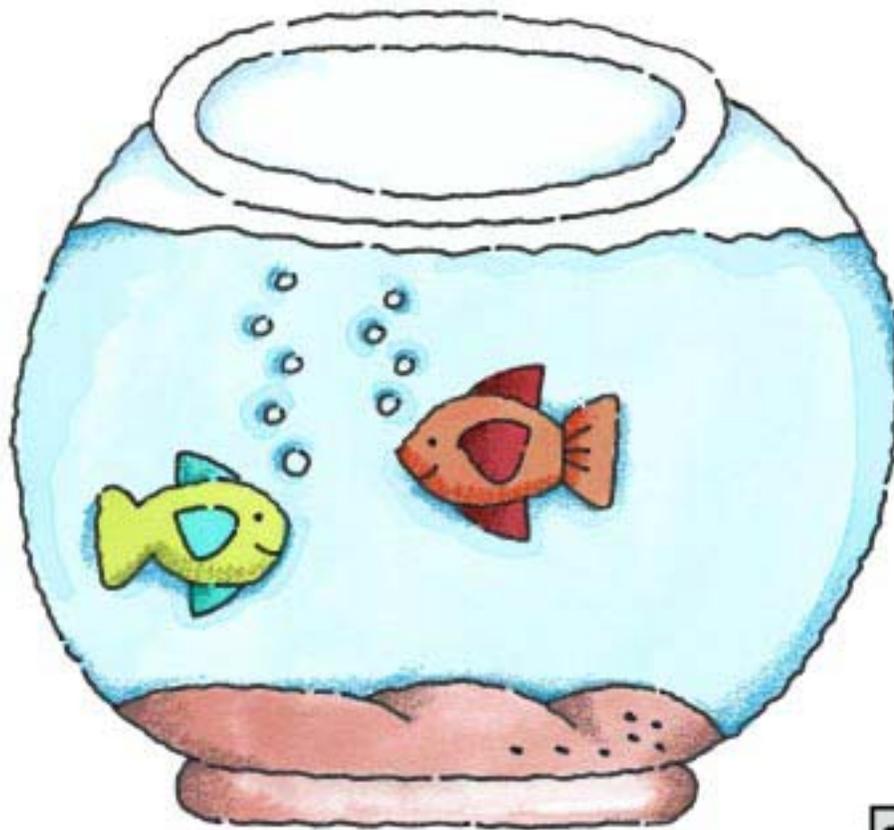


**OF COOKIE JARS AND FISHBOWLS:  
A PUBLIC OFFICIAL'S GUIDE  
TO USE OF PUBLIC RESOURCES**



INSTITUTE *for* LOCAL  
SELF GOVERNMENT

## **SOUTHERN CALIFORNIA EDISON HELPS PROMOTE PROPER USE OF BOTH PUBLIC AND PRIVATE RESOURCES**

The **Institute for Local Self Government** is profoundly grateful to **Southern California Edison** for its support of the Institute's efforts, including the Institute's efforts in the public confidence and ethics area.

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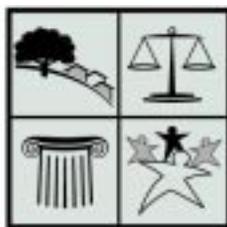
These standards include proper use of company resources – some of the same issues addressed in this guide. For example, employees certify that they have not:

- Used company property or services for personal gain or removed or disposed of the company materials, supplies or equipment without proper authority.
- Submitted employee expense reports or other requests for reimbursements for anything other than valid business expenses incurred in the discharge of the company business or for other than the purpose indicated.
- Used a corporate credit card (including a procurement credit card) for other than valid expenses related to the company business.

Employees also certify that they have not used corporate resources to make campaign contributions (including paid employee time) to support political except as authorized by senior management and permitted by applicable laws and regulations.

The Institute for Local Self Government thanks Edison for its assistance in making resources like this guide available for local officials.





INSTITUTE *for* LOCAL  
SELF GOVERNMENT

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# OF COOKIE JARS AND FISHBOWLS: A PUBLIC OFFICIAL'S GUIDE TO USE OF PUBLIC RESOURCES

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Prepared by JoAnne Speers

*Special thanks to the following individuals whose time  
and effort contributed to this publication:*

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*All final decisions about the content and formatting of this publication  
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**OF COOKIE JARS AND FISHBOWLS:  
A PUBLIC OFFICIAL'S GUIDE TO USE OF PUBLIC RESOURCES**

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**THIS PUBLICATION IS NO SUBSTITUTE FOR LEGAL ADVICE**

This publication provides an overview of ethics issues and at times provides summaries of the law. Readers should note that attorneys can, and do, disagree about many of the issues addressed in this publication. Moreover, proposals to change ethics laws are frequently introduced in the state Legislature and new court decisions can alter the practices a public official should follow. Accordingly:

- Public officials should always consult with agency counsel when confronted with specific situations related to ethics laws;
- Agency counsel using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
- Members of the public reading this publication should consult with an attorney knowledgeable in the fields of ethics and campaign finance law.

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# CHAPTER 2: ACCESS TO PUBLIC RESOURCES AS A PERK OF OFFICE?

There is no dispute that the stipends most elected officials receive cannot compensate them adequately for the time they spend on official duties. It is also well known that those who make careers in public service (for example, city managers and county or district administrators) usually can earn more in the private sector.

To close the gap, it can be tempting to look at the opportunity to travel and incur other expenses as a “perk” of office – particularly for those familiar with norms in the private sector. It’s rare for public officials to fall into this trap.

The difficulty is that those who do usually attract unfavorable attention and give all public officials a bad name. Moreover, the media can portray even legitimate expenditures in a way that makes the agency look bad. Added to all of this is a general public distrust of how government spends money.<sup>4</sup>

In short, viewing access to public resources as a “perk” is both legally and ethically risky. Here’s why.

The fact that perks are in addition to one’s compensation is why, for public officials, perks can be problematic.

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<sup>4</sup> See, e.g., Public Policy Institute of California, *Research Brief: Casting a Long Shadow: Californians’ Distrust of Government* (September 2002) (analyzing the conclusions in *A California State of Mind: The Conflicted Voter in a Changing World* by Mark Baldassare and noting “One of the most prominent themes in the book is that Californians simply do not trust their elected officials to spend taxpayers’ money wisely or to be responsive to the public’s needs and desires.”).

## WHAT IS A “PERK?”

“Perk” is an abbreviation of the word “perquisite.” A “perquisite” is:

1. A payment or profit received in addition to a regular wage or salary, especially a benefit expected as one’s due.
2. A tip; a gratuity.
3. Something claimed as an exclusive right: “Politics was the perquisite of the upper class” (Richard B. Sewall).<sup>5</sup>

## THE RELATIONSHIP BETWEEN EXPENSES AND SALARIES

Typically there is a legal limit on public official compensation levels, either in state or local statutes. Public officials, particularly elected ones, may only collect and retain such compensation that the law allows.<sup>6</sup> Any extra must be refunded.<sup>7</sup> As protectors of the public purse, courts generally take a strict approach to public official compensation limits.<sup>8</sup>

Moreover, as a reflection of this tightfisted attitude, there is a strong tradition under California law of placing limits on public officials’ ability to set their own salaries. For example, general law city council members cannot increase their compensation during their current term.<sup>9</sup> County boards of supervisors may set their salaries, but the act is subject to referendum.<sup>10</sup>

<sup>5</sup> *The American Heritage Dictionary of the English Language*, (4th ed. 2000).

<sup>6</sup> For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city’s population. The electorate may approve a higher salary. Cal. Gov’t Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov’t Code § 36516.1.

<sup>7</sup> *County of San Diego v. Milotz*, 46 Cal. 2d 761, 767, 300 P. 2d 1, 4 (1956) (action to recover fees from court reporter for faulty work).

<sup>8</sup> *Id.*

<sup>9</sup> See Cal. Gov’t Code § 36516.5 (providing a change of compensation does not apply during the same term but allowing adjustment when one or more members serving staggered terms begin new terms).

<sup>10</sup> Cal. Const. art. XI, §1(b).

Salaries for members of special district governing boards are set by the enabling legislation for each type of special district.<sup>11</sup> These statutes typically describe the compensation in terms of a maximum amount per day up to a specified maximum number of days per month spent in meetings or participating in district-related work. Increases to reflect changes in the cost of living tend to require a public hearing and are subject to referendum.<sup>12</sup> These statutes typically make board approval a precondition for receiving per diem compensation for activities other than attendance at board meetings. This is good reason for governing boards to have a formal policy that specifies what types of meetings qualify for per diem, as well as what expenses can be reimbursed.

The bottom line is this: There are various laws limiting public official compensation. These laws make it legally and ethically risky to view reimbursement for receiving a expense as a perk or an “extra.”<sup>13</sup>

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<sup>11</sup> *See, e.g.*, Cal. Pub. Res. Code § 5784.15(a) and (d) (park and recreation district board members may be compensated a maximum of \$100 per day for board meetings and \$500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive \$100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code § 20201 (water district officials—as defined—may, by ordinance, provide for compensation of \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request; not to exceed 10 days service/meetings per month); Cal. Water Code § 34740-41 (California Water Districts must adopt bylaws fixing compensation paid to officers, but may not exceed \$100 per day for attendance at board meetings and for each day's service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/meetings per month); Cal. Water Code § 30507.1 (Contra Costa county water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed 10 days service/meetings per month); Cal. Water Code § 21166 (irrigation district directors in districts of less than 500,000 acres receive 1) compensation of up to \$100 per day, not to exceed six days, 2) irrigation district directors in districts that produce or deliver electricity receive one of the following: up to \$100 per day or \$600 per month, with an annual cap of \$15,000); Cal. Water Code § 22840 (irrigation districts of 500,000 acres or more receive a salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors); Cal. Water Code § 71255 (municipal water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/meetings per month).

<sup>12</sup> *See, e.g.*, Cal. Water Code §§ 20203 and 20204.

<sup>13</sup> 65 Cal. Op. Att'y Gen. 517 (1982).

## DON'T LET THIS BE YOU: OFFICIALS ORDERED TO REPAY THOUSANDS OF DOLLARS IN UNDOCUMENTED EXPENSES

A northern California special district was rocked by charges of extravagant expenses and loose bookkeeping in 2003. The district ordered a number of officials to repay the expenses, which added up to tens of thousands of dollars. The local paper has made the district's practices an ongoing focus of attention. The United States Attorney indicted district officials on related charges.

The same newspaper then launched an investigation of similar districts throughout the state. The newspaper ran a series of articles chronicling practices that put these agencies in an unflattering light. The series culminated with an editorial titled "Diet at the Trough" that called for a range of legislative solutions including further limits on compensation and benefits for these directors and greater oversight of expenses.

This excerpt illustrates the tone of the coverage:

For more than a year, we have explored the culture of self-enrichment and high living that is a trademark of too many of the state's water districts.

