944.2, contains detailed requirements and reporting obligations in order for a gift to qualify for exclusion (copy attached). The reporting called for by the regulation is not required for gifts to the district which do not personally benefit an individual. The requirements are summarized as follows:

- ▶ Control Factor. The agency head or designee must control the payment. The donor can specify a purpose for the payment, but cannot designate who uses it, whether by designating a person by name, title, class or otherwise.
- ▶ “Agency head” means the individual in whom ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for this purpose. In a school or community college district or county board of education, the board itself has the ultimate legal authority. In order to avoid having to review these on a case-by-case basis, the board may delegate this authority to the Superintendent, or in the case of a county board, to the County Superintendent as secretary to the board. A sample delegation resolution is attached for this purpose.

- ▶ **Personal Benefit.** If the payment personally benefits an individual, the agency head or designee decides who will use it, but cannot select himself or herself.
- ▶ **Official Business.** The payment must be used for official district business. The FPPC says the meaning of “official district business” is “self-explanatory,” but does say that the gift must assist the agency in carrying out its mission, programs or goals and cannot be for an activity unrelated to the official responsibilities of the agency. (See FPPC, Gifts to An Agency, Questions and Answers.)
- ▶ **Reporting Requirements.** In order for the gift to comply with the regulation, the district/county board/county superintendent must report it to the FPPC within 30 days after the payment is used. A new form for this purpose has been created, FPPC Form 801. A copy of the form is attached and it can be accessed on the FPPC website at www.fppc.ca.gov/forms/801.pdf. The following information must be provided:
 - ▶ A description of the payment, date received, intended purpose and amount (or the actual or estimated value of the goods or services provided).
 - ▶ Name and address of the donor. If the donor is not an individual, the business activity of the donor must be provided or the nature and interests of the entity. If the individual has raised funds from other persons for the specific purpose of making the payment to the agency, the report must contain the names of, and amounts given by, these people.
 - ▶ A description of the agency’s use of the payment, including the name, title and department of the agency official for whom the payment was used, including the date(s) and place(s) of any travel, a breakdown of the total expenses for transportation, lodging, meals and related expenses.

The following additional requirements must be observed:

- ▶ The form must be signed by the agency head/designee.
- ▶ The form must be maintained as a public record and subject to inspection under Government Code section 81008(a).
- ▶ The form must be submitted to the District’s filing officer who receives statements of economic interest (Form 700) from employees. This must occur within 30 days after use of the payment. The form can be submitted by mail, personal delivery, e-mail or fax. The forms must be logged and maintained for a period of at least 4 years.

- ▶ The form (or the information from the form) must be posted on the district's website. If the district doesn't have a website, it must be forwarded to the FPPC for posting on its website. The regulation does not specify how long the form must remain posted on the District website.

The regulation does not apply to travel payments (payments for transportation, lodging and meals) which (1) are used by a board member and certain other officials such as "officials who manage public investments," (2) were not approved in advance in writing by the agency head or designee, or (3) exceed the district's reimbursement rates.

The FPPC has a separate regulation concerning gifts of passes or tickets (2 CCR section 18944.1). Amendments to those regulations have been proposed and are going through the approval process.

If you need further information on this topic, do not hesitate to contact our office.

— Grant Herndon

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

**RESOLUTION OF THE GOVERNING BOARD OF THE
_____ DISTRICT APPOINTING
SUPERINTENDENT AS DESIGNEE TO DETERMINE ACCEPTANCE
OF GIFTS TO THE DISTRICT WHICH MAY BENEFIT AN INDIVIDUAL**

1. Authority and Reasons for Adopting Resolution.

A. Regulations of the Fair Political Practices Commission allow for the acceptance of gifts by a local public agency which are not reportable gifts under certain circumstances, even though they may benefit an individual employee or official.

B. For the gift to be considered a “gift to the agency,” and not to an individual, the “agency head or designee” must control the use of the gift. The governing board would normally be considered the agency head for this purpose.

C. A series of criteria and reporting requirements must be satisfied in order for the gift to be considered a “gift to the agency.”

D. To avoid having to review numerous individual cases, the Board desires to name the Superintendent as its designee to determine whether to accept on behalf of the District a gift to the agency which may benefit an individual.

