

1 Amend 2 Cal. Code Reg. Section 18944 to read:

2 **§ 18944. Gifts Payments Made to an Agency For Use By Agency Official.**

3 (a) Applicability. This regulation sets forth ~~circumstances under which~~ identifies when a  
4 payment, other than a pass or ticket as described in Regulation 18944.1, which shall be governed  
5 by that regulation, or for travel expenses as described in Regulation 18950.1, which are governed  
6 by that regulation, that is made to a state or local government agency, or any subdivision,  
7 department division, bureau, office board, or commission of the foregoing that is controlled by  
8 the agency and used for official agency business; is not considered a reportable or limited gift or  
9 income to an individual public official, any official of that agency although the official receives a  
10 personal benefit from the payment.

11 (b) Definitions.

12 (1) "Payment" means a payment as defined in Section 82044, ~~and includes~~ including a  
13 monetary payment, to an agency, a loan, gift, or other transfer, and the payment for, or provision  
14 of, fees, goods or services to an agency where the person providing the payment has no legal  
15 obligation to do so.

16 (2) "Agency head" means ~~an~~ the individual in whom who has the ultimate legal authority  
17 of an for the agency is vested, or ~~who has been delegated authority to make determinations by~~  
18 ~~the agency for purposes of this regulation.~~ the individual the agency authorizes to determine how  
19 the agency uses the payment as provided in paragraph (c)(1).

20 (c) Gift Payment to an Agency. A payment to an agency, ~~that is otherwise a gift to a~~  
21 ~~public official, as defined in Section 82028, shall be considered a gift to the public official's~~  
22 agency and as described in subdivision (a), is not a gift or income to the public official who

1 receives the use of the payment if it meets all of the following requirements ~~are met~~:

2 (1) Official Agency Business. The payment is used for official agency business.

3 (2) Agency Head Controls Use of Payment. The agency head, ~~or his or her designee,~~  
4 determines and controls the agency's use of the payment including the selection of the agency  
5 official who will use the payment. ~~The donor may identify a purpose for the payment, but the~~  
6 ~~donor may not designate by name, title, class, or otherwise, an official who may use the~~  
7 ~~payment. If the payment will provide a personal benefit to an official, the agency head, or his or~~  
8 ~~her designee, shall select the individual who will use it.~~ The agency official head who  
9 ~~determines and controls the agency's use of the payment~~ may not select himself or herself as the  
10 individual who will use the payment unless payment is for an item that provides for general use  
11 by agency officials and the agency head is one of those officials who will have access to such  
12 use.

13 ~~(2) Official Agency Business. The payment must be used for official agency business.~~

14 (3) Agency Reports the Gift Payment. ~~Within 30 days after use receipt of the payment,~~  
15 ~~the~~ The agency reports the payment on a form prescribed by the Commission and maintained  
16 pursuant to the provisions of subdivision (d) below, that includes the following information:

17 (A) A description of the payment, the date it was received, the intended purpose; and the  
18 amount of the payment (or the actual or estimated fair market value of the goods or services  
19 provided, if the amount is unknown).

20 (B) The name and address of the donor. If the donor is not an individual, the report ~~shall~~  
21 must also describe the business activity, or the nature and interests of the entity. If the donor has  
22 raised funds from ~~other persons~~ another person for the specific purpose of making the payment

1 to the agency, the report ~~shall~~ must contain the ~~names~~ name of each person and ~~amounts~~ the  
2 amount given by ~~these persons~~ each person.

3 (C) The agency's use of the payment, and the name, title, and department of the agency  
4 official ~~for whom~~ who used the payment ~~was used~~. ~~The report shall include the date(s) and~~  
5 ~~place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and~~  
6 ~~other related expenses.~~

7 (D) ~~The form is signed by~~ The signature of the agency head, ~~or his or her designee, and~~  
8 ~~maintained by the agency as a public record subject to inspection and copying under Section~~  
9 ~~81008(a).~~

10 (d) The form must be maintained by the agency as a public record and pursuant to the  
11 provisions of Section 81008(a). Additionally, for any quarter year period in which payments  
12 aggregating to \$2,500.00 or more since the last filing are received by an agency, the agency  
13 must report the payment as follows:

14 (1) A state agency must submit a copy of the form(s) or a summary of the information on  
15 the form ~~(E) A state agency shall provide the completed form~~ to the Commission (or, in the case  
16 of the Commission, ~~to~~ the office of the Attorney General), within 30 days after ~~use of the~~  
17 ~~payment, the close of the quarter, by mail, personal delivery, electronic mail or facsimile.~~ If the  
18 state agency maintains a website, the state agency shall also post a copy of the ~~form~~ form(s) or a  
19 summary of the information ~~in~~ on the ~~form~~ form(s) on its website in a prominent fashion within  
20 30 days after ~~use of the payment~~ the close of any quarter in which the agency receives payments  
21 aggregating to \$2,500 or more since the last filing. ~~If the state agency does not maintain a~~  
22 ~~website, the~~ The Commission shall post a copy of the ~~form~~ form(s), or a summary of ~~or~~ the

1 information ~~in~~ on the form form(s), on its website. A local jurisdiction may require additional  
2 filing or website posting.

3 ~~(2)(F) A local agency shall provide the completed~~ A local agency must submit a copy of  
4 the form(s) or a summary of the information on the form to the filing officer who receives the  
5 agency employees' statements of economic interests, within 30 days after use of the payment, by  
6 mail, personal delivery, electronic mail or facsimile the close of the quarter. The filing officer  
7 shall post a copy of the form or the information in the form on its website, in a prominent fashion  
8 within 30 days after the close of any quarter in which the agency receives payments aggregating  
9 to \$2,500.00 or more since the last filing or if it does not maintain a website, shall provide a copy  
10 of the form to the Commission, which shall post the information on its website.

11 ~~(G) The individual in the agency who has official custody of these forms is the filing~~  
12 ~~officer for the forms, keeps a log of the forms under both the name of the agency and official~~  
13 ~~receiving the payment, and maintains the forms for a period of not less than four years.~~

14 ~~(d) Limitations on Application of this Regulation. The exception provided in subdivision~~  
15 ~~(e) does not apply to the following payments:~~

16 ~~(1) A payment for travel, including transportation, lodging, and meals, for a~~  
17 ~~state or local elected officer, as defined in Section 82020, or an official specified in Section~~  
18 ~~87200.~~

19 ~~(2) A payment for travel to the extent that it exceeds the agency's reimbursement rates~~  
20 ~~for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no~~  
21 ~~standard policy or practice concerning reimbursement rates, the State per diem rates as set forth~~  
22 ~~in applicable sections of the State Administrative Manual and Department of Personnel~~  
23 ~~Administration regulations, or the Internal Revenue Service rates for reimbursement of these~~

1 ~~expenses as set forth in the U.S. General Service Administration’s website under “Per Diem~~  
2 ~~Rates” and Internal Revenue Service Publications 463 and 1542, or their successors.~~

3 ~~(3) A payment for travel that the agency head, or his or her designee, has not preapproved~~  
4 ~~in writing in advance of the date of the trip.~~

5 ~~(4) Passes or tickets, as described in Regulation 18944.1, which shall be governed by~~  
6 ~~that regulation.~~

7 ~~(e) Public Colleges and University Research Projects. Notwithstanding this regulation,~~  
8 ~~the above provisions, a donation payment to a California public college or university for a~~  
9 ~~specific research project that is received consistent with the requirements of Regulation~~  
10 ~~18702.4(c) or a meal received in the course of the college’s or university’s official fundraising~~  
11 ~~activity, which qualifies under federal and state law for a deduction as a charitable contribution~~  
12 ~~for educational purposes, ~~will be deemed~~ is not a gift or income to the official of the college or~~  
13 ~~university who uses the payment.~~

14 ~~(f) Payments from the Federal Government. Notwithstanding this regulation, a grant,~~  
15 ~~reimbursement, funding, or other payment received by a state or local government agency from a~~  
16 ~~federal government agency for education, training, or other inter-agency programs, will not be~~  
17 ~~considered a gift to the public official who receives a personal benefit from the payment.~~

18 Comments:

19 1. Acceptance of a pass or discount from a transportation company by a public  
20 official, other than a Public Utilities Commissioner, may result in forfeiture of the official’s  
21 office pursuant to Article XII, Section 7 of the California Constitution.

22 NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82030,  
23 82044, 87100, 87103, 87207, 87302 and 89501 through 89506, Government Code.