



Guide to Reporting Gifts, Honoraria and Travel Payments

Legal Guidance Provided by CSBA

Under the Political Reform Act (the Act), 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 conflict of interest. (Gov't. Code 87100.) One of the purposes of the Act's disclosure requirements is to identify those circumstances where a public official may be disqualified from acting based on the official's personal financial assets and sources of income including sources of gifts. (Gov't. Code § 81002 (c).)

In addition to the disclosure of gifts on the FPPC Form 700, the Act imposes limits on *gifts* received by local elected officials, including school and county board members, and candidates for these offices. The current calendar year gift limit for 2015-2016 is \$460 from any one source. The gift limit is adjusted biennially based on the CPI, and the proposed limit for 2017-2018 is \$470.

The Fair Political Practices Commission (FPPC) is responsible for administering and enforcing the Act including the financial disclosure and disqualification requirements and the gift limits. The FPPC enacts implementing regulations, issues formal advice letters as well as informal advice, and initiates administrative and civil enforcement actions for violations of the law. The FPPC may seek fines of up to \$5,000 per violation, or the amount not properly reported.

School district and county board members must file a Form 700 annually by April 1, and within 30 days of taking and leaving office.

Most school board members file pursuant to their district's conflict of interest code which spells out the specific disclosure requirements for board members as well as other district officials. However, some school board members will file as an official under the category of a public official who manages public investments, and the disclosure requirements are set forth in the Act.

This guidance is intended to help governing board members identify and report gifts. Officials should not rely exclusively on this guidance since the gift and travel rules and related exceptions are complex and highly dependent on the specific facts of each situation. Each individual filer must verify Form 700's content under penalty of perjury so great care should be taken in the collection of information for the disclosures and the completion of the Form 700.

CSBA recommends the filers review disclosure requirements in the district's code or the Act as applicable. In addition, CSBA has found the instruction sheet for each schedule of the Form 700, the FPPC's Reference Pamphlet for the Form 700 and the FPPC's guide on gifts and travel expenses, "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans," to be extremely helpful resources in completing the Form 700.¹ When necessary, board members should contact the FPPC for specific, personal guidance².

1 The FPPC guidance, "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans," is available on its website (www.fppc.ca.gov/), or directly linked at <http://bit.ly/2fHFSAj>

2 For advice by phone or online, or for formal written advice concerning your duties under the Act, visit www.fppc.ca.gov/advice.html. When requesting advice from the FPPC, be sure to include all facts and circumstances since the advice will be dependent on the facts provided, and a small change in the facts may result in different advice.

What is a Gift?

A gift is any payment made by any person of anything 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. (Gov’t. Code 82028.)

Flowers, meals, beverages, tickets to sporting and entertainment events, travel, hotel stays, forgiveness of debt, and any discounts or rebates not available to the general public are all considered gifts. Gifts to an official’s immediate family members³ are presumed to be gifts to the official unless there is a working, social, or similar relationship between the donor and family member separate from the official.⁴

Officials may receive reportable “gifts” at CSBA’s Annual Education Conference (AEC). Board members, Superintendents, and others who receive something to eat or drink for free at a reception at AEC may need to the report the items as gifts, if the items received aggregate to a \$50 reportable gift from an individual source during the reporting period (the calendar year for an official filing an annual Form 700).⁵

SCHEDULE D Income – Gifts			CALIFORNIA FORM 700 FAIR POLITICAL PRACTICES COMMISSION AMENDMENT		
NAME OF SOURCE (Not an Acronym)			NAME OF SOURCE (Not an Acronym)		
ADDRESS (Business Address Acceptable)			ADDRESS (Business Address Acceptable)		
BUSINESS ACTIVITY, IF ANY, OF SOURCE			BUSINESS ACTIVITY, IF ANY, OF SOURCE		
DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)	DATE (mm/dd/yy)	VALUE	DESCRIPTION OF GIFT(S)
___/___/___	\$_____	_____	___/___/___	\$_____	_____
___/___/___	\$_____	_____	___/___/___	\$_____	_____
___/___/___	\$_____	_____	___/___/___	\$_____	_____

- Family members include spouses and dependent children (including an adoptive child or stepchild) who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return.
- Weddings gifts are not subject to the \$460 gift limit, but they are reportable. For the purpose of valuing wedding gifts, one-half of the value of each gift is attributed to each spouse. (Regulation 18946.3)
- There is no gift if an official does not partake of the food or beverage, or receive any other item of value at the event. The exception to reporting meals or drinks as gifts is when the official attends a reception or other event where food and beverages are available. Known as the “drop-in” rule, FPPC Regulation 18946.2 exempts minimal consumption of food and beverages from the definition of a gift when an official simply drops by an event for a few minutes and does not stay for a meal or entertainment. An intermediary is a person or entity that makes a contribution on behalf of another person and has been or will be reimbursed for the contribution.