[I]t [is] essential that those who seek to serve on water district boards do so for all the right reasons. . . Those reasons have nothing to do with health insurance for life, or unlimited credit card lunches at posh restaurants, or prime rib dinners for 75 people or first-class travel to and from conferences.<sup>14</sup>

Another editorial was entitled "Impervious to Shame" and noted that the particular district whose directors' expenses were highlighted had been the target of earlier scrutiny on this issue.<sup>15</sup> The paper detailed individual purchases by individual directors, even noting family ties.

Among the legislative reforms the newspaper recommended are 1) public disclosure of expenses (approval of such expenses at public meetings and posting them on Internet), 2) prohibition of district paid insurance and retirement benefits, and 3) having an outside auditor verify compliance with expenditure policies and state law.



<sup>14</sup> *Sacramento Bee*, November 23, 2003, page E4.

<sup>15</sup> *Sacramento Bee*, November 16, 2003, page E4.

## FLAT EXPENSE ALLOWANCES

Flat expense allowances tend to attract particular scrutiny. One problem is that such allowances can exceed the expenses actually incurred. As such, they can cause a public official to surpass statutory limits on public officials’ compensation. Another problem is that expense allowances do not necessarily save a public official the trouble of documenting expenses. If a public official does not provide receipts for his or her expenses, an allowance is subject to federal income tax withholding.<sup>16</sup>

One city was hauled into court for having a fairly modest (\$50-\$75) monthly expense allowance for council members in the late 1960s.<sup>17</sup> The court found the allowance violated the law as an unlawful gift of public funds.<sup>18</sup>

*In the public sector, viewing access to public resources as a “perk” is both legally and ethically risky.*

### DON’T LET THIS BE YOU: SUPERINTENDENT PROSECUTED FOR ADDING PERSONAL SIDE TRIPS

A school superintendent in a Central Valley school district started adding stopovers in Las Vegas to his business trips. A local taxpayers group got wind of the practice (which added up to a misappropriation of some \$23,000) and went to the grand jury. The superintendent did jail time, lost his job and was required to pay restitution.



<sup>16</sup> Treas. Regs. § 1.62-2T(e), § 1.3401(a)-1T.

<sup>17</sup> See *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public).

<sup>18</sup> See Cal. Const. Art. XVI, § 6.

## AVOIDING THE SELF-DECEPTION TRAP: QUESTIONS TO ASK

- Does the law allow me to use public resources in this manner?
- Am I treating an expense as a form of reward or compensation for my public service?
- How would I feel if a particular expenditure were reported in the local newspaper? How about a political hit piece?
- How would my next-door neighbor feel about my spending his or her tax dollars this way? Would he or she feel resentful?



Another city also found itself in court because of an expense allowance. The city prevailed, mostly because language in the city charter (which indicated the council would serve without compensation) seemed to authorize such flat expense allowances.<sup>19</sup> The city had also adopted the allowance as an ordinance finding that the allowance equaled the amount of expenditures.<sup>20</sup>

A number of city attorneys have questioned whether a court would reach the same conclusion today. Courts have been less deferential to legislative findings in more recent cases in other factual contexts.<sup>21</sup>

Charter cities may have more latitude than other public agencies in this area because of the unique relationship to the voters and the governing body in a charter city.

<sup>19</sup> *Porter v. City of Riverside*, 261 Cal. App. 2d 832, 68 Cal. Rptr. 313 (1968) (upholding ordinance allowing flat expense allowance against a claim that it violated a “no compensation” provision of the city’s charter when the charter allowed such an allowance, and the ordinance specifically found expenses to be the amount of the allowance).

<sup>20</sup> *Id.* at 837, 68 Cal. Rptr. At 316.

<sup>21</sup> See *Morgan v. Community Redevelopment Agency*, 231 Cal. App. 3d 243, 258, 284 Cal. Rptr. 745, 755 (1991) (observing that the scope of review for a legislative activity is to examine the record to see if an action was arbitrary, capricious or entirely lacking in evidentiary support).



## ISSUES TO PONDER – A FEW THOUGHTS

The following are some thoughts on the dilemma presented at the beginning of this chapter. The point of the case study, however, is for readers to reach their own conclusions. Reasonable people can disagree or give different weight to different considerations based on local policies and community standards. The key question is: what do **you** think?

***Sticky Situation #1:** With respect to staying overnight at a local motel and associated expenses after a long regional board meeting, the best approach, of course, is to know in advance whether such expenses are within the bounds of your agency's expense policies. Keeping the policy handy for such emergencies can also be a wise strategy.*

*In the absence of such guidance, a good test is whether you feel comfortable justifying the motel, meal, toiletries and other expenses for example in public session of your agency. Certainly the presumption is not that public officials should put themselves (or others) in danger by driving long distances while fatigued or when there are flood warnings. One question to ask is whether you would make the same decisions regarding staying over if you were in the area on personal business.*

*The analysis also can be affected by whether the lodging is a Motel 6 or a Ritz Carlton (or put another way, whether the total tab for all of the above is \$80 versus \$500). This is a variation on the "how would my neighbor feel?" question above.*

*Using public resources to purchase alcoholic beverages can be a sensitive issue in some communities. If so, it may be prudent to pay for these yourself.*

*Choosing a place to have breakfast other than a casino may be worth considering. Sometimes meals at casinos can be an exceptional value, but you may want to make sure your receipt shows that the purchase was for eggs. If the receipt is not specific, you may want to consider whether you simply pay for breakfast.*

*This is where the newspaper or political hit piece test may be helpful, along with imagining the headline as reading "Public Official Seeks Reimbursement for Casino Expenses." Even though the meal expense may be perfectly appropriate, the risk that it could be mischaracterized and give the public a misleading impression may counsel stopping at a different place for breakfast. There also may be a similar risk associated with ordering eggs benedict, depending on the community's sensibilities and the ultimate tab.*

*The newspaper is probably more a personal entertainment expense that is best to pay for yourself. These are just a few thoughts.*

With each of these dilemmas, ask yourself the questions posed at the end of this chapter to figure out what decisions make sense for you.

## ISSUES TO PONDER



**Sticky Situation #2:** *To assist elected officials in responding to constituent inquiries and conduct other agency business, the agency issues each board member a laptop computer. The laptops are not fancy; they are hand-me downs from the building department. They are a few years old and have no bells and whistles to speak of.*

*You get home from work one day to find your son distraught. Your home computer has crashed and he cannot finish his homework, which is an Internet research assignment. You are relieved that he has such a commitment to doing his homework. You can dial into your personal Internet service without going through the agency's access number. Should you let your son use the agency laptop to finish his homework?*

**Sticky Situation #3:** *The local Kiwanis club is holding a benefit for underprivileged children and asks you as the mayor to write a letter on city letterhead encouraging businesses to participate. As a past president of the Kiwanis club, you are only too happy to support this effort. What additional issues do you need to consider before responding to the request?*

**Sticky Situation #4:** *A recent emergency has had all staff on duty for extended hours. As things start to calm down and you take a breather, you realize that tomorrow is your mentor's birthday and you usually take her to lunch to celebrate. You forgot to make reservations and purchase a gift. Your assistant hears you muttering under your breath about your oversight and offers to make the reservation and run out and purchase a gift. Any potential problems in taking him up on his offer?*

See page 26 for some – but not all – the thoughts one might have on these dilemmas.

# CHAPTER 3: NOT THE MASTER OF ALL HE SURVEYS: NO PERSONAL USE OF PUBLIC RESOURCES

These situations are tricky because public officials face both criminal and civil penalties for using public resources for personal benefit.<sup>22</sup> Criminal penalties include a two to four year state prison term and permanent disqualification from public office.<sup>23</sup> Civil penalties include a fine of up to \$1,000 per day on which the violation occurs, plus three times the value of the resource used.<sup>24</sup>

## WHAT IS PERSONAL USE?

“Personal” use of public resources are activities that are for personal enjoyment, private gain or advantage.<sup>25</sup> “Use” means the use of public resources that is substantial enough to result in a gain in advantage for the user and a loss to the local agency that can be estimated as a monetary value.<sup>26</sup> The statute penalizes both intentional and negligent violations.<sup>27</sup>

There are very narrow exceptions for “incidental and minimal” use of resources. The purpose of these exceptions appears to be more to prevent traps for the unwary; they do not constitute an affirmative authorization for personal use of public resources. An “occasional telephone call” is an example of an incidental and minimal use of public resources.<sup>28</sup>

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<sup>22</sup> See Cal. Gov’t Code § 424; Cal. Gov’t Code § 8314.

<sup>23</sup> Cal. Penal Code § 424.

<sup>24</sup> Cal. Gov’t Code § 8314(c)(1).

<sup>25</sup> Cal. Gov’t Code § 8314(b)(1).

<sup>26</sup> Cal. Gov’t Code § 8314(b)(4).

<sup>27</sup> Cal. Gov’t Code § 8314(c).

<sup>28</sup> Cal. Gov’t Code § 8314(b)(1).

## **DON'T LET THIS BE YOU: PERSONAL USE OF CITY CREDIT CARDS TAKES DOWN TWO CITY OFFICIALS**

In the early 1990s, a northern California mayor was convicted for using the city's credit card, charging (over a period of months) a variety of supplies for the mayor's private business. When staff requests for reimbursement to the city (and cessation of the practice) failed, the city manager asked the vice mayor to intervene.

He advised the mayor to make immediate restitution, with interest, that day, but essentially was ignored. The matter came to the attention of the grand jury, which subpoenaed key city staff members, and eventually indicted the mayor.



During the mayor's trial, the city manager of a nearby city called to inquire as to the status of the mayor's prosecution. This turned out to be less about the mayor than it was about the inquirer. He too had used his city credit card improperly (to purchase baseball tickets). Although he willingly and immediately repaid the "advance," he lost his job.

## IF I GET INTO TROUBLE, CAN THE AGENCY PAY MY DEFENSE?

Don't count on it. To provide a defense in a criminal action, for example, your agency must find that:

1. The criminal action or proceeding is brought on account of an act or omission in the official's service to the public entity;
2. Such defense would be in the best interests of the public entity; and
3. The individual's actions were in good faith, without actual malice and in the apparent interests of the public entity.<sup>29</sup>

If the issue is the personal use of public resources, it may be particularly difficult for the agency to make the last finding, which is that the use was in the apparent interests of the public entity. Moreover, even if the agency could make these findings, it doesn't have to. There may be strong political pressures not to.

Similarly, an agency may refuse to provide a defense in a civil action if it finds the actions in question related to corruption or fraud.<sup>30</sup> Also, public agencies are not responsible for damage awards designed to punish or make an example of someone.<sup>31</sup>

Note that, in these situations, that the agency's attorney is not your attorney, with attendant protections for attorney-client confidences. The agency attorney's obligations are to the entity as a whole – not to any one official in that agency.<sup>32</sup>

<sup>29</sup> See Cal. Gov't Code § 995.8. See also *Los Angeles Police Protective League v. City of Los Angeles*, 27 Cal. App. 4th 168, 32 Cal. Rptr. 2d 574 (1994) (finding city was not required to provide the defense of police officers accused of vandalism and conspiracy to commit vandalism).

