Gift of Public Funds
(Spoiler Alert: It's Illegal)

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Notes:

CALIFORNIA PUBLIC FUNDS DOCTRINE

Presentation for the

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CALIFORNIA PUBLIC FUNDS DOCTRINE

1. OVERVIEW
    a. Set forth in *Cal. Const., art. XVI, § 6*
    b. Prohibits the giving or lending public funds to any person or entity, public or private
        i. Prohibition includes aid, making of gift, pledging of credit, payment of liabilities
            1. Encompasses the giving of monetary funds and any "thing of value"
        ii. "Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever"
        iii. "and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever"

2. EXCEPTIONS
    a. Expenditures/disbursements for public purpose. *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281; *Redevelopment Agency of San Pablo v. Shepard* (1977, Cal App 1st Dist) 75 Cal. App 3d 453; *Schettler v. County of Santa Clara* (1977, Cal App 1st Dist) 74 Cal App 3d 990.
        i. The public purpose exception is liberally construed
            1. "Determination of public purpose is primarily a matter for the Legislature and will not be disturbed as long as it has a reasonable basis." *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281.
                a. *County of Alameda* was decided when public funds doctrine was under Art IV § 31 but same standard still applied as seen in several of the examples below
            2. Courts may infer the public purpose from other legislation or the manner in which legislation enacted. *Scott v. State Board of Equalization* (1996, Cal App 3d Dist) 50 Cal App 4th 1597.
            3. Expenditure valid under public purpose exception even if there is an incidental private benefit *Redevelopment Agency of San Pablo v.*

Shepard (1977, Cal App 1st Dist) 75 Cal. App 3d 453 (citing *County of Alameda*).

ii. Redevelopment is public purpose. *Board of Supervisors v. Dolan* (1975, Cal App 1st Dist) 45 Cal App 3d 237, 245.

b. Aid granted pursuant to *Cal. Const., art. XVI, § 3*

i. *Cal. Const., art. XVI, § 6*: "nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; **provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI**;"

ii. *Cal. Const., art. XVI, § 3* provides: "No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:"

1. can make state money obtained from federal government available or authorize its use for purpose of hospital construction by public agencies and nonprofits organized to construct/maintain such facilities
2. can grant aid to institutions for orphans or abandoned children
3. can aid "needy blind persons" who are not inmates in institution supported in whole/part by state or its political subdivisions
4. can aid "needy physically handicapped" individuals who are not inmates of an institution under supervision of Dept. of Mental Hygiene and supported in whole/part by state or any institution supported in whole/part by a political subdivision

c. Irrigation districts

i. can acquire stock of water corporation which has part of system located in foreign country

1. "provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country"

ii. can generally acquire stock of corporations or interests in rights as necessary for district's purposes

1. "provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation"

d. Public entities can join with other agencies under insurance pooling or JPA agreement for purposes of providing insurance or other payment of various liabilities in tort, workers comp, etc.

i. "Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature;"

e. Public entities can aid veterans via money or credit in acquiring farms, homes, businesses or otherwise paying for them

i. "Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of was, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation;"

f. If disaster or emergency declared by the President, the State or a subdivision thereof can aid/assist persons in clearing debris or wreckage from private land or waters if deemed to be in public interest

i. public entity must be indemnified by recipient against claims arising from such aid

ii. aid/assistance must be eligible for federal reimbursement

iii. "Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political

corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof."

g. Temporary transfers from treasurer of city/county to political subdivision for maintenance purposes when funds in custody and paid solely through treasurer's office

   i. only allowed when resolution adopted by city/county governing body directing it

   ii. cannot except 85% of anticipated revenues of the political subdivision

   iii. can't be made before first day of fiscal year or after the last Monday in April of current FY

   iv. must be replaced from revenues of political subdivision before any other obligation of political subdivision is met from such revenue

   v. "And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue."

