

# GIFTS OF PUBLIC FUNDS

Office of the City Attorney – Neighborhood Council Advice Division

AB 1234 ETHICS TRAINING

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## Basic Overview.

Neighborhood councils are prohibited from making a gift of their public funds and expenditures must have a public purpose. The general prohibition against gifts of public funds is enshrined in the State Constitution. The Constitution provides that “[t]he Legislature shall have no power to give or ... to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever;...” *Cal. Const., Art. XVI, § 6*. “However, ‘expenditures of public funds or property which involve a benefit to private persons are not gifts within the meaning of the Constitution if those funds are expended for a public purpose....’ [Citation.]” *Preston v. State Board of Equalization* (2001) 25 Cal. 4<sup>th</sup> 197, 225.

In determining whether a legislative body has made a gift of public funds, the courts will look first at “whether the money is to be used for a public or private purpose.” *Oakland v. Garrison* (1924) 194 Cal. 298, 302. “If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift.” *Ibid.* As the California Court of Appeal explained in *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237, 243, “if a public purpose is served by the expenditure of public funds, [the Constitution] ... is not violated even though there may be incidental benefits to private persons.” However, to avoid violating the constitutional prohibition, the expenditure of public funds is allowed only if a “direct and substantial public purpose is served and nonstate entities are benefited only as an incident to the public purpose.” *California Housing Finance Authority v. Elliot* (1976) 17 Cal. 3d 575, 583. Thus, public expenditures that do not directly further the proffered public purpose may still be found to be unconstitutional.

Courts defer to the legislative body’s determination of what constitutes a “public purpose.” *County of Alameda v. Carleson* (1971) 5 Cal. 3d 730, 746. The concept of public purpose has been “liberally construed by the courts,” and a city council’s determination of public purpose will be upheld “so long as that determination has a reasonable basis.” *Ibid.*

Neighborhood councils are authorized under the City’s funding program to use their funds for: 1) costs related to the functions, operations, and duties of being a certified neighborhood council, which includes costs for “meeting and office space, office equipment, computers, supplies, and communications, such as costs associated with newsletters, postage, or printing written materials and for

2) neighborhood improvement projects. *Plan for a Citywide System of Neighborhood Councils ("Plan")*, Art. IX, §§ 1 and 2.

Thus, in spending their funds, neighborhood councils must ensure that they are spending their money for specified purposes as authorized under the Plan and ensure that they are not impermissibly making gifts of public funds to other entities or organizations.

### **Misuse Of Neighborhood Council Funds**

A corollary to the concept of a gift of public funds, is the misuse of public funds. As noted above, neighborhood councils are authorized to spend public money for specified purposes. In the Neighborhood Council Funding, Policies and Procedures Manual, the Department of Neighborhood Empowerment ("DONE") has provided a list, though not exhaustive, of unacceptable uses or purchases of neighborhood council ("NC") allocated funds:

- Any purchases made without the authorization of the NC governing body, and any purchases that are not identified by category in the approved budget or spending plan of the NC
- Transactions completed without obtaining an original invoice, receipt, written quote, or written estimate
- Renting or leasing of office space without prior approval of DONE
- Long-term contracts in excess of 12 months or one full funding cycle without approval of DONE General Manager and City Attorney Office
- Gift Cards or Flowers
- Airfare and any other travel expense including room accommodations
- Alcohol, tobacco, firearms, and adult entertainment
- Funding to 3<sup>rd</sup> party individuals or groups without either an approval contract for goods or services, or a receipt from a vendor for goods or services received
- Hiring staff or securing the services of temporary employees, except through an approved contract between DONE and Apple One. a City-approved temporary employment agency
- Retaining janitorial, custodial, security. Or other professional services without an approved contract for services
- Supporting or opposing ballot measures or candidates, filing lawsuits against the City or City agency, filing appeals against any discretionary decisions made by any City agency, political forums or debates, unless following City Attorney guidelines

Should there be any question about the propriety of the expenditure of your public funds, you should consult the DONE Funding Handbook and discuss the matter with your DONE Advocate.

## **Penalties For The Misuse Of Public Funds.**

A misuse, or improper expenditure of public funds, can result in personal liability of a board member by the imposition of civil and/or criminal penalties.

Those penalties may include: a) the loss of reimbursement privileges; b) restitution to the City of Los Angeles; c) civil penalties for the misuse of public funds of up to \$1,000 per violation and three times the value of the misused funds; or d) criminal prosecution for the misuse of public funds, pursuant to *California Penal Code* section 424 (officials who willfully and intentionally misuse or embezzle public funds may be imprisoned for up to four years and barred from ever holding office in California).

## **Summary/Checklist**

The following is a checklist that can help in identifying the propriety of NC expenditures:

- Is the NC Board considering making an expenditure from allocated funds?
- Is the transfer of proposed funds for a public or private purpose?
- Is there a benefit to the NC?
- Will a private person(s) benefit from the allocation of the proposed funds?
- Is the proposed expenditure directly related to a NC purpose?
- Does the proposed expenditure fall within DONE's Funding Program?

## **Practice Tip**

Any time NC funds may be expended and the proposed expenditure may raise a possible allegation of misuse of public funds or an unacceptable purchase from NC funds, the NC President and/or Legal Liaison should contact the DONE Project Coordinator and the City Attorney's Office with the relevant set of facts. Depending on the complexity of the proposed expenditure or purchase, the DONE Project Coordinator and/or the City Attorney's Office will provide a response orally or in writing.

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