<sup>30</sup> See Cal. Gov't Code § 995.2 (public agency may refuse defense of civil action if, among other reasons, the agency finds the official acted because of "actual fraud, corruption or actual malice.") See also Cal. Gov't Code § 822.2 (immunity from liability for misrepresentation does not apply in instances of corruption).

<sup>31</sup> See Cal. Gov't Code § 818.

<sup>32</sup> *California Rules of Professional Conduct for Lawyers, Rule 3-600(A)*; *Ward v. Superior Court*, 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is county, not assessor in his individual capacity).

*Public officials face both criminal and civil penalties for using public resources for personal purposes.*

## SPECIAL ISSUES

### USE OF PUBLIC RESOURCES FOR BUSINESS

The criminal statute was the basis for a 2000 conviction of a county supervisor who, among other things, used county facilities for her private law practice.<sup>33</sup> On appeal, the supervisor argued that the jury should have been allowed to consider whether she had reimbursed the county for the use of public resources. The court said “no,” noting that the statute making it a crime to misuse public resources must be strictly construed.<sup>34</sup> Although the decision was not published (which means that it cannot be cited as precedent in other cases), it stands for the factual proposition that officials are prosecuted for misuse of public resources and that reimbursement may not be a defense.

### USE OF PUBLIC RESOURCES FOR CAMPAIGN PURPOSES

The same statutes that prohibit the use of public resources for personal benefit also prohibit the use of such resources for campaign purposes.<sup>35</sup> The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures. The League of California Cities offers extensive analysis of the do’s and don’ts to keep local officials on the safe side of the law in this area (visit [www.cacities.org](http://www.cacities.org) and search on “ballot measure”).

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<sup>33</sup> *People v. Bishop*, 2000 WL 520878 (2000) (unpublished opinion). Another element of the prosecution was the use of county resources for campaign purposes.

<sup>34</sup> The court cited *People v. Dillon*, 199 Cal. 1 (1926), a case in which convictions were upheld on facts demonstrating that the city was reimbursed for money improperly disbursed by the defendant. While *Dillon* did not expressly reject a reimbursement defense to the charge of violating section 424, the court said the decision cannot be reconciled with such a defense.

<sup>35</sup> Cal. Penal Code § 424; *People v. Battin*, 77 Cal. App. 3d 635, 143 Cal. Rptr. 731 (1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superceded on other grounds by *People v. Conner*, 34 Cal. 3d 141, 193 Cal. Rptr. 148 (1983). See also Cal. Gov’t Code § 8314 (“‘Campaign activity’ means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. ‘Campaign activity’ does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls and visitors to private political entities.”).

## DON'T LET THIS BE YOU: OFFICIALS' CREDIT CARD USE LEADS TO TAX EVASION CHARGES

In 2003, two water district officials were indicted in federal court for, among other things, income tax evasion/conspiracy to defraud the United States government.<sup>36</sup> The indictments were based on the theory that the officials had made personal purchases on district credit cards that, in effect, became a form of income to them that was not reported on their income tax forms. Because credit card billings and payment used the U.S. mail, the indictment also includes a count of federal mail fraud.



### USE OF AGENCY CREDIT CARDS FOR PERSONAL EXPENSES

Agency officials should think carefully about the wisdom of using agency credit cards for personal purchases – even if one plans to subsequently reimburse the agency. While there is no specific legal precedent indicating such a practice is unlawful, there also is no specific legal precedent indicating that such practice is lawful.

As mentioned above, one court's rejection of a reimbursement defense suggests that even giving the money back may not be sufficient to keep you out of trouble. (Of course, even more risky is incurring such personal expenses and then not taking steps to reimburse until there is some kind of public inquiry about the propriety of such expenses.)

<sup>36</sup> *U.S. v. Kramer and Ness*, No. \_\_\_\_\_ (indictment filed in the Eastern District of California).

*The risk of credit card misuse, either intentional or inadvertent, is high.*

The risk of credit card misuse, either intentional or inadvertent, is high. Because of this, a number of agencies have stopped issuing credit cards to officials or employees. In fact, the Association of California Water Agencies has recommended against issuance of credit cards to water agency board members.

To facilitate travel arrangements, some agencies have one agency credit card that can be used to make airline and hotel reservations. This credit card is kept in a secure place and the authority to use it is limited to a few people. All other expenses are either on a reimbursement or cash advance basis.

### **USE OF AGENCY LETTERHEAD OR TITLES**

Agencies differ on the extent to which public officials have access to and use of agency letterhead for correspondence. For example, some agencies prohibit any use of letterhead or the agency logo without governing body approval.<sup>37</sup> Others prohibit the use of letterhead (or logo) for certain purposes, for example, personal purposes or endorsement of candidates.<sup>38</sup> Some provide agency officials with more informal note cards or personal stationery for individual correspondence.

An agency policy is the first source of guidance for a public official. Even if a particular use of agency letterhead is not prohibited, the ethical question for an official to consider is whether the use of agency letterhead leads the reader to believe that the agency itself has endorsed the statements contained in the correspondence. A similar question is whether the recipient of the correspondence might infer from the use of official

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<sup>37</sup> See, e.g., San Diego County Water Authority Administrative Code, § 1.08.10(d) (“The official seal and any emblem, symbol, logo or other distinctive mark of the Authority shall be used solely for Authority purposes and programs, unless otherwise authorized by the Board. Private, commercial or non-commercial use of the official seal, mark, name or identity of the Authority is prohibited.”). The code is available online at: [www.sdcwa.org/about/who-admincode.phtml](http://www.sdcwa.org/about/who-admincode.phtml).

<sup>38</sup> See, e.g., City of Lawndale, Resolution 2090 (1981).

letterhead that the correspondence has some official imprimatur or endorsement (for example, on a letter of recommendation). Similar ethical questions apply to the use of titles and agency logos. These issues are why some agencies simply prohibit all use of agency letterhead and logos without governing body approval.

*Some things to consider:*

- To avoid any misunderstanding, many elected officials whose agencies allow them to use agency letterhead will specifically note that the opinions in the correspondence are their own and not those of the agency.<sup>39</sup>
- The law reflects the notion that it is both unfair and unethical for public officials to use public resources to enhance their visibility and name identification. For this reason, state law forbids sending mass mailings at public expense. The Fair Political Practices

## DON'T LET THIS HAPPEN TO YOU: USE OF STAFF RESOURCES HORROR STORIES

**Example 1:** An assistant general manager of a southern California irrigation district was convicted of misappropriating public funds a number of years ago. The manager had used his administrative assistant to type college coursework.

**Example 2:** A district attorney lost standing in the community when he used his authority to help his son. The son was in a fender-bender with an uninsured driver. The district attorney reportedly had the police pick up the driver and hold him until the driver signed a written promise to pay for the damage. The driver hooked up with an attorney and sued the county for civil rights violations, bringing both the district attorney's and the police officers' actions under intense scrutiny.

What started out as an incidental effort to vindicate his son's interests ended up being a major public embarrassment. When he realized how badly he misjudged the wisdom of his actions, the district attorney was reportedly reduced to tears.



<sup>39</sup> See Cal. Gov't Code § 89001.



## **BRIGHT IDEA:**

### **INCORPORATE “NO PERSONAL USE OF PUBLIC RESOURCES” PRINCIPLE IN ETHICS CODE**

The concept of not using public resources for personal gain or benefit is sufficiently important that a number of public agencies have included it in their ethics codes. For more about public agency ethics codes, visit the Ethics Resource Center at [www.ilsg.org](http://www.ilsg.org) (public confidence section).

Commission has defined “mass mailings” as sending 200 or more identical pieces that contain the name or pictures of elected officials except as part of a standard letterhead.<sup>40</sup> Even public agency newsletters that contain elected officials’ names or pictures fall within the prohibition.

- If a public official finds it appropriate to use official stationery for a political purpose (and the agency permits such use), it is wise to note on the correspondence that the correspondence was not produced or sent with public funds. Other Political Reform Act requirements may also apply, for example, placing the name of the committee or candidate on the outside of the envelope.<sup>41</sup>

The City of Santa Clara feels sufficiently strongly about these issues that it includes the following provision in its ethics code: “I use my title(s) only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether I am exceeding or appearing to exceed my authority.”

## **OFFICE HOLDER BADGES**

Most agencies will issue their elected officials either business cards or some other form of identification that may be useful from time to time. Some agencies issue officials “badges” that look similar to those used by law enforcement officials.

<sup>40</sup> See 2 Cal. Code of Regs. § 18901.

<sup>41</sup> See Cal. Gov’t Code § 84305.

## AVOIDING THE SELF-DECEPTION TRAP: QUESTIONS TO ASK

- How does this particular use of public resources benefit the public's interest as opposed to my own personal interests?
- How would I feel if a particular use of public resources were reported in the local newspaper? How about a political hit piece?
- How would my next-door neighbor feel about my spending his or her tax dollars this way? Would he or she feel resentful?



This practice has fallen out of favor for a number of reasons. It is not clear what purpose such badges serve in light of the fact that most agencies issue other forms of identification to their officials. It is also not clear what the legal authority is to issue such badges. Most importantly, there is a significant risk that someone seeing the badge might mistakenly think the official has some relationship to law enforcement.

State law forbids anyone from using a badge to impersonate a police officer.<sup>42</sup> A city council member in Southern California was prosecuted for unlawfully using a badge and false imprisonment in 2003. The jury deadlocked 11 to 1 in favor of conviction. The city also refused to pay the costs of the official's defense.

### USE OF STAFF TIME

The prohibition against personal use of public resources extends to human resources or public agency staff time. The theory is that staff time spent on personal errands for supervisors or governing body members could be used instead for public business.

<sup>42</sup> Cal. Penal Code §538d (b)(2) (making it a misdemeanor to use a badge that would deceive an ordinary reasonable person into thinking the person is a law enforcement official).

## ISSUES TO PONDER – A FEW THOUGHTS

The following are some thoughts on the dilemma presented at the beginning of this chapter. The point of the case study, however, is for readers to reach their own conclusions. Reasonable people can disagree or give different weight to different considerations based on local policies and community standards. The key question is: what do **you** think?