When is a Gift Received?

An official has “received” a gift when she knows that she has actual possession of the gift or when she takes any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. This includes gifts that are accepted on the official’s behalf. (Regulation 18941.)

CSBA has created a “Gift Tracking Form,” attached to this guide, to assist officials in keeping track of potentially reportable gifts they receive, including multiple smaller gifts from a single source that may add up to or exceed \$50 annually to become reportable.

Reimbursing, Returning or Donating the Gift

An official who has received a gift may pay back the donor within 30 days for all or any part of a gift, and the gift will be reduced by that amount for reporting purposes. In addition, if a gift is received in excess of the limit, the official may reimburse the portion of the gift which exceeds the limit, and the limit is not violated so long as the reimbursement is made within 30 days of the receipt of the gift. (Regulation 18941.)

Officials also do **not** need to report the receipt of a gift if the gift is returned unused to the donor within 30 days of receipt, or the official donates the gift (unused) to a 501(c)(3) charity or nonprofit organization within 30 days of receipt (the official or a family member cannot hold a position with the charity), and the official does not take a charitable gift deduction on his or her income tax return.

When a gift is received, then what?

A board member who receives a gift must disclose the full name, address and business activity of the donor (and intermediary⁶, if any), a description of the gift, the amount or fair market value of the gift⁷, the date on which the gift was received, and, if the gift is a travel payment, the travel destination.

For 2016, no elected official, candidate, or designated employee of a local agency (including school district) may accept any gift(s) from one source worth more than \$460 in a single calendar year. (Gov’t. Code § 89503.) Gifts of \$50 or more or aggregating \$50 or more from a single source must be reported on the Form 700.

In addition, if gifts are received from a source in excess of the gift limit (currently \$460) during any 12-month period, an official is disqualified from participating in any district decisions involving the source of the gift(s) for 12 months following the receipt of the gifts.

6 An intermediary is a person or entity that delivers or makes a gift on behalf of another person and has been or will be reimbursed for the gift. An intermediary of a gift is required to disclose to the recipient the actual source of the gift.

7 The value of a gift is the fair market value at the time the gift is received, determined by finding any local or Internet advertisement for the item. Special exceptions to the fair market value rule are contained in Regulations 18946.1-18946.5 covering admission to events, wedding gifts, attendance at fundraisers, and air travel. A unique gift may be based on a reasonable estimate of its value.

What is *Not* a Gift?

The Act and FPPC regulations describe specific items and instances that are not considered gifts to public officials. The following list are just some of the items not considered gifts, and thus not subject to the \$460 gift limit, nor reportable on the Form 700:

- » Campaign contributions.
- » Prizes received in a manner not related to the official's status in a bona fide competition, unless only public officials are in the potential pool of winners.⁸
- » Informational materials provided to assist the official in the performance of his or her official duties, including admission to conferences or seminars and informational site visits and tours (but if the value of the item is greater than \$460, the board member has the burden of demonstrating the item is informational and related to the official's duties).
 - » Note: transportation provided to a site for a conference and any lodging and meals paid for by another are usually considered a reportable gift, and does not fit within the informational materials exception. (See Regulations 18942(a)(1) and 18942.1.)
- » Birthday/holiday exchanges with friends (to the extent that the gifts exchanged are not substantially disproportionate in value).
- » Gifts from family members (provided the family member is not acting as an intermediary for a third party).
- » When making a speech, the admission to the event for the official, food, and minimal items (such as a pen, note pad, or similar item) provided to all attendees.
- » Tickets for the board member and one guest for an event where the board member performs a ceremonial function such as giving an award.
- » Two tickets for admission, for use by only the official and one guest, to attend a fundraiser for a campaign committee or candidate, or to a fundraiser for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, provided by the hosting committee or organization. Tickets provided by others are reportable gifts based on the pro rata costs of the food, beverage and other items provided to the attendees.
- » Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that the official does not use and does not give to another person (a ticket has no reportable value unless it is ultimately used or transferred to another person). Tickets that are for functions and amateur events involving students and the official's district are also not considered gifts. (Regulation 18944.1.)

⁸ The FPPC has opined that when the pool of potential winners primarily consists of elected officials and/or other Form 700 filers, then any prize won may be reportable as a gift because the competition is not considered "bona fide." (Regulation 18942.)

- » Presents from groups, such as a retirement gift from coworkers, as long as no person contributed \$50 or more to the total cost of the gift (if someone donated \$50 or more, that person's portion is a reportable gift (Regulation 18945.2).
- » Reciprocal exchanges of value between an official and another individual on an ongoing basis so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid out by the official and no single payment is \$460 or more (for example, if two people get together regularly for lunches or coffee and rotate picking up the tab so that each pays approximately half the total value over the course of the calendar year).

