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TRUSTEES: IT MAY BE BETTER TO GIVE THAN TO RECEIVE ! A SHORT PRIMER ON GIFT LIMITATIONS FOR PUBLIC OFFICIALS

At some point, most trustees will experience educational vendors offering gifts of various kinds – travel, dining, seminars, tickets, etc. Trustees need to be aware that in their role as public officials, gifts often carry with them disclosure obligations and overall limitations on acceptance. Financial disclosure forms (the Fair Political Practices Commission’s Form 700, Statement of Economic Interest) must be filed within 30 days after assuming office and annually after that.

Many trustees attend workshops in the fall to learn about school governance and receive updates on a host of education topics. This bulletin is intended as a brief primer for trustees on things to watch out for with respect to gifts while traveling on District business.¹

1. **What is considered a gift?** A gift is something of value provided to you for your **personal benefit**, for which you have not provided goods or services of equal value in return.

From this basic definition, there are many, many exceptions and fine points in the law. However, any time you are offered a gift, you should stop and consider whether there may be a consequence in your role as a public employee or elected official. Even when it is lawful, a public servant has a personal decision to make when acceptance of the gift could reflect negatively on his or her district or undermine the integrity of its decision-making processes. Once you identify a potential issue, bring it to your Superintendent’s attention so that it can be reviewed with legal counsel, or contact the Fair Political Practice Commission’s advice hotline.

The following are examples of common situations requiring an analysis of the applicable gift limitation rules and exceptions.

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| Example 1: | A friend treats you to a golf weekend in Santa Barbara. |
| Example 2: | A software company offers free software, along with registration and lodging at a seminar on how to use the software, to the district’s information technology director and board members. |
| Example 3: | At the annual school boards association meeting, a school board member attends a reception and dinner paid for by a law firm serving school districts. |

¹ According to the nonprofit Institute for Local Government, “The goal underlying California’s gift reporting and gift limits is to prevent either the perception or the reality of gift giving influencing public officials’ actions. This is because public agency actions should always promote the public’s interests, as opposed to narrow personal or political interests.” (Institute for Local Government website, www.ca-ilg.org/GiftCenter.)

In each of these situations, a personal benefit has been conferred on you. By recognizing that, you will be able to request appropriate information to determine whether an exemption applies, reporting is required, or whether receipt of the gift would violate the law. You should keep a log of all gifts received during the calendar year, including the nature of the gift, date received, source and value, and keep a running total for each vendor.

2. **Do I need to worry about gifts involving family members?** For the most part, gifts to a public official from immediate family are not a concern. If the family member is acting as an agent or intermediary for someone other than specified family members, the gift is subject to the rules relating to gifts. For example, a gift from a relative which is in reality subsidized by a vendor will be subject to the legal limitations.

If Uncle Bernie gives you a shipment of roof shingles which are really provided on behalf of his employer, it will be subject to the gift rules even though from a family member.

Gifts TO certain family members, specifically spouses and children, can be treated as gifts to the public official and are the subject of recent changes to FPPC regulations.

3. **Are there some kinds of gifts I don't have to worry about at all?** There are many exceptions to the gift rules. Some exceptions provide that the item does not have to be reported on Form 700, or that the item is not subject to the usual gift limits. If you return the gift unused or reimburse the donor within 30 days of receiving it, you need not disclose it. The same applies where you donate the gift unused to a tax-exempt nonprofit or government agency without claiming a tax deduction. There is a generous exception for certain gifts of informational material.

4. **Are loans to a public official considered gifts?** Personal loans to an elected official or education agency employee can be considered gifts and subject to the gift rules when they are not repaid.

CAUTION: Elected officials must **NOT** accept a personal loan of \$500 or more unless made in writing under clearly identified terms. Elected officials are prohibited from receiving a personal loan from officers, employees, consultants or contractors of the District, with limited exceptions.

5. **What are the gift disclosure requirements for elected officials?** Elected officials disclose all gifts that are not exempt, regardless of their source, if the value exceeds \$50. If multiple gifts are received from the same source during the year, they must be disclosed when the total value exceeds \$50.

The Political Reform Act prohibits acceptance of gifts in excess of the gift limit. The gift limit is currently \$440. This means that elected officials may not accept gifts from a single source the value of which exceeds \$440 in a calendar year. The limit is periodically adjusted for inflation - it will be increased to \$460 effective January 1, 2015.

6. **What are some of the consequences of violating the gift rules?** In addition to late filing penalties and other administrative fines of up to \$5,000 per violation, civil sanctions of up to three times the value of the gift may be imposed. In some cases, criminal penalties may apply, along with disqualification from holding public office.

The acceptance of gifts exceeding the gift limitation also disqualifies the recipient from participating in decisions involving the gift-giver. This means that a board member would be prohibited from participating in the discussion and voting on a decision involving the gift source.

More detailed information regarding gifts and conflict of interest issues is available through Schools Legal Service and on the Schools Legal Service website, www.schoolslegalservice.org.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Grant Herndon

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