3. EXAMPLES

   a. GENERAL

      i. *Auerbach v. Board of Supervisors* (1999, Cal App 2d Dist) 71 Cal App 4th 1427

         1. Background

a. County sued by taxpayers for transferring money from county funds (12 of 16 of the funds were characterized as trust or agency funds) to general fund to cover cash flow deficits

b. Transfers did not affect any amount budgeted by county or any other required appropriation

2. Court of Appeal affirmed lower court, finding that Supervisors had authority for transfers under Government Code § 25252. Court reasoned that contrary to Plaintiffs' assertion, Government Code § 25252 did not distinguish between county money and funds held in trust by county but not belonging to it

a. Government Code § 25252 allowed county funds to be used for general purpose unless irrevocably committed

3. Found that Plaintiffs did not show that debts paid with funds were illegitimate

4. Court noted that rule has no effect on transfers between funds of same public entity, only between one political subdivision and another

a. This was crux of Court's position that there was no violation of *Cal. Const., art. XVI, § 6*

b. Court rejected Plaintiffs' contention that the trust and agency funds were not county funds

i. Court said the fact that the funds were carried on county books under particular name which suggests plan for future expenditure reflected only a matter of "administrative or bookkeeping convenience"

5. Court found transfers valid where none of county funds involved in transfers were political subdivisions for purposes of the definition set forth in Government Code § 8557(c), so the transfers did not fall within *Cal. Const., art. XVI, § 6* prohibition

a. Political subdivision defined in Government Code 8557(c) as "any city, county, district or other local governmental agency or public agency authorized by law"

ii. *Jordan v. Dept. of Motor Vehicles* (2002, Cal App 3d Dist) 100 Cal App 4th 431

1. Background

a. In original action, Plaintiffs sued the State of California and DMV, seeking refund for $300 smog impact fee imposed on those moving to CA and registering out of state vehicles in CA

b. Trial court awarded Plaintiffs' counsel approx. $18 million, holding impact fee was unconstitutional under commerce clause of the U.S. Constitution and Article XIX of the California Constitution.

    i. Fee and expense award represented 5% of common fund to be established refunds of fee resulting from Plaintiffs' efforts

c. State's appeal of fee/expense award was dismissed pursuant to agreement between state and Plaintiffs to conduct arbitration, and in the ensuing arbitration Plaintiffs were awarded approximately $88 million in fees/expenses

    i. Arbitration award was vacated by Sacramento County Superior Court following petition by State

d. Plaintiffs then appealed the decision to vacate the arbitration award

2. Court of Appeal upheld the lower court's decision to vacate the $88 million arbitration award, finding a violation of public funds doctrine where the $88 million award was in settlement of a $18 million dispute

    a. Court explained that payment of claim exceeding maximum exposure is akin to payment of wholly invalid claim and constitutes invalid gift of public funds

    b. Court defined gift for purposes of *Cal. Const., art. XVI, § 6* as including "'all appropriations of public money for which there is no authority or enforceable claim' even if there is a moral or equitable obligation

    c. Court considered the settlement of the fee dispute to be a valid public purpose, but State could not be compelled to pay more than the maximum exposure

        i. Decision notes that this does not mean that "legally insupportable" arbitration award is per gift of public funds as long as award "within amount in dispute"

        ii. Decision notes that the case was unusual because max exposure determined by trial court prior to arbitration

3. Court affirmed trial court's vacating of arbitration award and directed that new arbitration conducted in which award limited to original $18 million trial court judgment plus interest

b. EMPLOYMENT

i. *Los Angeles Unified School Dist. v. Livingston* (1981, Cal App 2d Dist) 125 Cal App 3d 942

1. Background

a. LAUSD challenging order dissolving TRO and refusing to grant preliminary injunction

b. LAUSD had previously obtained TRO to stop director of California Employment Development Department from paying unemployment compensation to LAUSD teachers that administrative law judge had deemed eligible for those benefits

2. LAUSD argued that paying benefits while legal remedy pursued would cause irreparable harm because account would suffer a charge based on benefits paid even if LAUSD succeeds in court re eligibility

a. LAUSD tried to distinguish similar cases cited in which benefits had to be paid despite pending legal proceedings because those cases dealt with private employer

i. Court rejected LAUSD arguments, as there were different benefit financing alternatives made available by legislature for public employers, and the options all required the public employer to assume risk of overpayment

3. Court here did not examine eligibility determination, only order denying preliminary injunction

4. Court found that LAUSD benefit system presenting the risk of erroneous benefit payments did not violate *Cal. Const., art. XVI, § 6* where public purpose of prompt benefit payments served

a. Determined that it was better to have working system with small percentage of error than none at all

b. Noted that policy of California Unemployment Insurance Code §§ 1335(c) and 1338, as well as case law require balance of equities pending judicial review of unemployment benefits to be weighted in favor of unemployed worker

c. Noted paragraph 2 of *Cal. Const., art. XVI, § 6* implies that insurance involves risk and that being unlucky with insurance claims doesn't equate to gift of public funds.

