

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2010-3**

**I. Summary**

For purposes of the city's gift prohibition laws, the value of a ticket to a political fundraiser event that is given to a city officer or employee by a someone who has an interest that could be affected by the officer or employee is equal to the fair market value of the benefits the city officer or employee receives by attending the fund raiser (*e.g.*, the dinner provided, the golf green fees, door prizes).

**II. Factual and Legal Background**

The Ethics Commission received an oral inquiry from Councilmember Nestor Garcia regarding the appropriate valuation of gifts of tickets to political fundraiser events. In particular, Councilmember Garcia asked whether the full "face value" of the ticket is considered to be the gift amount for purposes of the city's gift laws, or whether the gift amount is the fair market value of the dinner, *etc.* provided at the event.

**A. Gift Laws in General**

Revised Charter of Honolulu § 11-102(a) prohibits elected or appointed officers and employees from

[s]olicit[ing or accept[ing] 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.

The city's ordinances also generally prohibit the acceptance or solicitation of gifts by appointed officers, employees, and councilmembers under circumstances in which it can be

reasonably inferred that the gift is intended to influence the performance of an official duty or as a reward for any official action. Revised Ordinances of Honolulu (ROH) § 3-8.7(b) (as to appointed officers and employees); ROH § 3-8.8(a) (as to councilmembers). In addition to this general prohibition, the ordinances distinguish between gifts valued in excess of \$200 and gifts valued equal to or less than \$200. With certain specified exemptions,

gifts that exceed \$200 are automatically prohibited, as long as the gift-giver has an interest that the city official may affect in the course of fulfilling his or her job duties. By the same token, a gift that exceeds \$200 is not prohibited if the donor does not have an interest that the city official may affect in performing his or her work.

Gifts at or less than \$200 in value may not be solicited or accepted if a reasonable person could conclude that the gift is intended to influence or reward the officer or employee in the performance of an official duty.

*Honolulu Ethics Commission's Revised Guidelines on Gifts* (footnote omitted and citing to ROH §§ 3-8.7 and 3-8.8).

The \$200 “threshold” is significant in this matter because there may be instances where the face value of a political fundraiser ticket exceeds \$200 while the value of the event’s dinner, green fees, *etc.* is less than \$200.<sup>1</sup>

#### **B. Ethics Commission Precedent**

In Advisory Opinion No. 2003-3, the Ethics Commission considered the following question: “For purposes of the city gift prohibition laws, should the full price of the ticket [to a charitable fundraiser event] be considered a gift, or should the valuation of the gift be limited to the fair market value of the benefit received in exchange for the ticket?” In concluding that the value of the gift should be limited to the fair market value of the benefit received, we relied on the main concern that the gift prohibition laws address: the exchange of a payment (in the form of a gift) for an official favor:

In general, a gift is a “voluntary transfer of property to another made gratuitously and without consideration.” *Black’s Law Dictionary*, p. 688 (6<sup>th</sup> ed. 1990). The distinguishing feature of a gift is the absence of any expectation of receiving something of value in return or of any obligation to repay the gift.

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<sup>1</sup> For purposes of this opinion, we assume that the person giving the fundraiser ticket to the city officer/employee is someone who would have an interest that could be affected by the officer/employee (*e.g.*, a lobbyist giving the ticket to a councilmember), because if there were no interest that could be affected, the gift prohibitions laws are not implicated. *Gift Guidelines* (“[A] gift that exceeds \$200 is not prohibited if the donor does not have an interest that the city official may affect in performing his or her work.”).

If the gift prohibition laws are intended to prohibit the exchange (or even the appearance of an exchange) of a payment for special treatment, it follows that the valuation of the gift should be limited to what the recipient actually receives. It is the *exchange* of something of value (the gift) for something else of value (the special treatment) that the gift prohibition laws forbid.

In the case of charitable fundraising tickets with a clear donation component, the required exchange element is missing with respect to the donation amount. The exchange is between the original purchaser of the ticket and the charity, which directly receives the benefit of the donation. The city officer/employee is essentially a bystander to this part of the transaction. He or she receives none of the benefits of the donation -- *i.e.*, nothing that would influence or reward his or her official decisions. As a result, there is no reasonable inference to be drawn that he or she is being influenced in discharging his or her official duties or is being rewarded for taking official action. Treating the donation portion of the fundraising ticket as a gift for purposes of the gift prohibition laws would therefore not advance the basic purposes of the law.