**Sticky Situation #2:** *The use of the agency laptop for your son’s homework is a personal-use-of-a-public-agency-resource issue. Using the laptop provides an advantage to your family but does probably not involve a loss to the local agency that can be estimated as a monetary value. So allowing your son to use your laptop probably passes the threshold test of complying with legal standards.*

*Of course, just because it is lawful, allowing your son to use the laptop may not necessarily be ethical. Asking yourself the various “avoiding self deception” questions could reasonably cause one to conclude that this is such an incidental use of a resource as to not be unethical. But would you want your son to go to school and announce he used the agency laptop to his teacher or classmates? Would it be better (and perhaps a better lesson for your son) to take him to the local public library to access the Internet there?*

**Sticky Situation #3:** *In analyzing whether to use city letterhead to promote the local service club event, first ask yourself whether your agency has a policy governing the use of city letterhead. Such a policy may well provide the answer.*

*If there is no governing policy, ask whether this is truly a city purpose justifying the use of the city’s letterhead. Even though the event will undoubtedly benefit the community; as presently described, the event is not a city event and therefore your response will need to be that, as much as you want to help the Kiwanis Club, this is not something you can do.*

*The fact that the effort is a worthy cause cannot be part of the analysis. Opinions can differ about what constitutes a worthy cause and a worthy organization. It may be helpful to ask yourself how you would feel if someone else were mayor and endorsed a charitable activity by an organization that is reputed to engage in practices with which you disagree.*

**Sticky Situation #4:** *Using public agency staff resources for personal errands is never a good idea. This is true even when a public agency official has put in extra hours that have resulted in the errand not being accomplished. Unlike the laptop example, above, the agency probably can estimate the monetary value of the staff time. This scenario probably flunks most, if not all, the avoiding-self-deception tests.*

These are just a few thoughts. With each of these dilemmas, ask yourself the questions posed at the end of this chapter to figure out what decisions make sense for you.

**NOTES:**



## ISSUES TO PONDER

***Sticky Situation #5:*** *The agency's bond counsel invites you to lunch to go over the details of an upcoming financing and share some thoughts on revenue options for the agency. She selects a nice restaurant in town and the tab comes to \$60, including gratuity. She offers to pay, but you understand that this may give rise to reporting obligations under the Political Reform Act. Should you offer to pay because you discussed business?*

***Sticky Situation #6:*** *Every year a local arts group sponsors a concert in the park in your district that your constituents enjoy and enhances community pride. Because of state budget cuts, the arts group has lost funding and comes to you for assistance. The group suggests that you use a portion of the money you have for incidental officeholder expenditures as an advance for the concert's expenses. The group then offers to have a raffle at the concert to pay you back at least part of the advance. They also offer to credit your support in the promotional materials for the concert. What are some of the issues you should ponder in evaluating your options?*

See page 34 for some – but not all – the thoughts one might have on these dilemmas.

# CHAPTER 4: WHEN IT IS NOT BETTER TO GIVE...

These kinds of situations illustrate how the norms in the public sector can differ significantly from the private sector. It is common for business people to extend hospitality and make gifts and charitable contributions to generate goodwill for the company.

However, California’s constitution specifically prohibits “gifts” of public resources.<sup>43</sup> This prohibition applies to an agency making gifts to its officials and employees.<sup>44</sup> It also applies to gifts from either an agency or its officials to private citizens (for example, hosting meals).

Because this ban is in the constitution, it applies to all public agencies. The only possible exception is charter cities. Charter cities look to their charters for limits on their ability to do something. Therefore, charter city officials must consult their charters to see if they contain parallel gift restrictions.

How do you know if a gift is prohibited? The test is whether there is a valid public purpose justifying the expenditure.<sup>45</sup> This is another instance in which an expense policy can provide some affirmative guidance for local officials.<sup>46</sup> Such a policy can also protect officials from having a decision being second-guessed in court.

<sup>43</sup> See Cal. Const. art. XVI, § 6 (“nor shall it [the Legislature] have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individuals, municipal or other corporation whatever;...”). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 870, 118 Cal. Rptr. 901, 902 (1975) (making the connection between council member expenses and the prohibitions against a gift of public funds). Although the prohibition is directed to the Legislature, the courts’ theory is that, since general law cities, counties and special districts derive much of their authority from the Legislature, such local agencies also do not have the power to make gifts of public funds.

<sup>44</sup> There is an additional prohibition against granting extra compensation for work already performed by public officers, public employers or contractors. See Cal. Const. art. IV, § 17; art. XI, § 10.

<sup>45</sup> *City and County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 103-04, 248 Cal. Rptr. 290, 295 (1988). See also McQuillin, *Municipal Corporations*, § 39.19 (3d ed.) (all expenditures must be for a public purpose).

<sup>46</sup> See *Roseville v. Tulley*, 55 Cal. App. 2d 601, 608-09, 131 P. 2d 395, 400 (1942) (finding that judicial second-guessing of a city’s determination of what constitutes a public purpose would be an unwarranted intrusion into the legislative function of a city council).

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## SPOUSE TRAVEL

In the private sector, company officials often travel with their spouses on business trips at company expense. Not so in the public sector. The Attorney General has concluded that this would constitute a gift of public funds because there is no direct and substantial public purpose in paying for the expenses of a public official's spouse.<sup>47</sup> The specific question related to whether it would be proper for a hospital district to pay for a district director's spouse to attend a conference on official business. The Attorney General said no.

This, of course, does not mean that your spouse cannot accompany you to official functions. It just means that this becomes a personal expense.

## CHARITABLE DONATIONS

The California Constitution's prohibition against gifts of public funds has implications for charitable giving by public agencies.<sup>48</sup> As Scrooge-like as it seems, a public official should not assume it is appropriate for public agencies to make gifts to charitable organizations.

Here are some circumstances under which a public agency may contribute to a charity:

1. When the charity provides a service that complements or enhances one the public agency provides itself;
2. When there is an identifiable secondary benefit to the public agency; or
3. When the charity provides a service the public agency could provide but chooses not to.

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<sup>47</sup> 75 Cal. Op. Att'y Gen. 20 (1992) (finding paying a spouse's expenses to a conference violates both Government Code section 1090 and constitutional prohibitions against gifts of public funds). See also 65 Cal. Op. Att'y Gen. 517, 521 (1982) (finding Government Code section 36514.5 does not authorize reimbursement of the expenses of any person other than a member of the city council). See also *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 869-870, 118 Cal. Rptr. 901 (1975). (unauthorized reimbursement is illegal gift).

<sup>48</sup> See generally McQuillin, *Municipal Corporations*, § 39. 25 (3d ed.) ("Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.")

In all instances, the governing body should make findings in the minutes about the benefits to the agency associated with providing resources to the charity. As always, concluding that an expenditure may be legal is just the first step of the analysis; just because something is “legal” does not mean that it is the best use of resources in light of all competing demands on the agency’s treasury.

<b>EXAMPLES OF WAYS TO DOCUMENT BENEFITS ASSOCIATED WITH CHARITABLE SUPPORT</b>		
<b>RELATIONSHIP TO PUBLIC AGENCY PROGRAMS</b>	<b>EXAMPLE</b>	<b>NATURE OF BENEFIT(S)</b>
1. Complementary service	Donation to Tree Foundation in return for agreement to replace street trees agency removes because of disease or old age	Foundation has specialized knowledge about trees suitable for area.  Organization shares goal of populating area with more trees, thereby saving energy and enhancing property values for residents  Other grants received by the Tree Foundation mean the agency and those it serves save money on replacement of trees.
2. Demonstrable benefit	Boys and Girls Club’s after school programs	Such programs reduce the need for law enforcement activities in area. Programs promote public safety and law abiding youth in a positive, cost effective manner.
3. Service agency could provide but does not	Homeless shelter and associated placement programs	Such programs help end cycle of homelessness. Reducing homelessness is one of the agency’s housing element goals.

*California's  
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specifically  
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of public  
resources.*

Special districts have an additional burden when it comes to charitable contributions. Not only must they demonstrate the contribution benefits the district, but they must also demonstrate that the expenditure falls within the specifically enumerated powers of that particular type of district.

Making donations to charitable causes that are far away from the jurisdiction (for example, the victims of a hurricane) also present special challenges. Because of the distance, it is much tougher to justify the contribution as creating benefits to the jurisdiction's residents. Because of this, such donations are more vulnerable to legal challenge.<sup>49</sup>

Also risky is the practice that may exist in some jurisdictions where individual office holders can direct that a certain amount be given to a particular charity (possibly as part of an annual officeholder expense budget). Any decision to give public money to private charities should be made by an agency governing body, so the requisite findings on the benefit to the agency and the community it serves can be made.

One public agency's practices in this regard came under scrutiny, even though the agency put safeguards in place to make sure the funds were appropriately spent. The president of the local taxpayers' association suggested that using such monies for charitable contributions involves "a thin line" and is "almost like they're buying votes."<sup>50</sup> Although the newspaper noted that the funds could not be used for campaign purposes, the newspaper observed that such funds were used to boost officeholders' public profiles.

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<sup>49</sup> See 64 Cal. Op. Att'y Gen. 478 (1981) (noting that grants to other agencies must serve the interests or purposes of the residents of the granting agency).

<sup>50</sup> "Here's \$50,000 – Spend it Well," *Sacramento Bee*, November 23, 2003, page B1, B6.

## AVOIDING THE SELF-DECEPTION TRAP: QUESTIONS TO ASK

- Does the law allow me to use public resources in this manner?
- How does this particular expenditure benefit the public's interest as opposed to my own personal interests?
- Is my motivation for an expense a desire to personally curry favor with the would-be beneficiary of an expense?





## ISSUES TO PONDER – A FEW THOUGHTS

The following are some thoughts on the dilemma presented at the beginning of this chapter. The point of the case study, however, is for readers to reach their own conclusions. Reasonable people can disagree or give different weight to different considerations based on local policies and community standards. The key question is: what do **you** think?

***Sticky Situation #5:** On the \$60 lunch with bond counsel scenario, this is where these issues can be particularly difficult (again, which is why an expense policy can be helpful). One way to avoid this situation altogether is to limit discussions to business environments (your office or hers) – it can be less gracious and limit the rapport you two develop, but it might be the safest course.*

*In many communities, a \$30 per person lunch tab is pretty steep. Using taxpayer dollars to pay for a vendor's lunch may not pass either the newspaper or neighbor test. While it may be a legitimate expense for reimbursement for you, the better course in the future may be to go to a less expensive place and make it clear it will be Dutch treat.*

*Another way of looking at this situation is that, if you wouldn't take yourself out to a \$30 lunch, you probably don't want to have such a lunch at your agency's expense. A good strategy is to consider your agency's resources as your own: if a lunch is too expensive for your personal pocketbook, perhaps it is also too expensive for the public's pocketbook. There is a good likelihood your sense of what is too expensive is similar to your constituents' – who, incidentally, are in a position to pass judgment on how you spend their money.*

***Sticky Situation #6:** On using your officeholder expenditure budget for the concert in the park, the preferable approach is to make sure that all expenditures of public resources for what might be considered charitable function have a documented public benefit. Talk with your agency attorney about the best way to make this documentation happen.*

*The fact this will be structured as a quasi-loan does not change the analysis. There is always the chance that the loan will not be paid back and, in any event, the constitutional prohibition also applies to extensions of credit. Because of this, there needs to be a demonstrated public benefit to either giving the money outright or making a loan of it.*

*The more complex the financial arrangement, the greater potential for misunderstanding and missteps. You would want to consult with agency counsel on the legalities of having a raffle to generate repayment of the loan and whether the agreement can be sufficiently documented – to protect you, your agency and the arts group.*

*If you find yourself reluctant to consult your agency counsel on an issue because you suspect a dubious or critical reaction, that may be enough reason not to go forward.*

*The offer to credit your support raises other ethical issues. This will give you positive exposure among your constituents to be sure, but it is the agency as a whole that deserves the credit for the financial support. Yes, you were responsible for making the decision, but if you accept the offer to credit your support in the promotional materials, it will appear you are using public moneys to increase your profile in the community. This is generally not considered to be an appropriate use of public resources.*

These are just a few thoughts. With each of these dilemmas, ask yourself the questions posed at the end of this chapter to figure out what decisions make sense for you.

