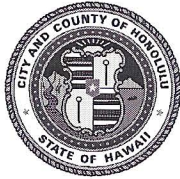


ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2010-4**

**I. Summary**

City agencies that receive gifts to pay for the costs of official government functions should obtain all needed accounting records to establish that the gift complies with the city Gift Policy. In situations where the donor does not transfer funds to the agency, but pays vendors directly for the costs of the government function, the agency should obtain the receipts showing payments from the donor to the vendors. If an agency does not review these records, it may not be able to comply with the city Gift Policy because the agency may not know the actual value of the gift. Also, the agency would not know whether a city official received a personal benefit from the gift. The Honolulu Ethics Commission ("Commission") urges the Council and executive agencies to incorporate this recommendation into their gifts policies and procedures.

In a separate issue, the Commission did not find probable cause of a gift law violation where a city official did not have reason to know that a donor of a gift to the city had also paid for a service of personal benefit to the official. To avoid undue personal benefit, the official paid the donor the fair market value of the personal gift.

**II. City agencies should maintain records showing compliance with the city Gift Policy.**

The city may receive gifts through the Council as described in Resolution 05-349, CD1, FD1 ("Gift Policy"). The Gift Policy limits who may solicit gifts and under what circumstances they may be requested or accepted, the types of gifts that may be received by agencies, and the process by which the Council will accept gifts on behalf of the city.

A problem arose with a gift to a city agency. The gift was intended to cover the costs of a legitimate city government function. As required under the Gift Policy, a gift declaration form from the donor stating the purpose and approximate value of the gift, along with a resolution to accept the gift, were submitted to Council. As is sometimes done, instead of transferring funds to the city so that the city could pay vendors for the cost of their services for the event, the donor paid for the costs directly to the vendors. The city agency did not get the receipts for the donor's expenses. As a result, the city agency did not know the actual value of the gift or what expenses were paid for.

An inherent risk exists when the city agency benefiting from the gift does not have the information to ensure it has complied with the Gift Policy's requirements. In this case, the city agency did not audit the costs of the event to ensure they were equal to the value of the gift stated on the declaration form. In addition, the lack of records also may allow unlawful gifts to city personnel to go unreported. The Commission recommends that all city agencies that receive gifts covered by the Gift Policy collect and maintain the documents needed to account for the value and purpose of the gift to the city, even if the donor directly pays vendors for the city's benefit. The Council and executive agencies should amend the relevant policies and procedures.

**III. If a city official does not have reason to know that he received a gift, there is no gift law violation.**

In its *Guidelines on Gifts to City Agencies*, the Commission notes that a gift to the city must be for a legitimate government purpose and used to pay the reasonable and necessary costs associated with the government function. The value of gifts or portions of gifts that do not meet these criteria will be attributed to the city officer or employee who benefits from the gift. Gifts that benefit city personnel must comply with the gift laws, including Section 11-102(a), Revised Charter of Honolulu, (a gift is prohibited if a reasonable person could conclude that the gift was intended to reward or influence the recipient in carrying out their city duties)<sup>1</sup> and Sections 3-8.7 and 3-8.8, Revised Ordinances of Honolulu (gift or gifts valued in excess of \$200 from one source in one year presumed to be violations).<sup>2</sup>

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<sup>1</sup> **Section 11-102. Conflicts of Interest --**

No elected or appointed officer or employee shall:

(a) Solicit 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.

<sup>2</sup> **Sec. 3-8.7 Gifts to mayor, prosecuting attorney, and appointed officer or employee--Prohibition under certain circumstances.**

- (a) For the purpose of this section:  
"Appointed officer or employee" means an officer or employee, as defined under Section 3-8.1, other than an elected officer. "Appointed officer" includes a member of a board or commission.  
"Gift" means any gift, whether in the form of money, goods, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form.
- (b) Neither the mayor, the prosecuting attorney, nor any appointed officer or employee shall solicit, accept, or receive, directly or indirectly, any gift under circumstances in which it can be reasonably inferred that the gift is intended:
- (1) To influence the solicitor or recipient in the performance of an official duty; or
  - (2) As a reward for any official action on the solicitor's or recipient's part.
- (c) During each one-year period beginning on July 1<sup>st</sup> and ending on June 30<sup>th</sup>, neither the mayor, the prosecuting attorney, nor any appointed officer or employee shall solicit, accept, or receive, directly or indirectly, from any one source any gift or gifts, not exempted by subsection (d), valued singly or in the aggregate in excess of \$200.00.
- (d) Exempted from the prohibition of subsection (c) are the following:
- (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,

