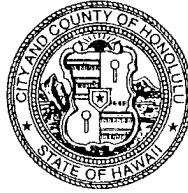


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June 21, 2004

TO: ALL AGENCIES

FROM: CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL

SUBJECT: GUIDELINES ON GIFTS, REVISED APRIL 21, 2004

The Honolulu Ethics Commission (Commission) requests that you ensure that each employee and officer, including board and commission members, in your agency is made aware of the attached Revised Guidelines on Gifts.

These guidelines have been reformatted to be more helpful to city personnel in determining whether they may solicit or accept gifts. The guidelines include new sections explaining the law for gifts valued above \$200 and below \$200. In addition to general guidelines, the Commission has sections aimed at helping clarify the conduct required of officials who have discretionary authority as well as those who have the authority to enforce the law. We have greatly expanded the number of examples illustrating the gift guidelines.

Should any officer or employee wish to seek advice, please contact the Commission through the addresses listed above or 527-5573.

Thank you for your cooperation.

Encl.

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I. THE GIFT LAWS

A. In General

A gift includes money, goods, services, loans, travel, entertainment, hospitality, discounts, promises or any other thing for which full value is not paid. A person who presents a gift to a city official may expect something in return. Similarly, a city official who asks for a gift may become obligated to the gift-giver. The public is concerned that those who provide gifts to a government official may receive special treatment from the official. The city laws limiting gift solicitation and acceptance are intended to help eliminate conflicts of interest, thereby fostering trust in government.

City officers and employees may not solicit or accept a gift, directly or indirectly, under circumstances in which it reasonably may be inferred that the gift is intended to ***influence*** or ***reward*** the performance of official duties.¹ Soliciting or accepting a prohibited gift creates an unlawful conflict of interest. Councilmembers should contact the Ethics Commission staff for advice on voting when a conflict of interest exists.

The laws and guidelines described below are intended to prevent the creation of a real conflict of interest, as well as the appearance of a conflict of interest. An appearance of a conflict of interest occurs when you accept a prohibited gift, even if receiving the prohibited gift would not change how you carry out your city duties.

B. Gifts in Excess of \$200

The city's gift prohibition law distinguishes between gifts valued in excess of \$200 and gifts valued equal to or less than \$200. Sections 3-8.7 and 3-8.8, Revised Ordinances of Honolulu, prohibit city officers and employees from soliciting or accepting, directly or indirectly, any gift or gifts under the following circumstances:

- 1) The source of the gift(s) has an interest that the public official may affect in carrying out his or her duties; and
- 2) The gift(s) is valued singly or in the aggregate in excess of \$200 over a fiscal year.²

¹ Section 11-102(a), Revised Charter of Honolulu, states:

No elected or appointed officer or employee shall... [s]olicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.

² Because gifts over \$200 may not be accepted, the requirement to report gifts over that amount was repealed.

In other words, gifts that exceed \$200 are automatically prohibited, as long as the gift-giver has an interest that the city official may affect in the course of fulfilling his or her job duties. By the same token, a gift that exceeds \$200 is not prohibited if the donor does not have an interest that the city official may affect in performing his or her work.

C. Gifts Valued At or Below \$200

In contrast to the rule governing gifts valued in excess of \$200, the determination whether soliciting or accepting a gift valued at or below \$200 is significantly more dependent on the specific facts and circumstances.

Gifts at or less than \$200 in value may not be solicited or accepted if a reasonable person could conclude that the gift is intended to influence or reward the officer or employee in the performance of an official duty. The Commission considers the following factors in determining whether a gift valued below \$200 may be requested or accepted:

- 1) The official duties of the recipient, especially whether they include official action directly affecting the donor;
- 2) The business relationship between the recipient and the donor;
- 3) The existence of past, present, or predictable future applications or contracts between the donor and the city;
 - a) Whether the recipient's department presently has before it an application affecting the donor; and
 - b) Whether the contract was made or permit granted through an open, public process;
- 4) Whether the gift will aid the recipient in performing his or her city duties, and, therefore benefits the city, or whether the recipient gains a personal benefit;
- 5) Whether receipt of the gift impugns the integrity of the recipient's department or agency;
- 6) What benefit the donor may gain from giving the gift;
- 7) The value of the gift; and
- 8) The custom and practice in the community with regard to the giving of gifts.

We recommend you contact the Ethics Commission staff for a determination whether soliciting or accepting a gift is appropriate under the circumstances you experience.

II. COMMON GIFT SITUATIONS

Because the lawfulness of soliciting or accepting a gift valued at or less than \$200 is so fact-specific, the following discussion provides several examples of common gift situations to help you understand how the factors listed above are applied in practice. Remember, however, each situation involving a gift should be evaluated individually. We recommend you contact the Ethics Commission staff for a determination whether the solicitation or acceptance is lawful under your particular circumstances.

