

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2004-10**

**I. Summary**

Under the Ethics Commission's *Revised Guidelines on Gifts* (April 21, 2004) (*Gift Guidelines*), city officers and employees who have the authority to enforce the law, such as police officers and building inspectors, are prohibited from soliciting or receiving gifts from anyone against whom they might be required to enforce the law. Honolulu Fire Department firefighters have some law enforcement authority as a result of their duty to conduct inspections of buildings and other structures to ensure compliance with the Honolulu Fire Code. Their responsibility to conduct inspections, however, is not their primary duty. Thus, for purposes of the *Gift Guidelines*, they are not subject to the automatic ban on soliciting or receiving gifts that applies to other city employees and officers whose primary jobs are to enforce the laws.

**II. Background**

Under the Ethics Commission's *Gift Guidelines*, city officers and employees who have the authority to enforce the law are prohibited from soliciting or receiving gifts from anyone against whom they might be required to enforce the law:

City personnel who have authority to enforce the law (such as police officers, *fire* and building *inspectors*, prosecutors, and liquor commission members and employees) must follow a higher standard of conduct regarding gifts. These officers and employees may not solicit or accept any gift from persons or businesses against whom the employee may be required to enforce the law.

*Gift Guidelines*, § II.C (emphasis added).

Honolulu Fire Department (HFD) firefighters are required, as part of their basket of duties, to conduct inspections of buildings/dwellings in their fire station's geographic areas. In connection with these inspection duties, firefighters have the authority to issue violation notices. Non-compliance with these notices can ultimately result in referrals to the Honolulu Prosecutor's Office.

### **III. Question Presented**

Should HFD firefighters be classified as city personnel with the “authority to enforce the law” under the *Gift Guidelines*? Stated otherwise, do the “fire inspectors” referenced in the *Gift Guidelines* include firefighters?<sup>1</sup>

### **IV. Analysis**

#### **A. Firefighters’ Inspection Duties**

In addition to their traditional fire extinguishment and rescue duties, firefighters are responsible for conducting inspections to ensure compliance with the Honolulu Fire Code (Revised Ordinances of Honolulu (ROH), Chapter 20) (the “Fire Code”).

Basically, firefighters are required to spend ten hours per month conducting inspections of buildings, structures, and premises within the geographic area covered by their stationhouse -- their “first-in” area. Each “first-in” area is divided into three equal parts, and each of the fire station’s three watches is assigned to conduct inspections in one of the three subdivisions. Every six months the watches rotate their assigned subdivisions to ensure that each firefighter eventually conducts inspections throughout his/her entire “first-in” area.

The typical inspection process is fairly straightforward. During the initial inspection, the firefighter does a full top-to-bottom review, noting any unsatisfactory conditions on an inspection report. The premises owner is ordinarily given two weeks (the “re-inspection date”) to correct any violations or unsafe conditions.

The firefighter who conducted the initial inspection is required to follow up by the re-inspection date to determine if the corrections have been made. If they have not, the firefighter has two options.

First, if the owner has made a good faith effort to fix the problem, the firefighter, after consulting with his/her company commander, may give an extension of time to correct the unsafe condition. At the end of the extension period, the firefighter does another inspection. If the problem still has not been fixed, the firefighter writes up a “Notice of Fire Hazard” report. The Notice of Fire Hazard is then referred to the full-time inspectors in the HFD Fire Prevention Bureau for follow up. The Fire Prevention Bureau takes over responsibility for the matter. In unusual cases, if the hazardous condition is not fixed after referral to the Fire

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<sup>1</sup> The HFD has a Fire Prevention Bureau staffed by full-time inspectors. This advisory opinion addresses only whether the automatic prohibition against soliciting/receiving gifts contained in the *Gift Guidelines* applies to firefighters working out of a stationhouse. It does not apply to HFD personnel assigned as full-time fire inspectors in the Fire Prevention Bureau, against whom the automatic ban applies.

Prevention Bureau, the HFD can refer the matter to the Honolulu Prosecutor's Office. Violations of the Fire Code can be prosecuted as misdemeanors.<sup>2</sup>

Second, if the owner has not made a good faith effort to correct the hazardous conditions, the firefighter issues a Notice of Fire Hazard and refers it to the Fire Prevention Bureau.