ii. *Sturgeon v. County of Los Angeles* (2008, 4th Dist) 167 Cal App 4th 630

1. Background
    a. County paid judges same benefits as employees and local officers
        i. County added these benefits in late 1980s, which were in addition to compensation prescribed by legislature
            1. Amounted to $46,436 in benefits in FY 2007 (approx. $21 million total), which was approximately 27% of judge salary
    b. Plaintiff taxpayer alleged gift of public funds and waste under CCP§ 526a
2. Court reversed trial court decision, finding no gift of public funds under *Cal. Const., art. XVI, § 6* because the benefits at issue promoted public interest of recruiting and retaining judges
    a. Court reiterated public purpose/reasonable basis analysis and definition of "gift" for purposes of public funds doctrine as "all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation"
    b. Notes that cases re bonuses for work already performed and benefits to employees are generally uniform in finding public purpose
        i. E.g. *Jarvis v. Cory* (1980) 28 Cal 3d 562 and *San Joaquin Employers' Assn., Inc. v. County of San Joaquin* (1974, Cal App 3d Dist) 39 Cal. App 3d 83
            1. Followed rationale of public entity's interest in recruiting and retaining employees
3. Also finds no waste under CCP § 526a

c. TAXATION
    i. *Community Television of So. Cal. v. County of Los Angeles* (1975, Cal App 2d Dist) 44 Cal App 3d 990
        1. Background
            a. Appeal by County from LA Superior Court order granting summary judgment in favor of Community Television of Southern California (KCET) in action to recover paid real property taxes pursuant to statutory exemption of Cal Rev & Tax Code § 214

i. Exception allowed certain organizations to avoid paying property tax in consideration for public benefit offered

1. Here it was public TV station

b. County claimed that statute under which KCET filed for exception, Cal Rev & Tax Code § 271.4 was unconstitutional as gift of public funds and violation of equal protection

c. KCET had acquired property in County on 7/23/70 and filed for property tax exemption on 1/28/71, but was denied as a late filing, which amounted to a waiver under the Cal Rev and Tax Code

i. But KCET hadn't acquired the property in time to meet the deadline for the exemption claim

1. Cal Rev & Tax Code § 271.4 allowed welfare exemption to apply retroactively in this circumstance

a. Consequently the County challenged the statute's constitutionality

i. County argued that its interest in taxes had vested so to allow the debt to be forgiven under Cal Rev & Tax Code § 271.4 would be a prohibited gift of public funds

2. Court of Appeal affirmed summary judgment for KCET

a. Court explained that need for exemption trumps the procedural requirements and Cal Rev & Tax Code § 271.4 expressed this

3. Court of Appeal finds that release of tax lien without consideration would violate Article XVI

a. But that was not the case here because court found public purpose expressed in Revenue and Tax Code § 214

4. Decision reiterates case law saying that public purpose determination primarily a legislative matter and isn't disturbed so long as there is reasonable basis

ii. *Edgemont Community Services Dist. v. City of Moreno Valley* (1995, Cal App 4th Dist) 36 Cal App 4th 1157

1. Background

a. District challenging Riverside Superior Court judgment barring the District from recovering the costs of collecting City's sewer utility user tax

2. Court of Appeal found that trial court erred in holding that District not entitled to reimbursement for cost of collecting City's utility user's tax on sewer services provided by District on its behalf

3. Court found that construing Government Code § 37100.5 as allowing this shift in cost of collection violates Art XVI § 6

   a. Court explained that allowing for such transfer is not per se invalid if purpose of money collected on one entity's behalf is used for benefit of donor agency

      i. Decision cites *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal App 3d 204 as primary support for this assertion

   b. Court reached its decision after finding that there was no indication that all or any portion of the tax would be used by City for the exclusive benefit of District residents or purposes specified in resolution under which District was organized

   c. Court of Appeal ordered the trial court to enter judgment requiring the City to reimburse the District for costs incurred in collecting the City's user utility tax

4. Court found no support for City argument that cost of collection of tax should be borne by District because tax was incident to services and facilities furnished by District

iii. *White v. State of California* (2001, Cal App 4th Dist) 88 Cal App 4th 298

1. Background

   a. Recovery Laws enacted by State in wake of 1994 OC financial crisis allocated tax revenue to OC general fund when such revenue had previously been allotted to other County controlled funds and agencies

      i. Followed prior rejection by OC voters of ½ cent sales tax to help recovery in 1995 after OC filed bankruptcy in 1994

      ii. 4 recovery bills passed – SB 863, AB 200, SB 1276, AB 1664, among which:

         1. SB 863 reduced property allocation to an OC flood control district and a harbors, beaches

and parks fund by $4 million a year, allocated money to general fund of County

2. AB 1664 allowed OC to reduce revenue deposited in transportation fund over 15 year period by $38 million in order to keep in general fund
3. SB 1276 allocated some highway user tax funds to transportation fund which would have previously gone to County
    a. Related to legislative intent to minimize Recovery Laws' effect on agencies
4. AB 200 corrected technical issues

b. Plaintiff claimed Art IV § 16 of California Constitution violated, which provides that all laws of a general nature have uniform operation and that a local or special statute is invalid in any case where a general statute can be made applicable
    i. Trial court found no violation

c. Plaintiff claimed violation of public funds where transfers did not promote specific interests of the "donor agencies"
    i. Trial court found no violation

2. Court of Appeal upheld Legislative action under Art IV because the Court considered this a unique situation, where OC went bankrupt and taxpayers unwilling to raise taxes for recovery
    a. Court found legislative action valid, as necessary to protect OC and State where Recovery Laws were narrowly targeted and generally applicable laws wouldn't adequately address issue
    b. Purpose was clearly set forth in legislation
3. Court of Appeal affirmed trial court with respect to public funds doctrine challenge, finding no prohibited gift of public funds because no transfer of funds had been effectuated by the Recovery Laws. Court explained that even if there had been a transfer, legislative findings showed OC needed the money for its recovery and credit standing of public debt issuers constituted a valid public purpose
    a. Decision reiterates public purpose/reasonable basis analysis
    b. Court said prohibition regarding gift of public funds is not triggered merely because legislature allocated less tax dollars to

certain local agencies and instead determined that such funds be allocated to general fund to be used for public purpose.

i. As this did not constitute transfer of funds between public entities

c. Court noted that funds were not specifically raised for purpose of transferring agencies, but were levied as general property and sales taxes and then allocated

i. This rationale and the rationale reflected in item 4 below paralleled the primary reasoning relied on by the Court of Appeal in rejecting public fund doctrine violation in *California Redevelopment Assn. v. Matosantos* (2013, Cal App 4th Dist) 212 Cal App 4th 1457

1. Concerning state legislation that transferred tax increment funds from redevelopment agencies

4. Court explained that even assuming allocations could be viewed as transfers between agencies, funds were from sales and property taxes and same general group of taxpayers would benefit

a. Decision notes that under Art XVI § 6 "showing of public benefit to the transferor agency [per *Edgemont* and *Golden Gate*] is only necessary where there is not a substantial identity between the taxpayers who paid the taxes and those who will benefit"

d. OTHER APPLICATIONS

i. *County of Riverside v. Idyllwild County Water Dist.* (1978, Cal App 4th Dist) 84 Cal App 3d 655

1. Background

a. District adopted resolution requiring all tax exempt entities to agree to pay capital cost charge in addition to service charges based on rate schedule applicable to all users as a condition of sewer service

b. Trial court said County was not obligated to pay under Art XIII § 3 as it was exempt from property taxes and special assessments which is how capital cost charge was characterized

2. Court affirmed trial court, finding that County agreement to pay invalid special assessment charge to District by means of signing a user's agreement to pay charges amounted to prohibited gift of public funds

a. Consequently, the agreement did not function as a waiver of the County's right to contest charge, as County was not empowered to enter into the agreement

ii. *California Housing Finance Agency v. Elliott* (1976) 17 Cal 3d 575

1. Background

a. CHFA made loans to private housing sponsors and mortgage lenders at below-market rates, refinanced existing mortgages and created a supplemental bond security fund in connection with the construction/development/acquisition of low rent and mixed income housing

b. Loan funds were to come from bond proceeds which CHFA Chairperson refused to issue in part because he argued it was unconstitutional gift of public funds

c. Program was undertaken pursuant to Health and Safety Code § 41000 et seq.

2. Court found that legislature acted reasonably in concluding that such housing developments serve a public purpose and that CHFA used funds as provided by the legislation, which Court regarded as having been carefully designed to achieve the public purpose

3. Court noted that non-state entities benefitted only as incident to public purpose