A. General Guidelines for Officers and Employees

1. Tokens of aloha

City personnel, except for those who have the authority to enforce the law, may accept small tokens of aloha, such as a lei or food to be shared with co-workers, especially during the holiday season. For a discussion of the rules governing when officers or employees with authority to enforce the law may accept or solicit gifts, see Guideline C, Guidelines for City Personnel Who Have Authority to Enforce the Law, below.

Example #1: You attend a seminar hosted by a company that sometimes receives contracts from your department. Each participant is given a “goodie bag” which includes a T-shirt and coffee cup displaying the company’s logo and assorted candy and dried fruit. May you accept the goodie bag?

Answer: Yes, these gifts have a small value and are considered a token of aloha. A reasonable person would not believe that you are being influenced or rewarded by these small gifts of appreciation.

2. Gifts of relatively small value

City personnel who do not have discretionary authority over an interest of the gift-giver and who are not involved in law enforcement may accept a gift of relatively small value, such as a pen, watch or tote bag valued at less than \$50 from a donor. For a discussion of the rules governing when officers and employees with discretionary authority may request or receive gifts, see Guideline B, Guidelines for Public Officials Who Have Discretionary Authority, below. For a discussion of the principles governing when officers or employees with authority to enforce the law may accept or solicit gifts, see Guideline C, Guidelines for City Personnel Who Have Authority to Enforce the Law, below.

Example #2: A visiting dignitary from a foreign country visits Honolulu and you are assigned to escort the official to various city departments. It is a custom of the visitor's country to give the escort a gift of appreciation. You are presented with a handbag bearing that country's seal. May you keep the gift?

Answer: Yes. If the value of the handbag is less than \$50, you may keep it.

3. Gifts of charity fundraiser tickets

The value of a gift of a charity fundraiser ticket made to a city officer or employee is equal to the value of the food and drink consumed by the public official, not the value of the donation made to the charity. The value of the food and drink is determined by the charity to be the amount of the donation that is not tax deductible. For a discussion of the principles governing when officers or employees with authority to enforce the law may accept or solicit gifts, see Guideline C, Guidelines for City Personnel Who Have Authority to Enforce the Law, below.

Example #3: You are a department director. A consultant to your department invites you and your spouse to be his guests at a charity fundraising dinner. The contractor is donating \$500 per ticket to the charity, but the charity values the portion of the donation that is not deductible for tax purposes to be \$75 per ticket. If you accept the invitation, will you violate the prohibition against gifts valued in excess of \$200?

Answer: No. The value of each ticket is only \$75 for gift purposes. It is equal to the non-deductible amount of the contribution as determined by the charity. Therefore, the total value of the gift is \$150 and the gift cap law is not breeched. However, in this example, you would still have to ascertain whether an appearance of a conflict of interest would arise under the circumstances because of your discretionary authority over the consultant. For a discussion of these issues, see Guideline B, Guidelines for Public Officials Who Have Discretionary Authority, below.

4. Gifts involving non-city projects of community-wide benefit

Generally, a city officer or employee may not use his or her position or city resources to obtain special treatment for any one. This means that you may not use city time or any other city resource for a non-city project. However, there is an exception for projects that have been deemed by the Mayor to be of community-wide benefit. If a project has been so designated, a city employee or officer may use his or her work time to support the project, including soliciting donations. Keep in mind, however, that donations may not be solicited from anyone whose business relationship with your department may be affected, or may appear to be affected, by whether they choose to donate.

Example #4: You have been selected to be the coordinator for the annual Foodbank collection for your department. May you use your paid city time to notify all department personnel to submit contributions of food and cash?

Answer: Yes, because the Foodbank's drive has been authorized by the Mayor's office as a project of community-wide benefit. Familiar projects with a community-wide benefit include Aloha United Way, the March of Dimes and the Foodbank.

Example #5: You would like to participate in fund raising for the March of Dimes. You intend to ask for donations from vendors, contractors and consultants used by your department. May you do so?

Answer: No. You may not solicit gifts from outside sources used by your department, such as vendors, contractors and consultants. A reasonable person could conclude that a vendor may contribute because the vendor believes that his or her business relationship with the department may be affected if he or she does not contribute.

5. Indirect gifts

An indirect gift is one that is made to the spouse or dependent child of a city officer or employee.

Example #6: You are a division head. A consultant to your department who you oversee learns that your daughter is about to head to college on the mainland and generously gives her a check for \$150 to help defray costs. May you or your daughter accept the money?

Answer: No. As a dependent, any gift she receives indirectly benefits you. Neither of you may keep the \$150 because a reasonable person could conclude that the gift is intended to influence you in performing your city work with the consultant.

