

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. 2004-8

### I. Summary

The solicitation of contributions from private businesses by city officers to support lower fares for the city's Zoo Train and which also benefited a city contractor did not violate the city's gift laws or the fair and equal treatment policy.

### II. Background

On [date] the Honolulu Ethics Commission ("Commission") received a request for advice from [name] regarding whether the solicitation of funds from private businesses by city officials on city time to benefit another private business was in violation of the city ethics laws. On [dates], the Commission staff requested information from [certain city officers] ("Officers"). Copies of the request letter were transmitted to the Officers for their comment, pursuant to Section 3-6.7(b), Revised Ordinances of Honolulu (ROH).<sup>1</sup> The Officers jointly responded to the request letter by a memorandum dated [date].

### III. Facts

In 2003 and 2004, the city administration, through a department ("Department"), entered into a contract with a private business ("Contractor") to operate the city's Zoo Train. The Zoo Train provides rides to children and families throughout the Honolulu Zoo. In order to temporarily reduce the fare charged from \$2 to \$1 per rider, the Officers sought corporate sponsorship of the Zoo Train. In exchange for advertising and other benefits associated with the Zoo Train, several businesses contributed a total of \$29,000 and in-kind contributions valued at \$1,500 to maintain the lower fare. The Officers requested the contributions from the private businesses. The contributions were deposited in an account and, upon approval of the director of the Department, the funds were distributed to the Contractor.

---

<sup>1</sup> Sec. 3-6.7 Requests by third parties.

- (b) Where the employee or officer involved in the request is not the person making the request, such employee or officer shall have an opportunity to respond in writing within 15 days after receipt of a copy of the request. The response may include a request for a hearing before the commission.

**IV. Questions presented**

- (1) Was the solicitation of contributions to subsidize the Zoo Train fare an unlawful request for a gift?
- (2) Was the solicitation of contributions a violation of the fair and equal treatment policy contained in the city ethics laws?

**V. Analysis and Discussion**

**A. Gifts**

The gift laws prohibit the solicitation, receipt or acceptance of a gift under circumstances in which a reasonable person could conclude that the gift is provided to influence or reward the recipient for discharging his or her official duties.<sup>2</sup>

One element of these laws is that the officer or employee obtains, or appears to obtain, a direct or indirect personal benefit. In this case there is no such benefit to the Officers. Both were carrying out their respective employment duties and did not receive anything of value other than their city salary. Accordingly, there is no violation of the gift laws.

**B. Fair and equal treatment policy**

Section 11-104, Revised Charter of Honolulu (RCH), states:

Elected or appointed officers 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.

We have no information that the concession agreements between the city and the Contractor were entered into through a process that improperly excluded other qualified vendors. Thus,

---

<sup>2</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.

Sec. 3-8.7 Gifts to mayor, prosecuting attorney, and appointed officer or employee--Prohibition under certain circumstances.

- (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.

there is no basis to conclude that the Contractor received special treatment or consideration in obtaining the contract to operate the city's Zoo Train.

The issue here is whether, by soliciting funds from private businesses to lower the fare for a Zoo Train ride, the Officers used their official positions to obtain special treatment for the Contractor. We conclude that they did not.

We consider this situation to be substantively analogous to the solicitation of a gift to a department. Under our *Revised Guidelines on Gifts* (April 21, 2004, p.7) gifts may be solicited for and received by a city department without violating the city's fair and equal treatment policy or gift laws. This solicitation is generally permissible because in most instances, there is no personal benefit to or conflict of interest arising from the officers or employees of the department soliciting gifts that will be used to carry out the functions of the department.

In situations in which a gift has been solicited for a city department, after the gift is received and the necessary steps to inform the Council of the gift have been taken,<sup>3</sup> the department may expend the gift to further a departmental goal. While the Officers did not follow this conventional process, what they did in effect was to solicit a gift that the Department used to further the goal of temporarily reducing the city's Zoo Train fare. In other words, if the Officers had requested that the contributions be deposited with the Department as gifts to the Department, the contributions could have been applied to the contract with the result that the fare charged the riders would have been \$1 instead of \$2. This approach would have reached the same result as the one used by the Officers in this case, but through the more conventional process.<sup>4</sup>

We find nothing about the Officers' efforts in this case that amounts to the provision of special treatment to any particular business or group. To the contrary, several entities benefited from the corporate sponsorship the Officers helped to obtain: (1) the sponsors received advertising and community recognition; (2) the Contractor obtained a contract and funds that it might not have received without the contributions; (3) the Zoo Train riders received a temporary fare reduction; and (4) the city was able to improve the amenities and attractiveness of the Zoo without expending the taxpayers' money. Under those circumstances, there was no violation of the city's fair and equal treatment laws.

## **VI. Recommendation**

We find no violation of the gift laws or the fair and equal treatment policy. However, we recommend that in the future when a city department solicits or receives contributions that will be applied to the benefit of a city project, the contributions should be reported to the Council as provided by law.

---

<sup>3</sup> RCH Section 13-113 provides the Council with authority to accept gifts on behalf of the city. Resolution 86-298 (September 17, 1986) sets forth the process by which departments may conditionally accept gifts pending the final determination of acceptance by the Council.

<sup>4</sup> It appears that some of the concern regarding the contributions and their payment to Xtreme fun may result from the city officers not using the conventional process whereby the gift is reported to the Council for its determination whether the gift should be accepted by the city.

We request that the Officers respond to our recommendation within 15 days of receipt of this opinion, pursuant to RCH Section 11-107 and ROH Section 3-6.5(e).<sup>5</sup>

Dated: June 22, 2004

/S/  
\_\_\_\_\_  
ROBIN DAVID LIU, Chairperson  
Ethics Commission

---

<sup>5</sup> RCH Section 11-107 reads in relevant part:

The commission shall recommend appropriate disciplinary action against officers and employees found to have violated the standards of conduct established by this article of the charter or by ordinance. The appointing authority shall promptly notify the commission of the action taken on the recommendation.

\* \* \*

Sec. 3-6.5 Requirements applicable to the rendering of opinions.

(e) After an opinion has been rendered, the commission shall notify the appointing authority of the officer or employee involved or the council in the case of elected officials, of its decision and shall recommend appropriate disciplinary action against officers and employees found to have violated standards of conduct established by the revised charter or by ordinance. The appointing authority or the council shall take whatever action is deemed necessary, and report the action taken to the commission within 15 days after receiving the decision and recommendation of the commission. The disclosures of conflicts of interests as provided in Revised Charter Section 11-103 shall be made matters of public record at any time that such conflict becomes apparent.