



THE GIFT THAT KEEPS GIVING: GIFTS OF PUBLIC FUNDS

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The California Constitution prohibits public agencies, including school and community college districts, from making a gift of public funds. “Due to their unique operating environment, governments have a responsibility to be accountable for the use of resources that differs significantly from that of business enterprises. Although businesses receive revenues from a voluntary exchange between a willing buyer and seller, most governments obtain resources primarily from the involuntary payment of taxes.” (GASB White Paper: *Why Governmental Accounting and Financial Reporting Is – And Should Be – Different* (April 2013).) The restriction against gifts of public funds is in place to ensure accountability to constituents and to prevent misuse of this public money. The Constitution states, in relevant part: “The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation[.]” (Const., Art. XVI, § 6.) Courts have interpreted this provision to include all payments of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation.

Importantly, an expenditure is not a “gift” within the meaning of the constitutional prohibition if the district receives adequate consideration in exchange for the funds expended. Consideration is a benefit or something

of value commensurate with amount of the payment. In determining whether an expenditure is considered a “gift” within the meaning of the gift clause, the primary question is whether the funds are used for a public or private purpose. If the expenditure is primarily for a public purpose, it will generally not be a gift. If the expenditure is for a private purpose, however, such as for the benefit of a single employee or student, it will likely be an unlawful gift of public funds. As the California Supreme Court explained in *City of Oakland v. Garrison* (1924) 194 Cal. 298, 302:

Where the question arises as to whether or not a proposed application of public funds is to be deemed a gift within the meaning of that term as used in the constitution, the primary and fundamental subject of inquiry is as to whether the money is to be used for a public or private purpose. If it is for a public purpose within the jurisdiction for the appropriating board or body, it is not, generally speaking, to be regarded as a gift.

To justify an expenditure, a district’s governing board must determine that the expense will tangibly benefit the education of its students. If the governing board has reasonably determined that a particular type of expenditure serves a legitimate public purpose, courts will generally defer to the board’s decision.

When Does An Expenditure Serve A Public Purpose?

In the context of public education, an expenditure serves a legitimate public purpose when it will directly and tangibly benefit the education of students within the district. Examples of appropriate school expenditures typically include payments for:

School furniture, supplies, and equipment;

Teacher and faculty salaries;

Uniforms and regalia for school bands, choirs, or athletic teams;

Caps and gowns for graduation ceremonies;

Instructional materials and textbooks;

Maintenance of buildings and facilities;

Research and promotional activities to advance public education;

Awards to high school students for excellence;

Flowers or decorations for a district awards ceremony or commemorative event;

Transportation for high school students living in outlying parts of the district.

On the other hand, expenditures driven by personal motives or moral obligations, such as a desire to convey compassion, sympathy, joy, or gratitude, generally do not serve a primary public purpose and, thus, are likely unlawful gifts of public funds. Districts and public officials can face potential legal liability, including taxpayer lawsuits, civil and criminal penalties, and the loss of public confidence, for the misuse or improper expenditure of public monies. (See, e.g., Gov. Code, § 8314; Pen. Code, § 424.)

In *Stanson v. Mott* (1976) 17 Cal.3d 206, for example, a taxpayer filed a lawsuit alleging that a state official had authorized an improper expenditure of public funds to promote the passage of a bond issue. The taxpayer requested the court to require the official to personally repay the funds. The state official argued that the expenditure was lawful and that, in any event, he could not be held personally liable. The California Supreme Court disagreed. The Court concluded that in the absence of clear legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign. The Court also held that public officials may be held personally liable if they fail to exercise due care and reasonable diligence in authorizing the expenditure of public funds. Whether or not an official has acted with due care depends on

various factors including, for example, whether the expenditure's impropriety was obvious or not, whether the official was alerted to the possible invalidity of the expenditure, and whether the official relied upon legal advice in making the expenditure.