Honoraria, Travel, and Other Special Circumstances

Honoraria, travel, and other special circumstances are treated differently from "gifts," are subject to different rules and limitations, and require different reporting.⁹

Honoraria:

Local elected officials are prohibited from receiving any honoraria payments.

Honorarium is broadly defined to include any payment made in consideration for any speech given, article published, or attendance at any conference, convention, meeting, social event, meal, etc. There are exceptions to the honoraria prohibition for payments for travel in connection with a bona fide business and for travel in connection with campaign activities. There are also exceptions to the honoraria prohibition for certain types of travel as described below.

Travel Payments:

Generally, when an official receives an advanced payment or reimbursement for his or her travel, that payment may be treated by the recipient as either a gift or as income. (Travel payments include transportation, parking and related lodging and meals.) When a travel payment is made in connection with an official attending an event or making a speech, the payment or reimbursement would usually be considered a gift. However, if the official is providing value that is equal to or in excess of the payment or reimbursement received, it may be considered income. (Gov't. Code 89506.)

If the payment is considered a gift, it is also normally subject to the \$460 gift limit. If the payment is income, it is reportable when the payment(s) totaling \$500 or more and is not subject to any limit.

There are exceptions to the honoraria prohibition and to the gift limit for certain types of travel. These include payments made in connection with travel related to an issues of local, state, national or international policy which are provided by a government agency, educational institution or public charity which is tax exempt under Internal Revenue Code section 501(c)(3). When an official is invited to make a speech for a group or at an event in the

⁹ For detailed information on agency gifts and behested payments, see the FPPC's guidance, "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans," at <http://bit.ly/2fHFSAj>. Agency gifts — payments made to a government agency that are used by officials in the agency to conduct agency business — may be reportable by the agency on Form 801, and not subject to the \$460 gift limit. Behested payments — payments made at the behest of an official that do not confer a personal benefit on an official (such as when an official solicits a donation from someone to an organization) — are not gifts but may require disclosure by the official on Form 803.

United States, the payments for transportation, and related food and lodging for the day before, the day of and the day after the speech are permissible and not subject to the gift limit or honoraria prohibition. These payments are reportable as gifts by the official on the Form 700 that are not subject to the gift limit.

In addition, payments made for “official agency business” (e.g. providing training or education information directly related to governmental function) are not gifts if the payment is made directly to the government employer, instead of the individual, and there is no personal benefit to the official, such as extra days of travel so long as the agency publicly discloses the travel payments on Form 801.

SCHEDULE E Income – Gifts Travel Payments, Advances, and Reimbursements		CALIFORNIA FORM 700 <small>FAIR POLITICAL PRACTICES COMMISSION</small> AMENDMENT
<ul style="list-style-type: none"> • Mark either the gift or income box. • Mark the “501(c)(3)” box for a travel payment received from a nonprofit 501(c)(3) organization or the “Speech” box if you made a speech or participated in a panel. These payments are not subject to the \$460 gift limit, but may result in a disqualifying conflict of interest. • For gifts of travel that occurred on or after January 1, 2016, provide the travel destination. 		
<p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p><input type="checkbox"/> 501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____ <i>(If gift)</i></p> <p>▶ MUST CHECK ONE: <input type="checkbox"/> Gift -or- <input type="checkbox"/> Income</p> <p><input type="radio"/> Made a Speech/Participated in a Panel _____</p> <p><input type="radio"/> Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p>	<p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p><input type="checkbox"/> 501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____ <i>(If gift)</i></p> <p>▶ MUST CHECK ONE: <input type="checkbox"/> Gift -or- <input type="checkbox"/> Income</p> <p><input type="radio"/> Made a Speech/Participated in a Panel _____</p> <p><input type="radio"/> Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p>	

Additional Resources

- » 2015/2016 Statement of Economic Interests, Form 700, available at <http://bit.ly/1TQv7um>
- » FPPC Limitations and Restrictions on Gifts, Honoraria, Travel and Loans, A Fact Sheet for Local Elected Officers and Candidates for Local Offices, available at <http://bit.ly/2fHFSAj>
- » Sample BB 9270, Conflict of Interest, and Exhibits are available to Policy Services clients on Gamut Online.

For additional guidance, contact CSBA's Office of the General Counsel at 800-266-3382.

Gift Tracking Form

Please note that all gifts received in a calendar year from a single source is limited to a value of \$460, and that officials are required to annually report gifts cumulating to \$50 or more in value from a single source.

1. Name of the person or entity who gave the gift: _____
2. Address of the person or entity who gave the gift:

3. What the business activity is of the person or entity who gave the gift, if any:

4. The date the gift was received: _____
5. The fair market or dollar value of the gift received: _____
6. The description of the gift received:

This form may be used to track every gift received during the calendar year.
The Fair Political Practices Commission also has a "gift tracking" mobile app that can be downloaded.
Please visit www.fppc.ca.gov for more information.