



Everyday Ethics for Local Officials

When Is It Better Not to Receive? Gifts for Public Officials

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QUESTION

I have a longstanding friendship with a local developer, which pre-dates my public service by many years. This individual (who is quite well off) is a very generous person, taking me and other friends to restaurants, sporting events and other places that we could never afford ourselves.

The local newspaper is now making a big deal out of what it calls my being "wined and dined" by this developer. I suspect that the paper is setting this up as an election issue for next year. I personally see nothing wrong with allowing myself some of life's little luxuries, as long as I don't let it influence my judgment as a decision-maker. Moreover, it feels ungracious to reject someone's generous gestures. What are your views?

ANSWER

What you are experiencing, for better or worse, is the reality of public service ethics. In politics, perception can easily and quickly morph into reality. Put another way, it doesn't matter that *you know* your intentions to be honorable; the media and public's *perceptions* of your intentions can be just as important.

The newspaper and the public know that there are those who will try to curry favor with decision-makers by taking them out to meals or other events. This is based on the premise that we are raised to feel and express gratitude to those who do nice things for us.

This human tendency is one of the reasons that state law requires public officials to disclose on their Statement of Economic Interests any gifts received above a certain threshold. State law also imposes an annual limit on the value of gifts received from one source.

Like so many ethical issues, it can be helpful for public officials to decide in advance their policy regarding gifts. If you know what your philosophy and personal standards are, it can be easier to adhere to them when temptation strikes.

Let's define what kinds of gestures constitute "gifts" and then examine your options for gift policies.

Gifts Don't Always Have Bows

For purposes of gift limits and disclosure, state law defines the concept of "gift" broadly. The concept goes beyond what most of us consider to be a "present." A gift includes receiving meals or food. For example, if your friend invites you to dinner at a nice restaurant while you are both attending the state Chamber of Commerce annual conference in some faraway place, you need to ask him what your portion of the tab is in addition to extending your thanks for the hospitality.

The concept of a gift also includes discounts or rebates on the price of something, if these discounts and rebates aren't available to members of the public in the regular course of business. Gift issues can also arise when someone covers your travel expenses, pays for your lodging costs or lets you stay at their vacation home.

In short, a gift is generally any payment or benefit that you receive for which you do not provide goods or services of equal value. Even though some kinds of gifts are not subject to disclosure and limits under state law (gifts among family members, for example), it is helpful to keep this broad definition of gift in mind as you ponder what your gift policy should be as an officeholder.

Understanding that the concept of "gift" can be very broad when you are a public servant, what are your options in terms of your own policy and approach to gifts as a public official?

The "What the Law Allows" Approach

Some public officials take guidance from state and any local laws relating to acceptance of gifts. State law, for example, makes a judgment that the public has a right to know when an official receives gifts totaling \$50 or more from a single source. It does this by requiring officials to disclose gifts exceeding this amount on their Statement of Economic Interests.

State law also makes the judgment that no public official should receive gifts totaling more than \$420 (2009-10 limit) in a calendar year from one source (see *Everyday Ethics for Local Officials, The Gift That Keeps on Giving: Changes to the Gift Rules*, April 2009). These requirements make it necessary for you to keep a running tally of what you receive from whom, so each year you: 1) know when the \$50 threshold has been reached; and 2) avoid exceeding the \$420 maximum.

It can get even more complicated in terms of possibly having to disqualify yourself on your friend's development applications to your city. You reach the threshold for disqualification if the aggregate value of the gifts you receive total \$420 (2009-10 limit)

or more *in the year (12-month period) preceding your decision*. Thus, you can avoid exceeding the gift limit in any given calendar year but still exceed the gift limit for purposes of disqualifying yourself from participating in a decision involving your developer friend.

For example, this could occur if your friend took you to a \$100 concert in May 2004, treated you to a \$100 meal in November 2004, gave you a \$150 Christmas present and then invited you to a \$100 sporting event in February 2005. When your friend's development application is on the agenda in March 2005, you and your local agency attorney will have to look at what happened the year preceding the decision. In this illustration, you received \$450 in the prior 12 months; this means that, according to the law, you have a potentially disqualifying interest in your friend's application.

Again, certain kinds of gifts are exempt from these rules, but it can be helpful to have the basic \$50/\$420 thresholds firmly in mind. Note too that, for most public officials, the gift rules are not just limited to those who live in, do business with or are seeking favorable decisions from your jurisdiction. The same rules apply if your friend lives in another area and has no connection with your agency.

What to Do About Unwanted Gifts

Some local officials and agencies have adopted and publicize a "no gift" policy to discourage gifts. For example, they place a sign on their office doors explaining that, while they appreciate the thought, their policy is to not accept gifts.

If you receive an unwanted gift, within 30 days of receiving the gift you may:

- Return the gift unused;
- Deliver the gift to a nonprofit organization without claiming the gift as a tax deduction (the nonprofit must be exempt from taxation under section 501(c)(3) of the Internal Revenue Code); or
- Reimburse the gift giver for the fair market value of the gift.

