

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 527-5573 ☎ Fax: (808) 527-6936 ☎ EMAIL: ethics@honolulu.gov ☎ Internet: www.honolulu.gov/ethics

JEREMY HARRIS
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion No. 2002-3

I. Summary

Under § 11-102(a), Revised Charter of Honolulu (RCH) and §§ 3-8.7(c) and 3-8.8(b), Revised Ordinances of Honolulu (ROH), as amended by Ordinance No. 02-15, it cannot be a violation for a city officer or employee to solicit, accept or receive a gift or gifts valued at more than \$200 where the proper performance of the officer's or employee's city duties does not affect an interest of the donor of the gift.

II. Facts

A city officer's spouse receives gifts from organizations in the health care industry from which the city officer also benefits, such as free lodging and meals at health industry conferences. For purposes of discussion, we assume that the relevant gifts are more than \$200 in value singly or in the aggregate from one source in one year.

III. Question presented

The issue here is whether the gift laws, as amended by Ordinance No. 02-15, prohibit the solicitation, acceptance or receipt of any gift that is more than \$200 in value, even if the donor has no interests that may be affected by the discharge of the recipient's duties.

IV. Analysis

RCH § 11-102 states that 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 which it can be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties.

Similarly, ROH § 3-8.7(b) states:

Neither the mayor, the prosecuting attorney, nor any appointed officer or employee shall solicit, accept or receive, directly or indirectly, any gift, whether in the form of money, goods, services, 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:

- (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.

Finally, ROH § 3-8.8(a) applies the same prohibition to councilmembers.

It is evident from their plain language that RCH § 11-102(a) and ROH §§ 3-8.7(b) and 3-8.8(a) require the gift be made under circumstances where it may be reasonably inferred that the donor intends to influence or reward the city officer's or employee's work performance.

Recently, ROH § 3-8.7(c), was amended by Ordinance No. 02-15. It now reads:

During each one-year period beginning on July 1st and ending on June 30th, 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 under subsection (d), valued singly or in the aggregate in excess of \$200.

An identical amendment was included covering councilmembers.¹

At first blush, reading the new law alone might lead one to conclude that no gift valued at more than \$200 may be solicited, accepted or received, regardless of the source. When examined in the context of all the gift laws, however, we do not reach this opinion. We are required to interpret Ordinance No. 02-15 in a manner consistent with the ordinances it modifies and the Charter section it implements. RCH § 11-102(a) and ROH §§ 3-8.7(b) and 3-8.8(a) require an inference of intent to influence or reward a city official's work performance. None of these sections were amended to delete this requirement. In fact, an interpretation that no link needs to be shown between the interests of the donor and the duties of the official would be contrary to the language in RCH § 11-102(a) that requires an intent to influence or reward work performance. An ordinance may not be inconsistent with the Charter. Fasi v. City Council of City and County of Honolulu, 72 Haw. 513, 518-19, 823 P.2d 742, 744-45 (1992). Ordinance No. 02-15 simply sets a \$200 limit above which the gift is one that is conclusively presumed to be intended to influence or reward the officer or employee for discharging duties that could affect the donor. See, Bill No. 88, CD1 (2001), Conference Report No. 166, page 4.

¹ ROH § 3-8.8(b) reads:

During each one-year period beginning on July 1st and ending on June 30th, 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 the excess of \$200.00

As noted above, the existence of an unlawful intent to influence or reward under RCH § 11-102(a) and ROH §§ 3-8.7(b) and 3-8.8(a) requires the existence of a link between the interests of the gift-giver and the duties of the public official. There must be a factual connection or nexus that establishes a conflict of interest between the receipt of the gift and discharging the duties of the city official. The nexus is provided in circumstances where the donor has interests that either have come, are pending or are reasonably likely to come before the official in the course of discharging his or her duties. Without this factual connection, there is no logical basis to conclude that the gift is intended to reward or influence the officer or employee in carrying out his or her work responsibilities.

To illustrate this point, assume that a friend of a city employee gives him a gift worth \$300 and the gift does not fall within any exemption listed in ROH § 3-8.7(f). Assume further that the friend has no present, past or likely future interests that would be affected by the employee's discharge of his duties. In this case, there is no link between the donor's interests and recipient's city duties. Under these circumstances, a reasonable person could not conclude that the donor intended to influence his friend's work because the donor is not affected by the employee's work.

Applying our analysis to the examples related in this case leads us to conclude that the city officer could not violate the gift prohibitions by accepting gifts of free meals or lodging valued over \$200 from a single source in a one-year period² unless the donor has an interest in a matter that the city officer would participate in or be involved with as a city official. To make this determination, factors to examine would include whether the donor had an interest in a matter with which the city official was involved, is involved or is reasonably likely to be involved. If such a connection exists, the gift prohibition may apply depending on the specific circumstances involved regarding each gift.

Dated: September 6, 2002

/S/
ROBIN DAVID LIU, Chairperson
Ethics Commission

²A gift to the spouse or dependent child of a city officer or employee is considered an indirect gift to the city officer or employee.