For example, if the donor pays for a city employee to attend a mainland conference for work purposes, the employee is entitled to travel, room and board equivalent to what would be paid for by the city. Lavish accommodations paid for by the donor would be considered personal gifts to the employee and would be regulated under the gift laws.

As stated above, in this case the city did not receive the gift funds and, therefore, did not make the payments for the services provided by vendors. The donor handled all the transactions. Also, the donor covered a cost for a city official that was solely for the official's personal benefit.

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- fiancé, or fiancée of such a relative. A gift from any such person shall not be exempt from subsection (c) if the person is acting as an agent or intermediary for any person not covered by this subdivision;
- (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 mayor, the prosecuting attorney, or an appointed officer or employee as a charitable contribution for tax purposes. In the event the gift is donated to a public body or to a bona fide educational or charitable organization, the donor shall send, along with the gift, documentation acknowledging the initial giver of the gift; and
  - (7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.
- (e) A violation of this section by the mayor, the prosecuting attorney, or an appointed officer or employee shall be punishable in accordance with Section 3-8.5.

**Sec. 3-8.8 Gifts to councilmember--Prohibition under certain circumstances.**

- (a) No councilmember shall solicit, accept or receive, directly or indirectly, any gift, whether in the form of money, goods, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it can be reasonably inferred that the gift is intended to influence the councilmember in the performance of the councilmember's official duties or is intended as a reward for any official action on the councilmember's part.
- (b) During each one-year period beginning on July 1<sup>st</sup> and ending on June 30<sup>th</sup>, no councilmember shall solicit, accept, or receive, directly or indirectly, from any one source any gift or gifts, not exempted by subsection (c), valued singly or in the aggregate in excess of \$200.00.
- (c) Exempted from the prohibition of subsection (b) are the following:
  - (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 of the councilmember or the spouse, fiancé, or fiancée of such a relative. A gift from any such person shall not be exempt from subsection (b) if the person is acting as an agent or intermediary for any person not covered by this subdivision;
  - (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 councilmember as a charitable contribution for tax purposes. In the event the gift is donated to a public body or bona fide educational or charitable organization, the councilmember shall send, along with the gift, documentation acknowledging the initial giver of the gift; and
  - (7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.
- (d) A violation of this section by a councilmember shall be punishable in accordance with Section 3-8.5.

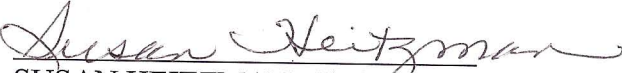
In its investigation, the Commission staff interviewed the official and several witnesses and obtained the records of the official, donor and others.

The Commission determined that there was insufficient information to support probable cause that the official violated the gift laws. Under the facts in this case, the city official reasonably thought he or she had paid full value for a purchase, when in fact the donor paid for the purchase. Furthermore, the donor did not tell the official that the donor paid for the purchase. If a city officer or employee does not have reason to know that he or she received a gift, there can be no influence or reward for the official, and no violation of the gift laws. Yet even though there is no violation, there is still a concern that the official benefited from the gift. In order to avoid unjust enrichment the official repaid the donor for the full amount of the personal gift.

#### **IV. Conclusion and recommendation**

This case shows that ethics issues may stem from poor record keeping. The Commission believes that a proper accounting by the city agency based on the donor's transaction records would have prevented the personal gift issues from arising because the accounting would have shown that the donor had paid for the official's personal expense. Therefore, the Commission recommends that each city agency obtain all records that show the amount and purpose of the gift, including those records where the donor pays vendors directly for the costs of the function. This way, the agency will be able to show that it has complied with the city Gift Policy and may review records for personal gifts.

Dated: November 22, 2010

By:   
SUSAN HEITZMAN, Chairperson  
Honolulu Ethics Commission