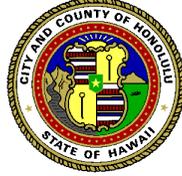


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Advisory Opinion No. 2004-1

I. Summary

This opinion responds to the request of a city officer (“Officer”) for advice regarding whether he may accept a prize valued in excess of \$200 won in the lucky number drawing at a golf tournament sponsored by an industry association (“Association”). The Ethics Commission (Commission) recommends that Officer return or otherwise properly dispose of the prize because acceptance would raise at least an appearance of conflict of interest or impropriety.

II. Facts

Recently, Association invited all elected officials to participate in its golf tournament. Association paid the \$170 greens fee for each elected official. Officer was one of the 13 elected officials who participated in the tournament. After the golf concluded, Association sponsored a lucky number drawing. Officer won the grand prize, consisting of two round trip tickets to San Francisco and two nights lodging. The Commission assumes that the door prize is valued considerably in excess of \$200 gift cap stated in Section 3-8.8(b), Revised Ordinances of Honolulu (ROH).¹

Association and its members regularly take positions on matters, such as real property taxes, economic development and public safety, that come before Officer in his official position and over which Officer has significant discretionary authority.

Officer requested an opinion from the Commission regarding whether he may retain the prize in light of the gift cap law. He also sought an opinion on this question from the Department of Corporation Counsel (COR). In a memorandum of [date], COR concluded that retaining the prize would not violate the gift cap stated in ROH Section 3-8.8(b). COR noted that the ban on gifts in excess of \$200 does not apply to gifts that are “available or distributed to the public generally without regard to the

¹ **Sec. 3-8.8 Gifts to councilmember--Prohibition under certain circumstances.**

(b) 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 excess of \$200.00.

official status of the recipient.” ROH Sec. 3-8.8(c)(5). COR concluded that the drawing for the grand prize was random and, therefore, not related to Officer’s official status. The Commission staff, however, contended that the invitation for free golf and the grand prize drawing were derived from Officer’s status as an elected official and, accordingly, were not excluded under ROH Sec. 3-8.8(c)(5).

III. Issue

The question is whether a city officer with significant discretionary authority may accept an expensive gift from those whose interests the officer may affect, even if the gift may not be subject to the \$200 gift cap.

IV. Discussion

The Commission will not resolve the interpretation of ROH Section 3-8.8(c)(5) at this time because it is concerned that, even if the door prize is not prohibited under ROH Section 3-8.8(c)(5), Officer should not retain the prize for other reasons. The Commission notes the circumstances under which the greens fee was paid and the grand prize was won. The golf tournament targeted elected officials and participants whose financial interests and business activities are or may be affected by elected officials. Officer’s invitation to and the payment of his greens fee for the golf tournament were based on his official status as an elected city officer. Officer’s eligibility to win the door prize was linked to his invitation to the golf tournament. Taken as a whole, the grand prize was an expensive gift won at a social event sponsored by an organization whose members have interests that may be affected by Officer.

An appearance of a conflict of interest occurs when an officer or employee has a personal interest that reasonably may appear to prevent him or her from making an unbiased decision with respect to a matter. See, e.g., Advisory Opinion No. 122. In the context of a gift, an appearance of a conflict of interest arises under circumstances where a reasonable person could conclude that it appears that the gift was provided to influence or reward the officer or employee in carrying out his or her official duties. Section 11-102(a), Revised Charter of Honolulu (RCH)² and ROH Section 3-8.8(a).³

² **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.

³ **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

We find that a reasonable person, knowing all the circumstances, could conclude that accepting the door prize creates an appearance of a conflict between your interest in the gift and the discharge of your public duties. The Commission believes that a city officer with significant discretionary authority and responsibilities should not accept an expensive gift from those who are affected by the decisions and actions of the officer. The Commission emphasizes that we do not find any actual conflict of interest or impropriety on Officer's part or that of the Association. Indeed, we commend Officer for bringing the issue to our attention. We are focusing only on what a reasonable public could conclude under the circumstances. The appearance of a conflict of interest or impropriety is sufficient to warrant Commission advice to refrain from accepting a gift. See, Advisory Opinion No. 183, n.9.

Similarly, the circumstances presented here may create an appearance of impropriety for Officer because Association or its members may expect special treatment from Officer in his official capacity as a result of the golf tournament and gift, contrary to RCH Section 11-104.⁴ An appearance of impropriety is a basis upon which not to accept a gift. See, Advisory Opinion No. 183, n.9.

V. Recommendation

The Commission recommends that you return the prize or donate it to a public body or a bona fide charitable or educational institution by means described in ROH Sec. 3-8.8(c)(6).⁵

Dated: March 5, 2004

/S/
LOLINDA D. RAMOS, Acting Chairperson⁶
Ethics Commission

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.

⁴ **Section 11-104. Fair and Equal Treatment --**

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person. (*Reso. 83-357*)

⁵ **Sec. 3-8.8 Gifts to councilmember--Prohibition under certain circumstances.**

- (c) Exempted from the prohibition of subsection (b) are the following:
- (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.

⁶ Chair Robin Liu and Vice-chair Lex Smith recused themselves from this matter.