The "Above Reproach" Approach

Let's be candid. It can be a hassle to keep track of and report all gifts received to make sure you are in compliance with the law. It can also feel rude to make the inquiry about value to the gift giver. Furthermore, as your question suggests, it can be easy for the media and the public to be critical of public officials who accept gifts. And finally, some public officials simply want to minimize the likelihood that anyone might suggest that improper considerations influenced their decision-making as a public official.

Another option is simply to have a "no gifts" policy. As the Institute for Local Government's "Slippery Slope" video observes, this ensures that no one can ever question either the public official's or the giver's integrity.

Such a strict policy can make a public official noteworthy. For example, when Janet Reno was nominated for attorney general, the media reported that she would pay the full sticker price when she purchased a car, just so no one would think she was getting a special deal based on her status as the local district attorney. Her policy was cited as evidence of the high importance she placed on the public's trust in her actions as a public official.

Those officials who use the "above reproach approach" to receiving gifts pay their own way at restaurants or they suggest other, less expensive ways to meet with people in the community whose perspectives they want to explore. These officials also tend to make their "no gifts" policy known to minimize the degree to which they are put in the awkward situation of declining generous gestures or inquiring into the value of gifts so they can be properly reported to avoid exceeding legal limits.

Special Warning: Gifts of Free or Discounted Transportation From Transportation Companies Are Prohibited

California's Constitution has a flat ban on elected officials receiving free or discounted transportation from transportation companies. The ban's genesis is the public's adverse reaction to the influence of the railroads early in California's history. The penalty for accepting such free or discounted transportation is severe: immediate loss of office.

Again the test is whether the free or discounted transportation is extended to someone because of their status as a public official. Discounts or passes that are offered to everyone, regardless of their status, are not a problem.

What You Don't Know Can (Really) Hurt You

The most risky approach - both legally and politically - is to be unaware of these restrictions or inattentive to them.

The gift restrictions described in this article are part of the Political Reform Act. Violations of these laws are punishable by a variety of sanctions, as described below, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.

Criminal Sanctions. A knowing or willful violation of the gift requirements is a misdemeanor. A person convicted of a misdemeanor under these laws may not be a candidate for elective office for four years following the conviction. Such a conviction

may also result in an immediate loss of office under the theory the official violated his or her duties or create a basis for a grand jury to initiate proceedings for removal on the grounds that failure to disclose constitutes willful or corrupt misconduct in office. Jail time is also a possibility. The severity of these penalties underscores just how important public officials' integrity is to the public they serve.

Civil Sanctions. Under appropriate circumstances, district attorneys, some city attorneys, the Fair Political Practices Commission (FPPC) or a member of the public can bring an action to prevent public officials from violating the gift laws. If a member of the public brings the action, the violator may have to reimburse the costs of the litigation, including reasonable attorneys' fees.

Administrative Fines. In addition to civil and criminal penalties, the FPPC may impose administrative penalties. The administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation. The prospect of such fines can make not complying with the gift limits and reporting requirements a very expensive proposition.

Of course, an allegation that an official violated the gift rules can magnify the unfavorable media coverage the official receives. In addition to being embarrassing and unpleasant at the time of the coverage, such headlines become an issue in future elections.

Exceptions to the Gift Rules

Although the definition of what constitutes a gift is fairly broad, there are exceptions. Some of the most common include:

- Gifts from a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother- or sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any of these people, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift;
- Gifts of hospitality involving food, drink or occasional lodging received in a person's home (this is known as the "home hospitality rule") when the individual or a member of his or her family is present; and
- Gifts approximately equal in value exchanged on holidays, birthdays or similar occasions.

Also excluded from the gift limits are informational materials (books, reports, calendars, pamphlets and periodicals) and inheritances. Personalized plaques and trophies with a value of less than \$250 are also exempt.

Be aware that the FPPC has adopted regulations to close as many loopholes as people might try to find in the gift regulations (for example, using intermediaries for gift giving).

The regulations in this area are very complex and only a few of them are mentioned in this article. As always, you are safest complying with both the letter and the spirit of the gift restrictions.

What's Right for You?

First, make sure you understand the rules relating to gift receiving and gift reporting. "Resources for Further Reading" provides additional information. Always consult with your agency attorney early and often if you have questions.

Once you know what the legal requirements are, it may be helpful to ask yourself some of the questions suggested in the Institute for Local Government (ILG) wallet checklist on dealing with sticky ethical situations:

- **Which gift policy is likely to promote public trust in your agency and your leadership?** If you think that accepting gifts will cause the community to question your decision-making, don't accept them.
- **What would you want to see reported in the local newspaper?** If the prospect of seeing a headline regarding the \$100 tab your developer friend picked up at an expensive restaurant gives you heartburn, insist in advance on paying your portion of the tab and/or choose a less expensive restaurant.
- **What would your next-door neighbor think?** If you receive a gift your neighbor would think is an effort to curry favor with you as an officeholder, take one of the steps suggested in "What to Do About Unwanted Gifts".

Do these rules and the answers to these questions potentially interfere with the established norms of your friendship? Yes, unfortunately. Taking the high road on any issue frequently involves a personal cost. As we have pointed out before in this column, public service involves a number of sacrifices.

Because the situation you describe in your question involves an old friend, ideally he or she will understand and accept the change in practice because he or she wants you to be successful in public office.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.