6. Donations to a department

From time-to-time an association, business or individual may want to donate gifts to a department or the city. This is usually permitted as long as the necessary steps are taken to record the gift and inform the Council of the gift for Council approval. A common example occurs when a vendor offers to pay to have city personnel conduct a site visit or attend a conference related to the employee's duties. If a department accepts such a gift, we recommend sending a letter to the donor stating that the gift will not create an advantage or preference for the donor. A gift in excess of \$200 value to the department, instead of the individual officer or employee, will usually avoid the issue of whether there is a violation of the gift cap.

Example#7: You work for the Department of Environmental Services and receive an inquiry from a vendor who wants to have the department send personnel to the Mainland to examine a waste-to-energy power plant similar to one that the vendor is offering to build for the city. The cost of the trip will be \$1, 500 per person. May the department accept a gift to pay for the cost of the appropriate personnel to conduct a site visit?

Answer: Yes. The gift is being made to the department and not to individual employees. Therefore, the \$200 gift cap does not apply. Furthermore, the department will determine whether the gift will be accepted and who will conduct the site visit.

Example # 8: During the trip the vendor offers to take you to dinner and a professional football game as his guest. Should you accept these gifts?

Answer: No. The dinner and game will likely be considered a personal gift and will at least raise the appearance of a conflict of interest between your public duty to remain objective in researching the plant and your personal interest in the entertainment.

For more information about gifts related to travel, see, Guidelines on Gifts in Conjunction with Travel (February 4, 2000) and Revised Guidelines on Gifts of Travel, Lodging and Meals in Connection with Travel (July 13, 1995). These Guidelines are available from the Ethics Commission office and at its web site, www.co.honolulu.hi.us/ethics.

7. Fundraisers for personnel in times of extraordinary financial need

In times of extraordinary financial need, such as deaths in the family or significant damage to homes from acts of nature, employees in a city agency may solicit other employees and donate to a common fund to aid those who have suffered losses. The solicitation should be reviewed and approved by the department director.

8. Gifts from those whose interests are not affected by you in carrying out your city duties

A city officer or employee may receive gifts from people or businesses who do not have an interest that would be affected by the officer or employee discharging his/her official duties. This even applies for gifts in excess of the \$200 gift cap. See, Honolulu Ethics Commission Advisory Opinion No. 2002-3.

Example #9: You are the director of the Department of Planning and Permitting. Your former business partner is a developer on Maui and has no business or personal interests on Oahu. Your former partner invites you to visit and will pay for you and your family's round trip airfare. May you accept this gift even though it exceeds the \$200 gift cap?

Answer: Yes. The gift laws do not apply to a gift from a person or entity that has no interest that you may affect in discharging your official duties. Because the former partner has no interests on Oahu that the director could influence in performing his city duties, the gift may be accepted.

B. Guidelines for Public Officials Who Have Discretionary Authority

Many city officers and employees exercise discretionary authority in carrying out their duties. Officials with discretionary authority should be careful not to create real or

apparent conflicts of interest. Because you have more discretion in how you perform your duties, it is more likely that a gift will appear to be intended to influence or reward you. Here are some examples to illustrate the law:

1. Gifts from contractors.

Generally, an officer or employee who has discretionary authority in the process of awarding, supervising or evaluating the performance of a contract may not solicit or accept a gift from a contractor who recently had a contract with the city, has a current contract or is likely to seek one in the future. However, a government official who has discretionary authority may request or receive a token of aloha from someone whose interests may be affected by the official's carrying out his or her duties, as noted in Guideline A1, Tokens of aloha, above. Also, a public official with discretionary authority may accept a discount if the discount is offered to all city employees, as discussed in Guideline B3, Discounts, below.

Example #10: Your job requires that you participate in selecting product vendors for your department by reporting on the quality of their products and service. One of the vendors you review sends you two tickets to an exhibition professional basketball game valued at \$120. May you accept the tickets?

Answer: No. You may exercise your discretionary authority in a way that may affect current or future contracts with the vendor. Remember, even if the gift would not affect how you do your job, accepting the gift creates an appearance of a conflict of interest.

Example #11: You are a department employee who has been given the task of coordinating the prizes for the departmental golf tournament, which is open to all employees. You want to know whether you may request that contractors to the department donate the cash and prizes for the golfers.

Answer: Your department's actions affect the interests of the contractors. Therefore, you may not solicit on behalf of your department. A vendor, contractor or consultant may reasonably feel that there is pressure to donate to the department because they have or will likely attempt to obtain contracts from the department.

2. Gifts from regulated or licensed businesses or those seeking permits

The rule is the same as Guideline B1, above, when applied to a regulated, licensed or permitted business. If you have discretionary authority in carrying out your duties and your duties may affect the interest of the donor, you may not solicit or accept gifts from these entities, other than tokens of aloha or discounts offered to all employees.