**B. The *Gift Guidelines*' Prohibition Does Not Apply To Firefighters Because There Is No Automatic Reasonable Inference Of An Improper *Quid Pro Quo* Or Appearance of Conflict of Interest Created When They Receive Or Solicit Gifts**

There is no question that firefighters have some authority to enforce the law. At the same time, however, enforcing the law through his/her role in conducting inspections is not a firefighter's primary duty in the same sense that enforcing the law is the primary responsibility of, for instance, a police officer or a Liquor Commission inspector (or even a full-time member of the HFD's Fire Prevention Bureau). Indeed, out of the 240 hours per month that a firefighter is typically on duty, he or she is required to conduct inspections for only 10 hours – only about 4% of on-duty time. We conclude that the fact that inspections are not the primary duty of firefighters puts them in a different class from police officers, Liquor Commission inspectors, building inspectors, and prosecutors for purposes of the gift laws.

The rationale behind the *Gift Guidelines*' prohibition against law enforcement personnel receiving or soliciting gifts is that the public perception created whenever a law enforcement officer receives any gift from a person or business against whom he or she may be required to enforce the law is of a possible *quid pro quo* – *i.e.*, that the gift is intended to reward the officer for turning a blind eye to a law violation. For instance, a gift from a bar owner to a Liquor Commission inspector almost automatically raises suspicions of improper favorable treatment. RCH § 11-102(a) prohibits any city employee or officer from soliciting or accepting a gift “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.”<sup>3</sup> In addition, we have noted that a gift may be prohibited if an appearance of a conflict of interest is created by the gift. *See, e.g.*, Advisory Opinion No. 2004-1 (March 5, 2004). Thus, because a reasonable

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<sup>2</sup> **ROH § 103.4.4 Citations.**

Any person violating any of the provisions of this [fire] code shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.

<sup>3</sup> **Revised Charter of Honolulu 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.

inference or appearance of improper influence is created almost any time a potential law violator gives a gift to a law enforcement officer, the *Gift Guidelines' per se* ban on city employees or officers with law enforcement authority from soliciting or receiving gifts is justified.

On the other hand, the same concern over the public perception of an illegal *quid pro quo* does not necessarily apply when a city employee without law enforcement authority solicits or receives a gift from a member of the public. In other words, when the gift recipient is a city officer or employee without law enforcement authority there is not necessarily a reasonable inference “that the gift is intended to influence the officer or employee in the performance of such person's official duties.” RCH § 11-102(a). There may be a reasonable inference in specific cases depending on the particular circumstances, but the inference is not automatic (as it is with law enforcement officers/employees). Thus, a *per se* or an automatic ban on the receipt of gifts when the city employee does not have law enforcement power is not justified. Instead, a case by case determination as to whether there is a reasonable inference of improper influence is more appropriate.

Even though firefighters clearly have some law enforcement authority, as noted above, it is not among their primary duties. In addition, we believe it would fair to say that most people do not think of firefighters as law enforcement personnel. Rather, they are associated with putting out fires, rescuing people trapped in burning buildings, *etc.* Thus, even though they clearly have some law enforcement authority, that authority is not paramount in terms of the public's perception of what they do. Accordingly, for purposes of the *Gift Guidelines*, they are more appropriately grouped with other city officers and employees who do not have the authority to enforce the laws rather than with the police officers, full-time Fire Prevention Bureau fire inspectors, liquor inspectors, building inspectors, and prosecutors, all of whom have as their primary responsibility the enforcement of the laws.

This does not mean, of course, that they are exempt from the city's gift laws. It means only that they are not *automatically* prohibited from soliciting or receiving gifts (even tokens of aloha and holiday gifts) from people and businesses in their “first-in” area. They are still prohibited from soliciting or receiving gifts “under circumstances in which it can reasonably be inferred that the gift is intended to influence the [firefighter] in the performance of [his/her] official duties.” RCH § 11-102(a). Under certain circumstances, a gift to a firefighter from a person or business in his or her assigned inspection area could create an inference of improper influence or an appearance of a conflict of interest. However, the determination as to whether such a reasonable inference was created (and thus whether RCH § 11-102(a) was violated) will be determined under the particular circumstances.

## **V. Conclusion**

Based on the foregoing, we conclude that the *Gift Guidelines' per se* ban on soliciting/receiving gifts by city officers or employees with law enforcement authority does

not apply to firefighters whose primary responsibilities do not include conducting inspections to ensure compliance with the Fire Code.<sup>4</sup>

Dated: December 14, 2004

/S/  
ROBIN DAVID LIU, CHAIRPERSON  
Ethics Commission

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<sup>4</sup> The *per se* prohibition still applies to full-time inspectors assigned to the Fire Prevention Bureau.