**NOTES:**

## ISSUES TO PONDER



***Sticky Situations 7 and 8:** Your agency has registered you to attend a conference in Sacramento and has put the associated airplane and hotel bill on the agency's credit card number. Your wife is traveling with you, but you paid for her airline fare on your credit card.*

*While you are there, your wife calls the local legislator, whom she knows from college. The legislator suggests the three of you get together for lunch at the restaurant next door to the conference center. This happens to be during one of the conference lunch sessions that will feature a preeminent speaker on the future of the California economy.*

*Do you miss the conference session to meet with your legislator? If you do, do you pick up the tab for lunch? Do you seek reimbursement for the lunch bill if you discussed agency business with the legislator during the meal? Should the agency pay for your wife's lunch since, without her, you wouldn't have gotten face time with your legislator? What are your options?*

*After the lunch, you start feeling unwell. You suspect the sushi plate you split as an appetizer with the legislator. You have a pounding headache and a very queasy stomach. You purchase over-the-counter products at the hotel gift shop that you desperately hope will relieve the symptoms. The clerk offers to charge these to your room. What do you say?*

See page 45 for some – but not all – the thoughts one might have on these dilemmas.

# CHAPTER 5: PAYABLE ON DEMAND?

## REIMBURSEMENT OF EXPENSES

There is a maze of statutes that describe in general terms what kinds of expenses are reimbursable. These statutes are remarkable for their lack of consistency and relative narrowness.

### GENERAL REIMBURSEMENT AUTHORIZATIONS

There are a number of statutes that allow reimbursement of officeholder expenses to varying degrees.<sup>51</sup> The law relating to water district directors, for example, generally allows reimbursement of expenses incurred in the performance of official duties, as long as those duties are authorized or required by the governing board (another good argument for an expense reimbursement policy).<sup>52</sup> Hospital district directors operate under a similar statute.<sup>53</sup> The statutes relating to county supervisors, however, only mention reimbursing for travel-related expenses.<sup>54</sup>

Somewhere in between are city council members in general law cities, who may be reimbursed for:

- “Actual and necessary” expenses which are
- Incurred in the performance of the councilmember’s official duties.<sup>55</sup>

<sup>51</sup> There is one general statute that applies to all local agencies that at least one appellate court has characterized as an “authorization” for expense reimbursement. *See Citizen Advocates, Inc. v. Board of Supervisors*, 146 Cal. App. 3d 171, 178, 194 Cal. Rptr. 61, 66 (1983) (Government Code “Section 1091.5, subdivision (a)(2), authorizes reimbursement of ‘actual and necessary expenses incurred in the performance of official duty.’”). More precisely, this code section creates an exception for expense reimbursement decisions from the general prohibition of self-dealing. *See* Cal. Gov’t Code § 1090.

<sup>52</sup> *See, e.g.*, Cal. Water Code § 34741 (For California Water Districts “Each director shall receive...expenses incurred in the performance of his duties required or authorized by the board.”); Cal. Water Code § 30507(county water district directors receive expenses incurred in performance of duties required or authorized by board); Cal. Water Code § 30507.1 (Contra Costa county water district directors receive expenses incurred in performance of duties required or authorized by board); Cal. Water Code § 21166 (irrigation district directors receive actual and necessary expenses when acting under orders of the board); Cal. Water Code § 71255 (municipal water district directors receive any expenses incurred in the performance of duties required or authorized by the board).

<sup>53</sup> *See* Cal. Health & Safety Code § 32103 (allowing travel and incidental expenses incurred by hospital district board members in the performance of their official duties as approved by the board).

<sup>54</sup> Cal. Gov’t Code § 25008 (county supervisors are allowed expenses associated with traveling outside county on county business and to state association meeting) § 25305 (county may purchase automobiles for use of county officers and employees in lieu of mileage; county board may allow officers and employees using county automobiles their actual and necessary expenses when traveling on county business).

<sup>55</sup> *See* Cal. Gov’t Code § 36514.5 (city council members); 65 Cal. Op. Att’y Gen. 517, 521 (1982) (interpreting Government Code section 36514.5). *See also* Cal. Health & Safety Code § 33114 (similar authority as to expenses of redevelopment agency members).

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There are a number of statutory provisions that set similar standards for reimbursement of public employee expenses.<sup>56</sup> There is also a law that allows automobile mileage or allowances for certain kinds of local officials.<sup>57</sup>

The decision on whether these requirements are met is ultimately the governing body's – not individual city council members'.<sup>58</sup> An expense policy can be a vehicle for making those determinations.

## WHAT CONSTITUTES “ACTUAL AND NECESSARY” EXPENSES?

The Attorney General has issued a number of opinions on the issue of whether an expense is “actual and necessary.” In general, the Attorney General has said that a school district could not adopt regulations authorizing certain employees to purchase meals for community leaders.<sup>59</sup> The costs of attending local civic functions could only be reimbursed when there is a “clear nexus” between such attendance and the employee's duties.<sup>60</sup>

The Attorney General has defined “necessary” as involving a practical need based upon prevailing business practices.<sup>61</sup> However, merely being “beneficial” to the public agency is not enough.<sup>62</sup> For federal income tax purposes, an expense is “helpful and appropriate.” An expense does not have to be required, however, to be necessary.<sup>63</sup>

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<sup>56</sup> See, e.g., Cal. Educ. Code § 44032 (authorizing school district governing boards to provide for actual and necessary employee expenses incurred in the course of providing services); § 44033 (authorizing governing boards to provide for automobile expense reimbursement on a monthly or mileage basis).

<sup>57</sup> See Cal. Gov't Code §1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties).

<sup>58</sup> 65 Cal. Op. Att'y Gen. 517, 523 (1982).

<sup>59</sup> 61 Cal. Op. Att'y Gen. 303, 305 (1978) (finding such meals flunked the “actual and necessary” test in the statute authorizing reimbursement of employee expenses). See also 85 Cal. Op. Att'y Gen. 210, 213 (2002) (reaffirming the 1978 opinion with respect to meal purchases for constituents, legislators and private business owners).

<sup>60</sup> 61 Cal. Op. Att'y Gen. 303, 305-06 (1978).

<sup>61</sup> 65 Cal. Op. Att'y Gen. 516, 522 (1982) (citing *Collins v. Riley*, 24 Cal.2d 912, 918 (1944) and determining that the expenses of a handicapped council member met this standard).

<sup>62</sup> 61 Cal. Op. Att'y Gen. 303 (1978) (citing *Gibson v. Sacramento County*, 37 Cal. App. 523, 174 P. 935 (1918)).

<sup>63</sup> See Internal Revenue Service Publication 463: Travel, Entertainment, Gift and Car Expenses (2002) at 3 (available at [www.irs.gov](http://www.irs.gov)).

In a 1944 California Supreme Court case, the court observed that the question of what constitutes a necessary expense is one of fact. The court also noted it is relevant whether the individual incurring the expense acted in good faith in finding a particular course of action to be necessary to protect his or her interests.<sup>64</sup>

In another case involving the propriety of a state expenditure, the court focused on the issue of whether the expenditure constituted state business. The court noted that there must be “some direct connection with the fulfillment of ... [the official’s] public duties.”<sup>65</sup>

Ultimately, the governing board determines what is necessary.<sup>66</sup> An agency expense policy offers an opportunity to do this.

With respect to meals, the policy should:

- Make it clear *under what limited circumstances* the agency will pay for officials’ and others’ meals.
- Be explicit about *the necessity* underlying those circumstances.
- Require *documentation* that the meal in question meets the requirements of the policy.

To address public concerns about what might be considered extravagant meals being paid for at public expense, it may be useful to refer to Internal Revenue Service guidelines for daily meal expenses as a yardstick. These guidelines are adjusted for cost of living differences in different areas and are available at [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem).

The Institute’s sample policy incorporates these suggestions. In the absence of an expense policy, consulting your agency attorney may be helpful.

*An agency expense policy is an opportunity to define what constitutes a “necessary” expense.*

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<sup>64</sup> See *Metropolitan Water District v. Adams*, 23 Cal. 2d 770, 773, 147 P.2d 6, 7 (1944) (note that discussion occurred in context of analysis of costs associated with retaining experts in eminent domain action).

<sup>65</sup> *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

<sup>66</sup> See 61 Cal. Op. Att’y Gen. 303 (1978).

## DON'T LET THIS BE YOU: SWEAT BOTH SMALL AND BIG STUFF

What appears to have been a discrepancy of less than \$10 turned up in a *Los Angeles Times* article in the fall of 2003. A local official had sought reimbursement for a \$30 lunch for two agency officials. The apparent issue generating controversy was whether a third person (one official's spouse) lunch was also included in the tab. The agency concluded it was and censured the official for turning in a false reimbursement request.

This is where the “newspaper test” can be helpful. Even relatively small, but apparently improper, expenditures can make the newspaper and cause embarrassment to public officials. Don't assume the media limits its attention to mega-abuses. Your guide needs to be whether the expenditure was proper, not whether anyone will find out about it. You cannot count on the fact that even relatively small transgressions will go unnoticed.



## SPECIAL CHARTER CITY POWERS

As a general matter, charter cities may adopt reimbursement policies consistent with their charters. City charters are “instruments of limitation, not authorization” – meaning that the city attorney looks for restrictions in the city charter as opposed to specific permission to take a particular action.<sup>67</sup> This view prevailed in a dispute over whether a charter city could reimburse its council members, city clerk and city attorney for the expenses associated with attending a League of California Cities conference.<sup>68</sup>

<sup>67</sup> See, e.g., *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 885 P.2d 934, 36 Cal. Rptr. 2d 521 (1994); *Alesi v. Board of Retirement*, 84 Cal. App. 4th 597, 101 Cal. Rptr. 2d 81, (2000); *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212, 19 Cal. Rptr. 2d 179 (1993); *Grimm v. City of San Diego*, 94 Cal. App. 3d 33, 38, 156 Cal. Rptr. 240 (1979).

<sup>68</sup> See *Roseville v. Tulley*, 55 Cal. App. 2d 601, 605, 131 P.2d 395, 398 (1943) (finding a charter city “has full control over its municipal affairs...and it has such control whether or not its charter specifically provides for the particular power sought to be exercised, so long as the power is exercised within the limitations or restrictions placed in the charter.”).