Frequent Questions and Scenarios

As most administrators are aware, there are various circumstances when they must decide whether a particular expenditure is a gift of public funds. Below are some frequently asked questions and common scenarios.

i. Does the gift of public funds doctrine apply to expenses that are just a few dollars?

Yes. The constitutional prohibition against the gift of public funds applies to expenditures of any amount.

ii. May a community college donate money to its auxiliary foundation?

No. If a community college provides publicly funded support to any nonprofit corporation, including an auxiliary foundation, it will constitute an unlawful gift of public funds unless the college secures an enforceable claim for a service or benefit of like value. In other words, a college must receive adequate consideration for the publicly funded support it provides to its auxiliary organization.

iii. Are student body funds subject to the gift public funds doctrine?

Yes. Funds maintained by associated student body organizations, or ASBs, are public funds subject to the constitutional gift clause. (See, FCMAT (2015) *Associated Student Body Accounting Manual, Fraud Prevention and Desk Reference for California K-12 Public Schools and Community Colleges.*)

iv. May a community college use its reserves to fund enrollment fees for indigent students?

No. Education Code section 76300 states that “[t]he governing board of each community college district shall charge each student a fee pursuant to this section.” The language of this statute establishes that per-unit fees are mandatory and cannot be waived. If a district fails to collect the mandatory fees, it may be subject to a penalty in the form of an apportionment reduction. (Educ. Code, § 76300 subd. (d).)

v. One of our board members had a recent loss in the family. We want to show our respect and send flowers for the funeral service. That’s not a violation of the gift clause, is it?

Yes, it is. Although it is certainly a noble cause, public expenditures that are driven by personal motives or moral obligations, such as to convey compassion or sympathy are an impermissible use of public funds. (See, *Veterans’ Welfare Board v. Riley* (1922) 189 Cal. 159, 170 “[o]ur own decisions consistently hold that an appropriation of public funds based upon a moral obligation as a consideration is a gift within the meaning of the constitution”].) This principle applies to public monies spent for flowers or gifts for occasions such as funerals, birthdays, weddings, anniversaries, or other life events.

vi. Is the settlement of a good faith dispute between the district and a private party a proper use of public funds?

It depends. Assuming the settlement does not exceed the district’s potential liability, the settlement of a good faith dispute between the district and a private party, such as an employee or contractor, is an appropriate use of public funds because the relinquishment of a valid legal claim in return for a settlement is good consideration and establishes a valid purpose. The use of public funds to settle a claim with no arguable liability,

on the other hand, such as a claim that is barred by the statute of limitations, lacks consideration, serves no public purpose, and violates the gift clause. (See, *Page v. Mira Costa Community College Dist.* (2009) 180 Cal.App.4th 471.)

vii. We want to show our staff appreciation with occasional gift certificates, mugs, and free movie tickets. Is that a permissible expenditure of public funds?

Not likely. These expenditures are for the primary benefit of employees who receive the gifts and are driven by the motive to convey gratitude. As such, they are likely an impermissible use of public monies.

viii. May the district use public funds to repair and maintain a road located on private property if the public has a right to travel on the road?

Yes. The use of public funds to improve a roadway which members of the public, including students, have a right to travel does not violate the gift clause because it would serve a public purpose. (See, 80 Ops.Cal.Atty.Gen. 56)

ix. Is a donation to charity a gift of public funds in violation of the gift clause?

Yes. The use of public monies to support nonprofit organizations or charities without consideration, no matter how worthy or benevolent the cause, are impermissible expenditures in violation of the gift clause. (See, 15 McQuillin, *The Law of Municipal Corporations* (3d ed. 2017) § 39:31 [“[a]ppropriations to charitable or nonprofit associations, without consideration, cannot be made”].)

Conclusion

As public agencies, school and community college districts are subject to the constitutional prohibition against gifts of public funds. In reviewing proposed expenditures, districts should exercise due care and diligence in determining whether or not a particular expense serves a primary public purpose. Although the analysis may be somewhat tricky at times, in the world of local public education, expenses are most likely justified when they will directly benefit the education of students within the district.

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