

A periodic news publication for KMTG clients and other friends featuring significant legal updates, client reminders and law-related articles.

The Public Agency must (1) control the use of the payment; (2) the payment must be for an official agency business; and (3) the gift must be reported within 30 days after use of the payment on Form 801.

When a Gift to a Public Official May Be Considered a Gift to a Public Agency

The Fair Political Practices Commission (“Commission”) has substantially revised the criteria under which a payment that is controlled by the agency and used in the official business of the agency is not considered a gift to a public official but is designated as “gift to an agency”. This means a gift is not a reportable gift to an individual public official, but rather, the agency itself. Public agencies are required to report these types of gifts on the FPPC Form 801, a copy of which may be retrieved at www.fppc.ca.gov/forms/801.pdf.

Gifts

Local elected office holders, candidates for local elected office, or designated employees of a local agency, including counties, cities, special districts and school districts, may not accept any gift or gifts from a single source aggregating in excess of \$390 in any calendar year. “Gifts” generally include any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value, unless the rebate or discount is offered to the general public in the regular course of business. “Payment” 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. However, gifts generally do not include information material, gifts that are returned or donated to a charity within 30 days without being claimed as a tax deduction, gifts from certain family members, campaign contributions, inheritances, personalized plaques or trophies with a value of less than \$250, hospitality (including food, beverages and lodging) provided by an individual in his or her home, and presents exchanged between the official and an individual other than a lobbyist on holidays, birthdays, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.

Exception to Definition of Gift to Public Official

The Commission has recently adopted a new regulation that excludes certain payments that previously constituted a gift to a public official. The regulation provides that if the payment meets the requirements set forth below that the payment will be considered a gift to the public agency instead of the official.

1. **Agency Control:** The agency head, or his/her designee, must determine and control the agency's use of the payment. The donor may identify a purpose for 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/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 Business:** The payment must be used for official agency business.

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The regulation does not apply to certain payments for travel.

Reporting

The agency must report the gift within 30 days after use of the payment on a Form 801 and include the following information:

1. 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).
2. The name and address of the donor and if the donor is not an individual, the report must also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other people to make the payment, the report must contain their names and the amounts donated.
3. 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. 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.
4. The form must be signed by the agency head or his/her designee and must be maintained as a public record subject to inspection under Government Code Section 81008(a).

The individual in the agency who has official custody of the forms is the filing officer for the forms and must keep a log both under the name of the agency and under the name of the official receiving the payment. The forms must be retained for at least four years.

State Agencies

State agencies must provide the completed form to the Commission within 30 days after use of the payment by mail, personal delivery, e-mail, or facsimile. If the state agency maintains a website, a copy of the form or the information contained in the form must be posted on its website in a "prominent" fashion. If the State agency does not maintain a website, the Commission will post a copy of the form or the information on its website.

Local Agencies

A local agency must 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, e-mail or facsimile. The filing officer must then post a copy of the form or the information contained in the form on its website. If it does not maintain a website, the Commission will post a copy of the form or the information on its website.

Limitations on Use

The regulation does not apply to the following:

Payments for Travel:

- *Payment for Officers' Travel:* Transportation, lodging, and meals, for a state or local

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officer, as defined in Government Code Section 82020¹, or an official specified in Government Code Section 87200² are not covered under the regulation.

- *Payments that Exceed Reimbursement:* If a payment exceeds the agency's reimbursement rates, or if the agency does not have a standard policy or practice concerning reimbursement rates, the State per diem rates, the regulation will not apply.
- *Pre-Approval Required:* Any payment for travel must be approved by the agency head or his/her designee before the date of the trip.

Passes or Tickets

Passes and tickets are governed by California Code of Regulations, Title 2, Section 18944.1.

Donations to Public Colleges or Universities

Notwithstanding this regulation, donations to California public colleges or universities for a specific research project that are received consistent with the requirements of California Code of Regulations, Title 2, Section 18702.4(c) or a meal received in the course of the college's or university's fundraising activity, which qualifies as a charitable contribution for educational purposes, will be deemed a gift to the college or university.

If you have any questions concerning the content of this *News You Can Use* publication, please contact:

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1 An "Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Government Code § 82020)

2 Officials listed in Government Code Section 87200 include elected state officers, judges and commissioners of courts, Public Utilities Commission members, Energy Commission members, Fair Political Practices Commission members, Coastal Commission members, planning commissioners, members of boards of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers of cities, members of city councils, and other public officials who manage public investments.