The Attorney General has suggested that charters must authorize reimbursement of certain expenses.<sup>69</sup> However the cases relied upon in those opinions involved specific charter language that would operate as a limitation on a charter city enactment.<sup>70</sup>

## LOBBYING EXPENSES

There are also statutes that allow public officials to be reimbursed expenses associated with lobbying the legislature.<sup>71</sup> The Attorney General has concluded that the statutory authorization, on its own, does not extend to purchases of meals for others when lobbying.<sup>72</sup> If an agency governing body believes it is in the community's interest to purchase such meals, it should explain why in its expense reimbursement policy.

## CONFERENCE ATTENDANCE AND EXPENSES

The courts have concluded that conference expenses are reimbursable as a "proper municipal purpose."<sup>73</sup> What happens if an official travels to a conference at public expense but then does not attend the conference sessions? Since the purpose for the expenditure is to assist the official in the performance of his or her official duties, not attending the conference sessions is both unethical and arguably a dereliction of duty.<sup>74</sup>

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<sup>69</sup> See 65 Cal. Op. Att'y Gen. 517, 526 (1982) (concluding city charter may provide for reimbursement of office holder expenses in a manner different from Government Code section 36514.5). See also 85 Cal. Op. Att'y Gen. 210, 213 (2002) (reaffirming the 1982 opinion and indicating that the electorate has the authority to determine the extent to which expenses are reimbursed).

<sup>70</sup> See *Porter v. City of Riverside*, 261 Cal. App. 2d 832, 834, 68 Cal. Rptr. 313, 314 (1968) (upholding a flat expense allowance for city council members against a challenge that the charter prohibited compensation for council members by noting that language in the charter authorized such allowances); *Woods v. Potter*, 8 Cal. App. 41, 95 P. 125 (1908) (rejecting a claim for council member compensation when the charter contained provisions relating to the compensation of all charter officers, except for the city council).

<sup>71</sup> See Cal. Gov't Code § 50023 (legislative bodies of cities and counties may directly or through a representative attend legislative bodies and meet with representatives of executive agencies, and present information; cost and expense incident to such meetings are proper charges against the local agency); § 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

<sup>72</sup> 85 Cal. Op. Att'y Gen. 210 (2002).

<sup>73</sup> See *Roseville v. Tulley*, 55 Cal. App. 2d 601, 607-08, 131 P.2d 395, 399-400 (1943) (court deferred to city's conclusion that such attendance would improve city administration). See also *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

<sup>74</sup> See Cal. Gov't Code § 3060 (providing grand jury may investigate claims of willful or corrupt misconduct in office, which can lead to removal from office). See also *People v. Tice*, 144 Cal. App. 2d 750, 310 P.2d 588 (1956) (phrase misconduct in office is broad enough to include willful malfeasance, misfeasance and nonfeasance).

## SPECIAL DISCLOSURE REQUIREMENT FOR SPECIAL DISTRICTS

Special districts must, at least annually, disclose all reimbursements of \$100 or more.<sup>75</sup> The term “special districts” include any agency of the state, formed pursuant to general or special act, for the local performance of governmental or proprietary functions within limited boundaries.<sup>76</sup> Although the statute refers to “publishing” or “printing” the document, the legislative history indicates that the legislative author’s intent was not to require “an expensive publication” but that periodically including the document in agenda packets or otherwise printing and making the document available for public inspection in an understandable format will do the job.<sup>77</sup>

### WHAT IF THE ISSUE IS NOT REIMBURSEMENT?

The statutes analyzed in this section all address the circumstances under which public agency officials may be reimbursed for their office-holding expenses. What if the issue is one of providing cash advances or using an agency credit card?

As this guide indicates, the statutes relating to reimbursement are only part of the legal framework that guides how public resources should be used. There are still proscriptions against gifts of public funds, personal use of public resources and limits on elected official compensation. These same legal principles and ethical considerations apply to advances and use of agency credit cards.

<sup>75</sup> See Cal. Gov’t Code § 53065.5 (referring to Government Code section 56036(a) for the definition of special district).

<sup>76</sup> See Cal. Gov’t Code § 56036(a) (includes county service areas but does not include counties, the state, school or community college districts, special assessment districts, improvement districts, community facilities districts, cities and other specified forms of entities).

<sup>77</sup> 1993-94 Assembly Journal, page 5873 (March 24, 1994 Letter from Assembly Member Tom Umberg).

**DON’T LET THIS BE YOU:  
DISTRICT ATTORNEY INVESTIGATES  
CREDIT CARD USE**

In fact, law enforcement authorities are reportedly investigating the use of agency credit cards by a number of local officials – a fact that has received unfavorable media coverage for the officials who are the subject of the investigation.

In these cases, there were apparently no adopted expenditure policies to support individual spending decisions. The press portrayed the expenditures as extravagant and questioned their relationship to the conduct of legitimate agency business.

In a recall petition against one official, the charge was levied that the official used the agency and tax dollars as “his personal piggy bank.” Media coverage of the investigation and the expenses in question was heavy just before the recall election. The recall succeeded.



*The courts generally “strictly construe” or narrowly interpret statutes providing for the fees, expenses and compensation of public officers. This means doubts are resolved against public officials.*

## AVOIDING THE SELF-DECEPTION TRAP: QUESTIONS TO ASK

- Does the law allow me to use public resources in this manner?
- How would I feel if a particular expenditure were reported in the local newspaper? How about a political hit piece?
- How would my next door neighbor feel about my spending his tax dollars this way? Would he or she feel resentful?





## ISSUES TO PONDER – A FEW THOUGHTS

The following are some thoughts on the dilemma presented at the beginning of this chapter. The point of the case study, however, is for readers to reach their own conclusions. Reasonable people can disagree or give different weight to different considerations based on local policies and community standards. The key question is: what do **you** think?

***Sticky Situations 7 and 8:** What to do about missing a conference session to meet with a legislator with your wife (a college friend of the legislator's) over lunch?*

*Given the importance of maintaining relationships with your legislator, a credible argument is that it is beneficial to your agency to strengthen your personal relationship with your legislator. Of course, the best time would be when the meeting does not conflict with the conference. However, sometimes one has to take these opportunities when the legislator offers to be available. One has to carefully weigh the relative costs and benefits of each decision. And maybe there's a way to maximize both sets of benefits (for example, if the lunch conference session will be taped and you can listen to it on the way home).*

*Assume you do go to lunch. There is a good chance, under the Attorney General's opinion on meals for legislators, that the expense will not be reimbursable unless your agency has a policy affirmatively authorizing such reimbursement. The suggested policy in this guide makes reimbursement appropriate if the purpose of the meeting is to communicate a policy position of the agency. This particular lunch seems more social in nature, even though some incidental issues relating to your agency may arise.*

*Moreover, legislators are subject to the same gift reporting and limits that local elected officials are. If you decide to seek reimbursement, you will want to check with agency counsel to make sure those bases are covered.*

*The agency should not pay for your wife's expenses, even though the objective reality is that you wouldn't have gotten face time with your legislator without her. Again, although having lunch with the legislator is useful, much of the conversation is likely to be purely social in nature.*

*In terms of charging over-the-counter stomach remedies to the room, like many ethical dilemmas, there are a number of ways to evaluate what to do. If you are not going to get reimbursed for the lunch with the legislator, however, it may be hard to argue that the public should be responsible for the consequences of bad sushi consumed at the lunch. This seems more like a personal expense, even though there are ties to agency business.*

These are just a few thoughts. With each of these dilemmas, ask yourself the questions posed at the end of this chapter to figure out what decisions make sense for you.

**NOTES:**

# CHAPTER 6: BEST PRACTICES

The overwhelming majority of local officials take a very sparing attitude toward expenditures of public resources. Not only is this approach the right thing to do, it also sits well with both the media and the public – particularly given the constraints that local agencies are facing on the financial front. This is why good ethics is good politics.

## ACHIEVING PRUDENCE: SOME QUESTIONS TO ASK

To summarize, here is a list of questions to ask in making spending decisions:

- Does the law allow me to use public resources in this manner?
- How does this particular expenditure benefit the public’s interest as opposed to my own personal interest?
- Is my motivation for an expense a desire to personally curry favor with the would-be beneficiary of an expense?
- How would I feel if a particular expenditure were reported in the local newspaper? How about a political hit piece?
- How would my next-door neighbor feel about my spending his or her tax dollars this way? Would he or she feel resentful?
- Am I making a spending decision out of a sense of reward or entitlement?

Although the first question is important, note that the law merely sets minimum standards for conduct and decision-making. Just because an expenditure might be legal, within the meaning of an agency’s policies or prevailing law, the expenditure may not be ethical.

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**More on Why Good Ethics is Good Politics** ..... 48

**What to Do if An Agency’s Practices Diverge from These Principles?** ..... 49

## MORE ON WHY GOOD ETHICS IS GOOD POLITICS

Focusing just on what the law allows also may not be politically savvy. Local officials are under an ongoing ethical obligation to consider the highest and best use of all public resources. The media, political opponents, and sometimes even law enforcement officials are poised to second-guess the decisions you make on such expenditures.



### **BRIGHT IDEA: EXPENSE POLICIES**

Some agencies have adopted policies that establish what kinds of expenses are and are not appropriate for agency office holders. What makes sense for one community may not sit well with another. Adopting such a policy enables agency decision-makers to reach a consensus on what makes sense for their community. Moreover, because such a policy will be considered at an open and public meeting, the policy will have the additional credibility of the opportunity for community input.

A sample of such a policy is available at the end of this guide. It is also available online in the Ethics Resource Center at [www.ilsg.org](http://www.ilsg.org) (public confidence section).



**BRIGHT IDEA:  
INDIVIDUAL BUDGETS FOR  
OFFICE HOLDER EXPENSES**

In some jurisdictions, a decision-making body will create a per-officeholder amount for travel and similar expenses. This policy gives each member of the governing body equal access to opportunities for training and advocacy. It also enables the governing body to collectively weigh these kinds of expenditures against others that benefit the community.

Of course a dollar limit for expenditures each year doesn't relieve each official from evaluating how best to use the amount allocated. The official must consider what kinds of expenditures best serve the community, within legal constraints. The fact that there is an amount budgeted is only the first step. The hope is this guide will help local officials sort through those issues.

*Focusing just on what the law allows may not be politically savvy.*

**WHAT TO DO IF AN AGENCY'S PRACTICES DIVERGE FROM THESE PRINCIPLES?**

What if an agency allows personal charges on agency credit cards with ultimate reimbursement? What if an agency has been allowing expense reimbursement without the benefit of an adopted policy? What if an agency has made charitable contributions irrespective of findings of benefits to the community?

Don't panic. The key is for the agency to address any issues it discovers to prevent repeat occurrences. The goal is for the agency's (and its officials') actions with respect to stewardship of public resources to be above suspicion. Here are some thoughts in that regard:

- Being aware of the ethical and legal issues associated with the use of public resources is the first step.
- Adopting and adhering to a policy with respect to the use of public resources, as suggested in this guide, is another step agency officials can take.
- Having an independent auditing and control person or department for the public agency is also helpful to create a culture in which missteps are not overlooked.
- Adopting a general ethics code to enhance the agency's culture of ethical conduct is yet another step.