Example #12: You are an employee of the Department of Planning and Permitting and have discretionary authority to approve building permits. While a permit is pending

before you, you receive a gift certificate for a \$100 dinner from the architect who submitted the permit application. May you redeem the certificate?

Answer: No, it can be reasonably inferred that the gift certificate is meant to influence you to approve the pending permit. This is another example where there is at least an appearance of conflict of interest if you accept the gift certificate.

3. Discounts

Officers and employees who have discretionary authority over the donor's interest may accept discounts only when the same discount is offered to all city personnel. Note that officers or employees with authority to enforce the law may not accept discounts from persons against whom they may be required to enforce the law, even if the discount is offered to all city personnel. See Guideline C, Guidelines for City Personnel Who have authority to Enforce the Law, below.

Example #13: You are an employee of the Department of Information Technology. You participated in the review and selection of bids for state-of-the-art computers for your department. The winning vendor offers you a substantial discount to purchase computer equipment for your home. May you accept?

Answer: You may accept the discount only if the same offer is made to all city employees.

C. Guidelines for City Personnel Who Have Authority to Enforce the Law

City personnel who have authority to enforce the law (such as police officers, fire and building inspectors, prosecutors, and liquor commission members and employees) must follow a higher standard of conduct regarding gifts. These officers and employees may not solicit or accept any gift from persons or businesses against whom the employee may be required to enforce the law.

This restriction applies to city personnel who:

- 1) Solicit gifts on behalf of an organization, unless the solicitation conforms with Guideline A4, Gifts involving non-city projects of community-wide benefit, above;
- 2) Make implicit solicitations by discussing an organization's financial need; or
- 3) Are offered drinks, food, or other items free of charge or at a discount from an individual or business over which the personnel have enforcement power, even if they are offered on non-city time.

Example #14: An off-duty Liquor Commission inspector has dinner with his family at a restaurant that has a liquor license. The manager of the restaurant presents the dinner bill, which includes a 30% discount, to the inspector. May the inspector accept the discount?

Answer: No. The discount is a gift to the inspector and may not be accepted because the inspector may have to enforce the law against the restaurant in the future. Acceptance of the discount would create at least an appearance of a conflict of interest between the inspector's personal interest in obtaining the discounted dinner and his public duty to enforce the liquor laws.

Example #15: A police officer orders his lunch from a national chain restaurant. When the officer tries to pay for his meal, the restaurant manager refuses to accept the money because his company's policy is not to charge uniformed police officers. May the officer accept the free meal?

Answer: No, the officer may not accept the free meal, despite the restaurant's policy. As in the previous example, there is an appearance of a conflict of interest between the officer's personal interest and his official obligation to enforce the law.

D. Exceptions to the Gift Restrictions

There are several exceptions to the gift restrictions described above:

- 1) Gifts received by will or intestate succession;
- 2) Gifts received by way of distribution of any *inter vivos* or testamentary trust established by a spouse or ancestor;
- 3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative;
- 4) Political campaign contributions that comply with state law;
- 5) Anything available or distributed to the public generally without regard to the official status of the recipient;
- 6) Gifts that, within 30 days after receipt, are returned to the giver or donated to a public body or to a bona fide educational or charitable organization without the donation being claimed by the officer or employee as a charitable contribution for tax purposes and documentation acknowledging the initial source of the gift is transmitted to the final recipient;
- 7) Exchanges of approximately equal value on holidays, birthdays, or special occasions;

- 8) Gifts from a source who has no past, present or likely future interest that has been or may be affected by the discharge of the officer's or employee's duties; and
- 9) Gifts made to the Council or a city agency for the purpose of supporting a function of the Council or agency made under circumstances assuring that no real or apparent conflict of interest exists for an officer or employee.

E. What to do with a Prohibited Gift

If you receive a gift that is prohibited under the ethics laws, you may not keep it. You are required to return the gift to the donor or donate it to a public body (such as your department) or a bona fide educational, non-profit or charitable organization within 30 days. If you donate the gift, you may not take the associated tax deduction and must inform the recipient of the name of the original donor.

III. PENALTIES

Violation of the gift laws may subject the officer or employee to discipline, including termination of employment or impeachment in the case of elected officials. City officers and employees may also be responsible for the value of any benefit received by anyone as a result of the violation. The city may void any contract that results from actions that are a violation of the ethics laws.

IV. CONTACT INFORMATION

Anyone who has questions may obtain advice from the Commission by calling 527-5573, writing the Ethics Commission, 715 S. King Street, Suite 211, Honolulu 96813-3091 or sending an e-mail to ethics@co.honolulu.hi.us.

ROBIN DAVID LIU, Chairperson
Ethics Commission

APPROVED FOR DISTRIBUTION:



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