In contrast, there is a clear exchange with respect to the dinner that the officer/employee receives by attending the fundraising event. Because one might reasonably infer that the provision of a free dinner would oblige the recipient to repay the favor, the required element of a *quid pro quo* is present; the dinner, therefore, implicates the concerns addressed by the gift prohibition law and should fall under its reach.

This analysis would change, of course, if there were reason to believe that the officer/employee did in fact receive some benefit from the donation. For example, if the officer/employee attempted to claim the donation as a charitable deduction for tax purposes, the full amount of the ticket, including the donation amount, would be a gift under the gift prohibition laws. Similarly, if the ticket provided some benefit to the officer/employee beyond the dinner -- *e.g.*, participation in a raffle drawing held at the dinner -- the value of the additional benefit would be a gift under the gift prohibition laws.

Advisory Opinion No. 2003-3.

### **C. Valuation of Political Fundraiser Tickets**

We believe that the reasoning in Advisory Opinion No. 2003-3 regarding how to value a gift of tickets to a charitable fundraiser applies with equal force to the valuation of political fundraiser tickets. As in the case of a charitable fundraiser event, there are essentially two transactions involved in the purchase of a ticket to the political fundraiser. The first transaction is between the original purchaser of the ticket (*e.g.*, a lobbyist) and the fundraiser beneficiary (*e.g.*, the political campaign). With respect to that transaction, the city officer or employee to whom the ticket is given is, as Advisory Opinion No. 2003-3 puts it, a “bystander”. Since he/she

does not receive any benefits from this exchange, there is no basis to presume that he/she will feel obligated to give the purchaser any favorable treatment.<sup>2</sup>

The city official, however, is not a bystander to the second transaction – the gift of the ticket. As the recipient of the gifted ticket, he/she does receive something of value. At a minimum, he/she receives whatever tangible benefits are provided at the fundraiser, *e.g.*, the dinner, drinks, any door gifts, the payment of green fees, *etc.* The receipt of these tangible benefits can create an actual or apparent *quid pro quo* and therefore implicates the concerns underlying the gift laws. Thus, as in the case of charitable fundraiser tickets, their value should be imputed as a gift to the city official/recipient.<sup>3</sup>

Whether any amount above what the city official actually receives at the fundraiser event also should be imputed as a gift to the city official would depend on whether he/she receives anything more than the dinner, door prizes, *etc.* For instance, if the recipient is credited in fundraising material as the purchaser of the fundraiser ticket or the donor (assuming this is even permissible under the campaign spending laws), the full amount of the ticket would be imputed as a gift to him or her.

### **III. Conclusion**

The valuation of the gift of a ticket to a political fundraiser presents essentially the same issue as the valuation of a ticket to a charitable fundraiser event. In Advisory Opinion No. 2003-3, the Ethics Commission concluded that the value of a gift of a ticket to a charitable fundraiser event is the fair market value of the benefit received at the event (*e.g.*, the meal, drinks). We conclude that the same reasoning we employed in Advisory Opinion No. 2003-3 applies to the valuation of political fundraiser tickets: the value to the city officer/employee is equal to the fair market value of the benefits the city officer/employee receives by attending the fundraiser.

Dated: April 8, 2010

By: /S/  
LEX SMITH, Chairperson  
Honolulu Ethics Commission

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<sup>2</sup> Under the state and federal campaign spending laws, the full purchase price of the ticket is reportable as a contribution to the political campaign. *Citizen's Guide to Federal Campaign Spending Laws*, p. 5 (“The full purchase price counts as a contribution. If you pay \$100 to purchase a ticket to a fundraising event, like a dinner, you have made a \$100 contribution (even though your meal may have cost the committee \$30.”)); *Guidebook for Candidate Committees (Hawai'i 2010 Elections)*, p. 11 (“The entire amount paid to attend a political fundraiser or to purchase a fundraiser ticket is a contribution. For example, if a contributor pays \$100 to buy a fundraiser ticket to a candidate’s golf tournament, the contributor has made a \$100 contribution to the candidate, even though the golf fees may have cost the candidate \$35.”).

<sup>3</sup> The city officer/employee bears the burden of determining the fair market value of the benefits received. If the ticket designates the fair market value of the dinner, *etc.*, this amount can be used as the amount of the gift; if the ticket does not assign a value, the officer/employee must take reasonable steps to ascertain the actual fair market value of benefit received.