Resources to help local officials with these steps are available from the Ethics Resource Center at [www.ilsg.org](http://www.ilsg.org) (public confidence section).

# CHAPTER 7: SAMPLE EXPENSE AND USE OF PUBLIC RESOURCES POLICY

## POLICY STATEMENT

Whereas, \_\_\_\_\_ [*insert public agency name*] takes its stewardship over the use of its limited public resources seriously.

Whereas, public resources should only be used when there is a substantial benefit to the *city/county/special district*.

Whereas, such benefits include:

1. The opportunity to discuss the community's concerns with state and federal officials;
2. Participating in regional, state and national organizations whose activities affect the *city/county/district*;
3. Attending educational seminars designed to improve officials' skill and information levels; and
4. Promoting public service and morale by recognizing such service.

Whereas, 1) legislative and other regional, state and federal agency business is frequently conducted over meals; 2) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the *city/county/district's* policy concerns; and 3) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law.

Whereas, this policy provides guidance to elected and appointed officials on the use and expenditure of *city/county/district* resources, as well as the standards against which those expenditures will be measured.

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Whereas, this policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources.<sup>1</sup>

Whereas, this policy also supplements the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.<sup>2</sup>

Whereas, this policy also applies to any charges made to a *city/county/district* credit card,<sup>3</sup> cash advances or other line of credit.

## AUTHORIZED EXPENSES

*City/County/District* funds, equipment, supplies (including letterhead), titles,<sup>4</sup> and staff time must only be used for authorized *city/county/district* business.<sup>5</sup> The following types of expenses generally constitute authorized expenses, as long as the other requirements of this policy are met:

### DRAFTING NOTES

<sup>1</sup> *See, e.g.*, Cal. Gov't Code §1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties); § 1091.5 (finding no impermissible interest in a contract if officer or employee is reimbursed actual and necessary expenses in performance of official duty); Cal. Water Code § 34741 ("Each director shall receive...expenses incurred in the performance of his duties required or authorized by the board."); Cal. Health & Safety Code § 32103 (allowing travel and incidental expenses incurred hospital district board members in the performance of their official duties as approved by the board); Cal. Gov't Code § 25008 (county supervisors are allowed expenses associated with traveling outside county on county business and to state association meeting); § 25305 (county may purchase automobiles for use of county officers and employees in lieu of mileage; county board may allow officers and employees using county automobiles their actual and necessary expenses when traveling on county business); *See* Cal. Gov't Code § 36514.5 (city council members); 65 Cal. Op. Att'y Gen. 517, 521 (1982) (interpreting Government Code section 36514.5); Cal. Health & Safety Code § 33114 (similar authority as to expenses of redevelopment agency members).

<sup>2</sup> *See, e.g.*, 26 U.S.C. § 162.

<sup>3</sup> Because of the potential for confusing an agency credit card with a personal card, a number of agencies have concluded it is wiser not to issue officials credit cards. This is consistent with state law that appears not to forgive inappropriate public agency expenses if they are reimbursed. In the prosecution of one county supervisor for personal use of public resources, the court concluded that reimbursement was not a defense. *See People v. Bishop*, 2000 WL 520878 (2000) (conviction for personal and campaign use of county facilities and personnel). The court cited to *People v. Dillon*, 199 Cal. 1 (1926), a case in which convictions were upheld on facts demonstrating that the city was reimbursed for money improperly disbursed by the defendant. While *Dillon* did not expressly reject a reimbursement defense to the charge of violating section 424, the court said the decision cannot be reconciled with such a defense.

<sup>4</sup> Some agencies allow elected officials to use their titles "for identification purposes only" as long as the communication makes it clear that the use of the title does not imply agency participation in or endorsement of a communication.

<sup>5</sup> State law prohibits personal use of public resources. *See, e.g.*, Cal. Gov't Code § 8314 (making it unlawful for state or local officials to use public resources for personal or campaign purposes).

1. Communicating with representatives of regional, state and national government on *city/county/district* adopted policy positions;<sup>6</sup>
2. Attending educational seminars designed to improve officials' skill and information levels;<sup>7</sup>
3. Participating in regional, state and national<sup>8</sup> organizations whose activities affect the *city's/county's/district's* interests;
4. Recognizing service to the *city/county/district* (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);<sup>9</sup>
5. Attending *city/county/district* events;<sup>10</sup>
6. Implementing a *city/county/district*-approved strategy for attracting or retaining businesses to the *city/county/district*, which will typically involve at least one staff member; and<sup>11</sup>
7. *[For those agencies that pay meeting stipends, for example, water districts]* Meetings such as those listed above for which a meeting stipend is expressly authorized under this policy.

## DRAFTING NOTES

<sup>6</sup> See Cal. Gov't Code §§ 50023 (legislative bodies of cities and counties may directly or through a representative attend legislative bodies and meet with representatives of executive agencies, and present information; cost and expense incident to such meetings are proper charges against the local agency); 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

<sup>7</sup> See *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

<sup>8</sup> Some agencies may want to limit pre-approved travel to in-state travel only. This may be accomplished in the section that follows by requiring pre-approval for all out-of-state-travel.

<sup>9</sup> Counties have specific statutory authority to honor those who have performed unique or noteworthy public service. See Cal. Gov't Code § 26206 (specifying that such honors must be of nominal value and cost). See also 10 Cal. Op. Att'y Gen. 18 (1947) (school district may issue recognition pins).

<sup>10</sup> Agency officials may wish to consider whether attending certain agency events are expenses that officials should bear personally (or through their officeholder accounts under the Political Reform Act), particularly if attendance at such events is politically advantageous.

<sup>11</sup> A consensus among the peer reviewers was that such meetings typically ought to involve the agency's economic development staff or chief administrative officer to insure the meetings are maximally productive.

All other expenditures require approval by the *city/county/district* governing body.

The following expenses also require governing body approval:

1. International [*and out-of-state*]<sup>12</sup> travel;
2. Expenses which exceed the annual limits established for each office holder;<sup>13</sup> and
3. Expenses exceeding \$\_\_\_\_\_ per trip.<sup>14</sup>

Examples of personal expenses that the *city/county/district* will not reimburse include, but are not limited to:

1. The personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children- or pet-related expenses;<sup>15</sup>
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;
5. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
6. Personal losses incurred while on *city/county/district* business.

Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

## **DRAFTING NOTES**

<sup>12</sup> For some agencies, pre-approval of out-of-state travel may not make sense, given the frequency with which such travel occurs or the proximity of state lines.

<sup>13</sup> Some jurisdictions find it useful to set an annual per office holder "budget" for such expenses. Such a budget does not, however, excuse agency officials from making a determination that each expense complies with the agency's policy, the law and ethical considerations.

<sup>14</sup> The threshold for pre-approval of travel over a certain amount for any kind of travel is subject to community standards.

<sup>15</sup> 75 Cal. Op. Att'y Gen. 20 (1992) (concluding there is no substantial public purpose associated with a public agency paying for spouse travel expenses).

## MEETING STIPENDS<sup>16</sup>

### GENERAL

Consistent with \_\_\_\_\_,<sup>17</sup> directors receive \$ \_\_\_\_\_<sup>18</sup> per day (“daily meeting stipend”) for each day’s attendance at meetings, as defined in this policy. Such compensation is in addition to any reimbursement for meals, lodging, travel and expenses consistent with this policy.

### DRAFTING NOTES

<sup>16</sup> This section should only be included for those local agencies whose enabling acts provide for per-day meeting stipends. *See, e.g.*, Cal Pub. Res. Code § 5784.15(a) and (d) (park and recreation district board members may be compensated a maximum of \$100 per day for board meetings and \$500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive \$100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code § 20201 (water district officials – as defined – may, by ordinance, provide for compensation of \$100 per day for each day’s attendance at board meetings or each day’s service rendered at the board’s request; not to exceed 10 days service/meetings per month); Cal. Water Code § 34740-41 (California Water Districts must adopt bylaws fixing compensation paid to officers, but may not exceed \$100 per day for attendance at board meetings and for each day’s service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed \$100 per day for each day’s attendance at board meetings or each day’s service rendered at the board’s request but not to exceed six days service/meetings per month); Cal. Water Code § 30507.1 (Contra Costa county water district directors receive compensation not to exceed \$100 per day for each day’s attendance at board meetings or each day’s service rendered at the board’s request but not to exceed 10 days service/meetings per month); Cal. Water Code § 21166 (irrigation district directors in districts of less than 500,000 acres receive 1) compensation of up to \$100 per day, not to exceed six days, 2) irrigation district directors in districts that produce or deliver electricity receive one of the following: up to \$100 per day *or* \$600 per month, with an annual cap of \$15,000); Cal. Water Code § 22840 (irrigation districts of 500,000 acres or more receive a salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors); Cal. Water Code § 71255 (municipal water district directors receive compensation not to exceed \$100 per day for each day’s attendance at board meetings or each day’s service rendered at the board’s request but not to exceed six days service/meetings per month).

<sup>17</sup> Insert relevant code section establishing meeting stipend amounts and limits for type of agency. See footnote 16 above for examples.

<sup>18</sup> Insert amount that does not exceed statutory limits. See footnote 16 above for examples.

## MEETINGS AND SERVICE SUBJECT TO DAILY STIPEND

To be entitled to a daily stipend under this policy, a the event in question must constitute one of the following:

1. A meeting of the district board within the meaning of Government Code section 54952.2(a);<sup>19</sup>
2. A meeting of a district committee within the meaning of Government Code section 54952(b);<sup>20</sup>
3. An advisory body meeting within the meaning of Government Code section 54952(b);<sup>21</sup> or
4. A conference within the meaning of Government Code section 54952.2(c)(2)<sup>22</sup> of the following organizations [*list organizations as relevant to district's jurisdiction, for example*]:
  - *California Special Districts Association;*
  - *Association of California Water Agencies;*
  - *California Association of Sanitation Agencies;*
  - *California Parks and Recreation Society.*

## DRAFTING NOTES

<sup>19</sup> That section reads as follows:

(a) As used in this chapter, “meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

*See* Cal. Gov’t Code § 54952.2(a). Note that this is the test for meeting suggested by the Association for California Water Agencies in its sample policy on directors’ compensation and expense reimbursement.

<sup>20</sup> That section reads as follows:

A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

*See* Cal. Gov’t Code § 54952(b).

<sup>21</sup> *See* Cal. Gov’t Code § 54952(b) (“advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body”).

<sup>22</sup> That section reads, in pertinent part:

...a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency.

*See* Cal. Gov’t Code § 54952.2(c)(2).

4. A meeting of any multi-jurisdictional governmental body on which the district director serves as the district’s designated representative.<sup>23</sup>
5. Any meeting attended or service provided on a given day at the formal request of the district board and for which the district board approves payment of a daily meeting stipend.<sup>24</sup>

**AGGREGATE LIMITS**

The number of days for which a district director receives a daily stipend will not exceed the aggregate limits established by state law.<sup>25</sup>

**COST CONTROL**<sup>26</sup>

To conserve *city/county/district* resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines.

