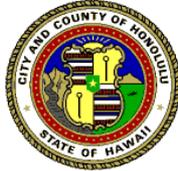


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion No. 2003-1

The city Council Executive Matters Committee requests advice whether a gift in excess of \$200 to a councilmember is prohibited under Sec. 3-8.8(b), Revised Ordinances of Honolulu (ROH), or merely triggers a conflict of interest for which the councilmember may disclose the gift. The Ethics Commission finds that ROH Sec. 3-8.8(b) prohibits gifts in excess of \$200 in value.

The answer to this question depends on the precise language used in the law. Sec. 11-102(a), Revised Charter of Honolulu (RCH), states that no city officer or employee “. . . **shall** solicit or accept any gift, directly or indirectly, under circumstances in which it can be reasonably inferred that the gift is intended to influence the officer or employee in the performance of such persons official duties.” (Emphasis added.) ROH Sec. 3-8.7(c) and Sec. 3-8.8(b) set a gift cap for city officers and employees:

During each one year period . . . 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. (Emphasis added.) ROH Sec. 3-8.7(c).

During each one year period . . . no councilmember **shall** solicit, accept, or receive, directly or indirectly, from any one source any gift or gifts, not exempted under subsection (c), valued singly or in the aggregate in excess of \$200. (Emphasis added.) ROH Sec. 3-8.8(b).

Courts and agencies are bound by the plain, unambiguous language in the law. See, *Chun v. Employees' Retirement System*, 61 Haw. 596, 600, 607 P.2d 415, 419 (1980). The Charter states that a councilmember “shall” not solicit or accept a gift under circumstances where one may reasonably infer that the gift is intended to influence the councilmember in carrying out his or her official duties. The ordinance sections state that a gift in excess of \$200 “shall” not be solicited, accepted or received by city officers or employees. The word “shall” is used to state a mandate or requirement in the law, unless there are circumstances demonstrating the term should be read as discretionary. See, *Perry v. Planning Commission of Hawaii County*, 62 Haw. 666, 676, 619 P.2d 95, 103 (1980). No such circumstances appear in this matter. We conclude that

the plain meaning of the relevant law prohibits acceptance of gifts valued in excess of \$200.

Furthermore, the preamble to Ordinance No. 02-15 states that one purpose of the bill is to create a more honest government by limiting the gifts that may be received by city officers and employees. Ordinance No. 02-15, pp. 1-2. The Committee Report states that “[\$200] is set as the **maximum dollar amount** of a gift or gifts that a city officer or employee may solicit, accept or receive from any one source [in a year].” (Emphasis added.) Committee Report No. 166, p. 3, April 10, 2002. These statements further demonstrate that the cap was created to prohibit gifts in excess of the cap and not merely to trigger a conflict of interest that is waived as long as the councilmember fully discloses the conflict before voting.

We must reject the argument that accepting a gift in excess of \$200 merely creates a potential conflict of interest because such reasoning is contrary to the plain language of Sec. 3-8.8(b) and the legislative history of Ordinance No. 02-15.

To illustrate how the gift cap law works, assume a lobbyist offers a gift valued at \$500 to a councilmember. If the councilmember accepts the gift, he or she will have violated the prohibition against gifts in excess of \$200. The violation is grounds for impeachment under RCH Sec. 11-106 and ROH Sec. 3-8.5(a). Moreover, a councilmember has “. . . the right to vote in council at all times.” RCH Sec. 3-107.1. Therefore, if the lobbyist has a bill that will be voted on by the Council, the councilmember may vote on the bill as long as he or she first discloses the conflict of interest created by the acceptance of the gift. If the councilmember fails to fully disclose the prohibited gift as required under RCH Sec. 11-103, his or her vote would be rendered void. Hui Malama Aina O Ko’olau v. Pacarro, 4 Haw. App. 304, 318, 666 P.2d 177, 186 (1983). In certain cases, the voiding of a vote could invalidate a bill even after it becomes law. Id.

Dated:

June 5, 2003

/S/
ROBIN DAVID LIU, Chairperson
Ethics Commission