2. What This Resolution Does.

This Resolution permits the Superintendent to act as the Board’s designee for purposes of accepting gifts to the District which may benefit an individual, under the provisions of an FPPC regulation, provided the Superintendent does not select himself/herself as the recipient and notifies the Board of any gifts accepted on behalf of the Board.

3. Designation of Superintendent.

The Board names the Superintendent as its designee to determine under the requirements of Title 2, California Code of Regulations section 18944.2, whether to accept on behalf of the District a gift to the agency which may benefit an individual. In making this determination, the Superintendent may not select himself/herself as the individual who will use the gift or payment.

4. Filings and Notification.

The Superintendent is directed to make all necessary filings for compliance with applicable regulations with respect to such gifts. The Board further directs the Superintendent to notify the Board of any gifts to the District accepted by the Superintendent under this delegated authority.

5. Certificate of Resolution.

I, _____, _____ of the Governing Board of the _____ District of _____ County, State of California, certify that this Resolution proposed by _____, seconded by _____, was duly passed and adopted by the Board, at an official and public meeting this _____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

_____ of the Board
of the _____ District of
_____ County, California

CALIFORNIA CODE OF REGULATIONS

§ 18944.2. Gifts to an Agency

(a) Applicability. This regulation sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.

(b) Definitions.

(1) "Payment" means a payment as defined in Section 82044 and includes a monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or provision of, goods or services to an agency.

(2) "Agency head" means an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.

(c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as defined in Section 82028, shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met:

(1) Agency Controls Use of Payment. The agency head, or his or her designee, determines and controls the agency's use of the payment. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, shall select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.

(2) Official Agency Business. The payment must be used for official agency business.

(3) Agency Reports the Gift. Within 30 days after use of the payment, the agency reports the payment on a form prescribed by the Commission that includes the following information:

(A) A description of the payment, the date received, the intended purpose, and the amount of the payment (or the actual or estimated value of the goods or services provided).

(B) The name and address of the donor. If the donor is not an individual, the report shall also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other persons for the specific purpose of making the payment to the agency, the report shall contain the names of and amounts given by these persons.

(C) The agency's use of the payment, and the name, title, and department of the agency official for whom the payment was used. The report shall include the date(s) and place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and other related expenses.

(D) The form is signed by the agency head, or his or her designee, and maintained by the agency as a public record subject to inspection and copying under Section 81008(a).

(E) A state agency shall provide the completed form to the Commission (or in the case of the Commission to the office of the Attorney General), within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency maintains a website, the state agency shall also post a copy of the form or the information in the form on its website in a prominent fashion within 30 days after use of the payment. If the state agency does not maintain a website, the Commission shall post a copy of the form or the information in the form on its website.

(F) A local agency shall provide the completed form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing officer shall post a copy of the form or the information in the form on its website, or if it does not maintain a website, shall provide a copy of the form to the Commission which shall post the information on its website.

(G) The individual in the agency who has official custody of these forms is the filing officer for the forms, keeps a log of the forms under both the name of the agency and official receiving the payment, and maintains the forms for a period of not less than four years.

(d) Limitations on Application of this Regulation. The exception provided in subdivision (c) does not apply to the following payments:

(1) A payment for travel, including transportation, lodging, and meals, for a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.

(2) A payment for travel to the extent that it exceeds the agency's reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no standard policy or practice concerning reimbursement rates, the State per diem rates as set forth in applicable sections of the State Administrative Manual and Department of Personnel Administration regulations, or the Internal Revenue Service rates for reimbursement of these expenses as set forth in the U.S. General Service Administration's website under "Per Diem Rates" and Internal Revenue Service Publications 463 and 1542, or their successors.

(3) A payment for travel that the agency head, or his or her designee, has not preapproved in writing in advance of the date of the trip.

(4) Passes or tickets, as described in Regulation 18944.1, which shall be governed by that regulation.

(e) Public Colleges and University Research Projects. Notwithstanding this regulation, a donation to a California public college or university for a specific research project that is received consistent with the requirements of Regulation 18702.4(c) or a meal received in the course of the college's or university's official fundraising activity, which qualifies under federal and state law for a deduction as a charitable contribution for educational purposes, will be deemed a gift to the college or university.

(f) Payments from the Federal Government. Notwithstanding this regulation, a grant, reimbursement, funding, or other payment received by a state or local government agency from a federal government agency for education, training, or other inter-agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment.