

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 177

This opinion is in response to a request for the Ethics Commission [Commission] to advise a City agency whether an employee may accept a discount on the purchase of a product from a retail seller who has contracts with the City.

The Commission believes that he may do so, provided all City employees are eligible for such a discount.

The Commission understands the facts to be as follows:

The duties of the employee relate to the awarding of City contracts for goods and services. His work concerning such contracts is reviewed by his supervisor, his agency head, and a representative of the Budget Department or the Purchasing Division, Finance Department.

The employee wants to accept a (percent) discount he solicited on the purchase of a product and related services from XYZ, Inc. XYZ, Inc., is offering all City employees a discount on various models of a product, has had contracts with the City to provide this product, and may bid for more contracts.

At this time the employee anticipates having official duties relating to a contract to be awarded in (date). XYZ, Inc., and other firms will probably submit bids for this contract.

Under the City's standards of conduct, the question presented is whether a City employee who has duties relating to the awarding of City contracts may accept a gift in the form of a discount from a commercial firm which has contracts with the City and plans to bid for more contracts.

The general rule is that whether or not City employees may accept a gift depends on the following factors:

1. The size of the gift.
2. The custom and practice in the community with regard to the giving of gifts.
3. Whether the gift relates to the position of the recipient-employee and thus redounds to the City's benefit, or whether the recipient-employee gains a personal benefit.
4. The official duties of the recipient-employee, and whether they include official action

- directly affecting the donor.
5. The benefit the donor stands to gain from giving the gift.
 6. The business relationship between the recipient and the donor.
 7. The existence of past, present, or possible future applications or contracts between the donor and the City.
 - a. Whether the employee's department presently has before it, or has had before it, an application affecting the donor.
 - b. Whether or not the contract was made through an open, public process.
 8. Whether the receipt of the gift impugns the integrity of the recipient-employee's department.

When a gift in the form of a discount from a retail seller of goods and services is considered in isolation, the factors clearly indicate the employee should not accept the discount. The size of the gift is large. For example, in this instance the discount on a product that costs (amount) is more than (amount). The discount would also give him a personal benefit and would not relate to his position with the City. Because his duties relate to the awarding of City contracts, they would directly affect whether or not a retail seller such as XYZ, Inc., receives City contracts, such as one anticipated in (date). Consequently, XYZ, Inc., may believe it stands to receive favorable treatment by offering the employee discount, even though other City officers or employees will also review the employee's work. Furthermore, the existence of past and possible future contracts between XYZ, Inc., and the City may create the appearance of a conflict of interest if he accepted a gift because the City agency where he holds a responsible position provides the expertise in the City's decision from whom to buy the goods and services XYZ, Inc., offers by contract. Therefore, if a business that sells products such as XYZ, Inc., offered him but not other employees a gift, he should not accept it because doing so would impugn his integrity and that of the agency where he works.

On the other hand, the Commission believes the employee may accept a discount because XYZ, Inc., is offering a discount to all City employees rather than only to him. Such a discount would benefit the buyers because they would have a product for personal use. It would also benefit XYZ, Inc., in the form of profit as a result of the large number of potential sales even at discount. If XYZ, Inc., offered a discount to one employee who has duties relating to future contracts, the discount may cause the employee to have a sense of gratitude that may be converted to a sense of debt and concomitant favorable treatment of XYZ, Inc. However, if all City employees are eligible for the same discount, employees who have duties relating to future contracts would receive no greater benefit than any other employees. As a result, a sense of gratitude and favorable treatment is far less likely to occur. Therefore, the Commission believes the employee may accept the discount, provided all City employees are eligible for the same discount.

In conclusion, XYZ, Inc. plans to bid on a City contract next year and has offered a discount to all City employees for the purchase of certain goods for personal use. An employee would like to purchase a product at discount, but his official duties relate to the awarding of City contracts. He believes this potential affect on XYZ, Inc., may create the appearance of a conflict of interest if he buys a product at discount. The Commission commends him for his sensitivity to

ethical considerations and believes he should not accept a discount that any potential bidder for City contracts offers only to him or a small group of employees whose duties relate to bids for City contracts. However, the Commission also believes that he or any other officer or employee may buy a product and services at discount because XYZ, Inc., has made the discount available to all City personnel.

Dated: October 23, 1987

JANE B. FELLMETH
Chair, Ethics Commission