ANTELOPE VALLEY
Regional Planning Advisory Committee

PO Box 347
Mammoth Lakes, CA 93546
760- 924-1800 phone, 924-1801 fax
commdev@mono.ca.gov

PO Box 8
Bridgeport, CA 93517
760-932-5420 phone, 932-5431 fax
www.monocounty.ca.gov

Overview of California's Gift of Public Funds Prohibition

Article XVI, Section 6 of the California Constitution prohibits the Legislature from making any "gift of any public money or thing of value to any individual, municipal or other corporation."

This restriction applies to all state agencies, counties, cities (including, with certain exceptions, charter cities), school districts, and other political subdivisions. The primary purpose of this prohibition is to ensure that public funds and resources are utilized strictly for public purposes, rather than to benefit private interests or individuals without a corresponding public benefit.

The California Supreme Court has long established that a transfer of public funds or assets does not constitute an unconstitutional "gift" if the transfer is made for a valid public purpose**.** (*County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281 ["[P]ublic funds are not gifts within the meaning of the constitutional prohibition if they are made for a public purpose."]),

1. Broad Legislative Deference

Courts grant significant deference to legislative bodies in determining what constitutes a "public purpose." A legislative finding that a public purpose is being served is highly persuasive and will not be disturbed by the judiciary unless it is **manifestly arbitrary or without reasonable foundation** (*Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237, 243). The benefit to the public can be both a direct benefit and an indirect benefit.

2. Incidental Private Benefit

If a public purpose is served by an expenditure, the fact that private individuals or entities also derive a direct or indirect financial benefit does not render the expenditure a prohibited gift. The private benefit is legally characterized as merely "incidental" to the primary public purpose (*City of Oakland v. Garrison* (1924) 194 Cal. 298, 302 [holding that road pavement improvements benefitting a few properties was still in the broader public interest).

3. Test for Gift of Public Funds

When evaluating whether an expenditure, transfer, or use of public resources violates Article XVI, Section 6, California courts and the Attorney General apply a multi-step inquiry:

Step 1: Is There a "Thing of Value"?

The prohibition covers not just cash disbursements, but any “thing of value.” This includes:

- Real property transfers or below-market leases.
- The use of public staff time, equipment, or facilities.
- Forgiveness of a debt or waiver of a valid claim/fee.
- Providing free or subsidized services.

Step 2: Is There Adequate Consideration?

If the public entity receives adequate consideration (e.g., goods, services, or property of equivalent value) in exchange for the payment or transfer, there is no “gift.” The transaction is a standard, lawful contract.

Step 3: Is There a Primary Public Purpose?

If there is no direct or adequate consideration returned to the public entity, the transfer must serve a primary public purpose.

- **The “Public Purpose” Test:** The expenditure must benefit the public at large, or a significant segment of the public, rather than serving a purely private interest.
- **Examples of Valid Public Purposes:**
    - Economic development and job creation (*City of Oakland v. Williams* (1929) 206 Cal. 315).
    - Settlement of a good-faith legal dispute (which avoids litigation costs).
    - Promoting public health, safety, or welfare (e.g., funding low-income housing).