

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. 2003-3

I. Summary

The Honolulu Ethics Commission (Commission) has received inquiries from city officers and employees asking how to value the gift of a ticket to a charitable fundraising dinner. Specifically, the inquiries have focused on the gifts of tickets that clearly designate the price of the ticket, or a portion of the ticket price, as a donation. For example, a \$100 ticket specifies that \$75.00 of the price is deemed a donation to the charity and the remaining \$25 is considered the fair market value of the dinner provided at the fundraising event.

The Commission finds that, generally, the value of a gift of a ticket made to a city officer or employee to a charitable fundraising dinner, where the money paid for the ticket is a donation to the charity, should be limited to the fair market value of the benefit received. Therefore, in the example above, the fair market value of the gift is \$25 and not the \$100 price of the ticket to the fundraiser dinner.

II. Question Presented

For purposes of the city gift prohibition laws, should the full price of the ticket 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?

III. Analysis

Revised Ordinances of Honolulu (ROH) § 3-8.7(a) defines a gift as “any gift, whether in the form of money, goods, service, loan, travel, entertainment, hospitality, thing or promise or in any other form.” In general, a gift is a “voluntary transfer of property to another made gratuitously and without consideration.” *Black’s Law Dictionary*, p. 688 (6th 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.

For example, ROH § 3-8.8(a) prohibits any councilmember from soliciting or receiving any gift “under circumstances in which it can reasonably be inferred that the gift *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." (Emphasis added.)

See also, ROH § 3-8.7(b) (prohibiting the mayor, prosecuting attorney and appointed officers and employees from soliciting or receiving gifts where it can reasonably be inferred that the gift is intended to influence or reward official duty or action).

In addition, certain types of gifts are exempted from the prohibitions because they are truly gifts in that they do not create an inference that special treatment is either expected in return or is being rewarded. See, e.g., ROH § 3-8.8(c)(1) (exempting gifts received by will or intestate succession).

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.

The Hawaii State Ethics Commission also advises that the value of a gift of a ticket to a charitable fundraising dinner that is styled as a donation is limited to the fair market value of the benefit received. For example, in its Advisory Opinion No. 95-3, the State Ethics Commission stated: "[I]f an employee received a ticket styled as a '\$25 donation' and then attended the event and ate a plate of spaghetti, the value of the gift was the fair market value of the plate of spaghetti."

IV. Recommendation

We believe that the foregoing valuation method should be relatively straightforward to apply. The gift cap, which prohibits the solicitation or acceptance of a gift or gifts in excess of \$200 in value from the same source in one year, has underscored the importance in valuing charity fundraiser dinner tickets. One practical approach for estimating the value of the charity dinner is to ask the charity or the donor to the charity for the amount of the ticket that is not tax deductible. In most cases, the non-deductible amount will be equal to the fair market value of the dinner.

Dated: August 7, 2003

/S/
ROBIN DAVID LIU, Chairperson
Ethics Commission