

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 176

This is in response to a request for the Ethics Commission [Commission] to issue an advisory opinion regarding whether a councilmember should accept "water conservation kits" from XYZ Development Company [XYZ].

The Commission believes that he should not.

The Commission bases this opinion on the following facts:

XYZ has plans to develop areas on Oahu and such plans are subject to City approval. XYZ also has a financial stake in selling "water conservation kits" to the City. In a letter to the councilmember, XYZ offered to install such a kit in his home and stated that a mainland city has purchased and distributed such kits to residents for installation in their homes. The purpose of offering to install a kit in the councilmember's home is so that he may have empirical evidence of the kit's efficiency to aid him in taking official action as to whether or not the City should purchase the kits.

The question presented is whether it can reasonably be inferred that a gift is intended to influence elected officials in the performance of their official duties when such officials have taken and will take official action directly affecting the donor.

The general rule is that City officers or employees should not accept gifts in any form from donors who have been or will be directly affected by the official actions of the officers or employees. See Advisory Opinion No. 169 [AO #169]. This rule follows from Section 11-102.1, Revised Charter of the City & County of Honolulu 1973 (1984 Ed.), which states:

No elected or appointed officer or employee shall ... 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.

For example, in AO #169 the Commission advised an employee that a solicited gift may be accepted because the **official actions** of the employees whom the gift would benefit had not directly affected and would not directly affect the donor. "Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction which

involves the use of discretionary authority. Section 6-1.1, Revised Ordinances of Honolulu 1978 (1983 Ed.).

In general, any gift from XYZ would tend to create the appearance of XYZ's intent to influence official action because XYZ has had, and probably will have, a wide variety of applications¹ and other matters before the City Council that relate to its plans for development. In this instance, if XYZ has a financial stake in selling the kits to the City where the members of the City Council will take official action regarding such sale, again, he should not accept XYZ's offer because doing so might create the appearance of a conflict of interest. If XYZ's purpose in making the offer is to provide the councilmember with empirical evidence of the kit's efficiency, he and other City officers may obtain such evidence in another manner, such as from the mainland city where the kits are already installed. Therefore, in general the councilmember should not accept gifts from XYZ, and the offer of the kit is an example of how the general rule, which prohibits accepting gifts from persons whom his official actions will directly affect, applies to a given situation.

Dated: October 23, 1987

JANE B. FELLMETH
Chair, Ethics Commission

¹"Application" should be interpreted broadly to include any matter before the City Council. See, e.g., Advisory Opinion #155.