**DRAFTING NOTES**

<sup>23</sup> That section reads as follows:

(a) As used in this chapter, “meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

*See* Cal. Gov’t Code § 54952.2(a). Note that this is the test for meeting suggested by the Association for California Water Agencies in its sample policy on directors’ compensation and expense reimbursement.

<sup>24</sup> Check to make sure your district’s enabling act includes authorization for payment of a daily stipend for non-meeting expenses.

<sup>25</sup> See footnote 16 above for examples.

<sup>26</sup> Some agencies have chosen (usually through a request for proposals process) to work with a single travel agency to promote cost control and accountability on airline flights and lodging. Another option is to limit the number of staff who can contact the travel agency to book or change travel plans.

## TRANSPORTATION

The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. In the event that a more expensive transportation form or route is used, the cost borne by the *city/county/district* will be limited to the cost of the most economical, direct, efficient and reasonable transportation form.

Automobile mileage is reimbursable at Internal Revenue Service rates presently in effect (*see* [www.irs.gov](http://www.irs.gov)). These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle.<sup>27</sup> This amount does not include bridge and road tolls, which are also reimbursable.

## LODGING

Lodging costs will be reimbursed or paid for when travel on official *city/county/district* business reasonably requires an overnight stay.<sup>28</sup> If such lodging is in connection with a conference, lodging costs should not exceed the group rate published by the conference sponsor for the meeting in question. For overnight stays in other contexts, another helpful source of guidance is Internal Revenue Service per diem rates for lodging, which include adjustments for higher cost locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).<sup>29</sup> The site also has

## DRAFTING NOTES

<sup>27</sup> The law permits a vehicle allowance. *See* Cal. Gov't Code § 1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties). Using the more typical Internal Revenue Service Code mileage rate for distance actually traveled avoids questions over the amount of any such allowance, however. *See Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public); *Citizen Advocates v. Board of Supervisors of Stanislaus County*, 146 Cal. App. 3d 171, 194 Cal. Rptr. 61 (1983) (finding a flat car allowance that supplements a per-mile reimbursement authorization was permissible). Note that there is a special statutory reimbursement rate for special district directors traveling on legislative business. *See* Cal. Gov't Code § 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each special district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

<sup>28</sup> An agency may want to provide guidance on what some circumstances reasonably requiring an overnight stay (for example, by distance or hours of travel from the agency's location).

<sup>29</sup> The Internal Revenue Service establishes per diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2004, the standard per diem rate was \$55 for lodging in general. However the rate for the San Francisco area (as defined) was \$139.

references to hotels that have government rates at or below Internal Revenue Service per diem limits.

## MEALS

Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher cost locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).<sup>30</sup>

*[The city/county/district will not pay for alcohol/personal bar expenses.]*<sup>31</sup>

## TELEPHONE/FAX/CELLULAR<sup>32</sup>

Officials will be reimbursed for actual telephone and fax expenses incurred on *city/county/district* business. Telephone bills should identify which calls were made on *city/county/district* business. For cellular calls when the official has a particular number of minutes included in the official's plan, the official can identify the percentage of calls made on public business.

## AIRPORT PARKING

Long-term parking should be used for travel exceeding 24-hours.

### **DRAFTING NOTES**

<sup>30</sup> The Internal Revenue Service establishes per diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2004, the standard per diem rate was \$31 for meals and incidental expenses in general. However the rate for Los Angeles, San Francisco, San Diego and San Jose areas (as defined) was \$51.

<sup>31</sup> Alcohol-related expenses should or should not be reimbursed according to community standards. An alternative to an all or nothing policy on alcoholic beverages is to give specified management-level employees authority to engage in "third policy hosting expenses" for alcoholic beverages.

<sup>32</sup> Note that it may be an effective cost control measure to provide elected officials with access to agency telephones and faxes for official business and not to reimburse for calls and faxes made on personal equipment.

## OTHER

Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which *city/county/district* officials receive reimbursement from another agency are not reimbursable.

## CASH ADVANCE POLICY

From time to time, it may be necessary for an official<sup>33</sup> to request a cash advance to cover anticipated expenses while traveling or doing business on the *city/county/district's* behalf. Such request for an advance should be submitted to the *[indicate whom]*<sup>34</sup> \_\_\_\_\_days prior to the need for the advance with the following information:

- The purpose of the expenditure(s);
- The benefits of such expenditure to the residents of *city/county/district*;
- The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
- The dates of the expenditure(s).

Any unused advance must be returned to the *city/county/district* treasury within two<sup>35</sup> business days<sup>36</sup> of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

In the event *[indicate who will be processing such requests]* \_\_\_\_\_ is uncertain as to whether a request complies with this policy, such individual must seek resolution from the *city/county/district* governing board.

### DRAFTING NOTES

<sup>33</sup> Some agencies limit cash advances. One approach is to make cash advances only available for line (less well compensated) staff and elected and appointed officials in the amount of the recommended Internal Revenue Service per diem for the area being traveled to. Another is to offer partial cash advances.

<sup>34</sup> For example, agency manager for elected officials and supervising department heads for staff.

<sup>35</sup> Other time thresholds may be appropriate.

<sup>36</sup> Choose a time period that is practical, but also is mindful of legal restrictions that exist with respect to having extended access to agency cash. This issue is analogous to the "float" issue when officials use agency credit cards for personal purposes. *See* Cal. Penal Code § 424.

## CREDIT CARD USE POLICY

*City/county/district* does not issue credit cards to individual office holders but does have an agency credit card for selected *city/county/district* expenses.<sup>37</sup> *City/county/district* office holders may use the *city/county/district’s* credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the *city/county/district* credit card and compliance with this policy must be submitted within five business days of use.<sup>38</sup>

*City/County/District* credit cards may not be used for personal expenses, even if the official subsequently reimburses the *city/county/district*.<sup>39</sup>

## EXPENSE REPORT CONTENT AND SUBMISSION DEADLINE

Expense reports must document that the expense in question met the requirements of the policy. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the *city/county/district’s* adopted legislative positions and priorities.

### DRAFTING NOTES

<sup>37</sup> The decision on whether to issue agency credit cards to individuals is a policy determination. Many experienced administrators advise against issuing agency credit cards to either elected officials or staff because of the potential for inadvertent use for personal purposes and the legal questions about whether one can be protected from civil and criminal liability by reimbursing the agency. (See footnote 3). An alternative used by some public agencies is the Cal-Card program, which provides for specific dollar limits per card holder and can be restricted for use with certain kinds of vendors. The Cal-Card provides a clear audit/documentation trail. The program is administered through a master contract with the State of California. For more information, see [www.documents.dgs.ca.gov/pd/calcard/calcardreq.pdf](http://www.documents.dgs.ca.gov/pd/calcard/calcardreq.pdf). Potential alternative language if an agency does issue credit cards is as follows:

*City/County/District* officials with *city/county/district* credit cards may only use those cards for official agency business consistent with this expense policy. Credit card expenses will be periodically reviewed by the governing body or its designee. Each credit card holder will, as a part of that individual’s expense report, document compliance with this expense policy.

<sup>38</sup> Choose a time period that is practical, but enables agency financial staff to verify charges on the credit card monthly bill.

<sup>39</sup> Note that this provision can be useful even if an agency does not issue credit cards to individuals because it establishes that using a central credit card for personal purposes is impermissible.

Officials must submit their expense reports within 30 days of an expense being incurred, accompanied by receipts documenting each expense.<sup>40</sup> Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

## AUDITS OF EXPENSE REPORTS

All expenses are subject to verification of compliance with this policy.

## REPORTS TO GOVERNING BOARD

At the following *city/county/district* governing body meeting, each official shall briefly report on meetings attended at *city/county/district* expense. If multiple officials attended, a joint report may be made.<sup>41</sup>

### DRAFTING NOTES

<sup>40</sup> If the deadline for expense reimbursement requests is too long or non-existent, it may be difficult to remember why certain expenses were incurred. Moreover, there may be audit issues in terms of recognizing the expense in the proper year.

<sup>41</sup> In making a joint report, officials should be mindful about open meeting laws governing communications among members of a legislative body. There is a conference exception to the Brown Act, as long as a majority of the members of a legislative body does not discuss among themselves business that is within the subject matter jurisdiction of the local agency (other than as part of the scheduled program). *See* Cal. Gov't Code § 54952.2(c)(2). Officials should not discuss among themselves the content of a joint report in advance of a public meeting. Simply asking one official to be the lead on the report during the public meeting and then asking others if anything was omitted should avoid Brown Act issues.

## COMPLIANCE WITH LAWS

*City/County/District* officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws.<sup>42</sup> All agency expenditures are public records subject to disclosure under the Public Records Act [*and other laws*].<sup>43</sup>

## VIOLATION OF THIS POLICY

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the *city/county/district*, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities and 4) prosecution for misuse of public resources.

### DRAFTING NOTES

<sup>42</sup> For example, meals are considered "gifts" to legislators that must be reported by them if the total value of gifts given from the agency exceeds \$50 in a year; there also is an annual gift limit. In 2003-2004, this limit is \$340. *See* Cal. Gov't Code § 87103(3). Registered lobbyists, by contrast, are limited to gifts of \$10 per month. *See* Cal. Gov't Code §§ 86201-86204.

<sup>43</sup> *See generally* Cal. Gov't Code §§ 6250 et seq. (California Public Records Act). Special districts have an additional obligation to prepare and annual summary of expense reimbursements over \$100 and make those available for public disclosure. Cal. Gov't Code § 53065.5.

**NOTES:**



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February 2004

*Subject: Of Cookie Jars and Fishbowls: A Public Official's Guide  
to Use of Public Resources*

Thank you for purchasing this guide. This publication is part of the Institute's Public Confidence Project. Public confidence is the public's faith that governmental decision-makers make decisions based on their sense of what serves the public's interests. Ethics, of course, plays an integral role in this confidence.

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## USE OF PUBLIC RESOURCES AND THE LAW – KEY THINGS TO KNOW

- 1** The law is very strict about the permissible uses of public resources by individual public officials. What may be common practice in the private sector may not be acceptable in the public sector.
- 2** Generally speaking, the expense must be necessary. The Attorney General has defined “necessary” using such words as “indispensable,” “unavoidable” and “something that cannot be done without.” Merely being “beneficial” to the public agency is not enough.
- 3** Reimbursing a public agency for a personal use of public resources may not avoid or get you out of trouble.
- 4** Issuing agency credit cards is not advised because of their potential for mistaken use or abuse.
- 5** Spouse expenses are not a permissible use of public resources.
- 6** Other areas subject to scrutiny are expense allowances and hosting meals for others.
- 7** It is advisable to check with one’s agency counsel about the laws that apply to your agency.
- 8** Adopting an expense policy can guide public officials on what the community believes to be “necessary” expenses by individual officials.
- 9** Expense policies can support agency officials if their expenses are ever questioned.