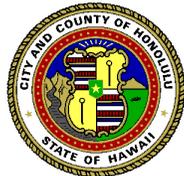


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ADVISORY OPINION NO. 2014-02

I. SUMMARY

A city employee admitted to accepting a prohibited gift from a business he/she had discretionary authority over in his/her city job and also misusing sick leave in order to play in a golf tournament. This case has been settled through a stipulation and therefore, the Commission makes no findings of fact or conclusions of law.

II. FACTUAL BACKGROUND

Employee is an [position] in the [] Section, [] Division of the [] (“Department”), City and County of Honolulu. His/her job duties include [description]. He/She also assisted [other city employee positions] with the review and approval of building permit applications. Since 2008, Employee had reviewed and approved at least 100 building permit applications that had been routed through the Department by [Business] and/or which Business was the third party reviewer for the project.

Business is a certified third-party reviewer that examines and certifies building plans for building, electrical and mechanical code compliance. Clients pay Business to review and certify building plans instead of routing plans through the city’s plans examiners. In addition to reviewing plans, Business also expedites building permit applications by routing them through other required agencies for approval such as the Department. Business was founded by [individuals A and B]. [Individuals B, C, and D] are currently registered as members of Business with the Department of Commerce and Consumer Affairs, Business Registration.

[Discussion of relationship between Employee and Business Employee]. In November 2013 Business Employee, on behalf of Business, invited Employee to play golf at the Golf Tournament as he was routing Business plans through Department. Employee accepted the invitation and allegedly paid his/her own green fees in the amount of \$50 to Business.

On [date], Employee participated in the Golf Tournament which was held at the [] Golf Course beginning at [time]. The invitation only golf tournament was supported by [] Sponsors as well as private donations from personal friends and clients of Business principals. The tournament consisted of registration, lunch, complimentary Business golf shirts, refreshments on the course, a post golf banquet, and prizes. The prizes ranged in value from \$20 gift cards to a \$650-50” TV.

Employee played 18 holes on a four-some team with other city employees. After the 18th hole, he/she ate the buffet meal and won a door prize, which was a \$50 gift card to [Retail Store]. According to [] Golf Course, the cost per person for the golf tournament was \$109 which included green fees, cart rental, food and drink. Employee left the golf course at approximately 9:00 pm that night. Employee attended a mandatory Department ethics training session on [date].

III. PROCEDURAL BACKGROUND

The Commission staff commenced an investigation of the Golf Tournament in response to a complaint alleging that approximately 40 city employees accept prohibited gifts including green fees, food, drinks and prizes from annual golf tournaments held by Business. Commission staff investigated the tournament and participants.

On February 19, 2014, the Commission found probable cause that Employee violated Revised Charter of Honolulu (“RCH”) Sec. 11-104 by misusing sick leave to attend the golf tournament, and by misusing his/her city position in providing false statements twice to the Ethics Commission Investigator -- once in an email response, and once during his/her interview. The Commission also found probable cause that Employee violated RCH Sec. 11-102.1(a) and Revised Ordinances of Honolulu (“ROH”) Sec. 3-8.7 by accepting a prohibited gift of green fees, food, drink, and a gift card in the amount of \$159 from Business, an entity he/she has direct control over in the approval of building permit applications.

The Commission authorized its Executive Director and Legal Counsel to act as Complainant in the matter and approved Complainant to issue a Notice of Alleged Violation (“Notice”) to Employee.

On February 24, 2014 Complainant served the Notice on Employee.

On March 10, 2014, Employee responded to the Notice. After good faith negotiation, the parties agreed to settle the case and signed a stipulation in which Employee admitted to accepting a prohibited gift from a business he/she had discretionary authority over in his/her city job and also misusing sick leave in order to play in a golf tournament. Per the stipulation, Employee took corrective action by returning the gift card to Business. Complainant did not object to the dismissal of all claims in the complaint except for the misuse of sick leave.

On April 25, 2014 the Commission approved and authorized the stipulation to settle the case.

IV. DISCUSSION AND ANALYSIS

City officers and employees are prohibited from soliciting, receiving, or accepting any gift, directly or indirectly, 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. A gift can be in the form of money, loan, gratuity, favor, service, thing or promise. RCH Sec. 11-102.1(a); ROH Sec. 3-8.7. City officers and employees are absolutely prohibited from accepting, receiving, or soliciting gifts valued above \$200 singularly or in the aggregate from one source within a fiscal year if the city officer or employee has discretionary authority over the donor. ROH Sec. 3-

8.7(b) and (c). Gifts below \$200 may not be solicited or accepted if a reasonable person could believe that the donor intended to reward or influence the city officer or employee in carrying out his/her official city duties. Id. ROH Sec. 3-8.7; Revised Guidelines on Gifts (Apr. 21, 2004) at Sec. I.C.

The value of a gift is equal to the fair market value of the benefits the city officer/employee receives by attending the event. Advisory Opinion No. 2010-3. In this case, the value of the gift, at a minimum, was \$109 per player which included green fees, cart rental, and banquet. This does not take into consideration the additional value of the complimentary golf shirts, lunch, refreshments provided during the round of golf, and any prizes that were won.

One of the ways City officers and employees can avoid accepting a prohibited gift is by returning the gift to the donor, or donating the gift to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes. ROH Sec. 3-8.7(d)(6); Advisory Opinion No. 2004-1 (requiring city officer to return prohibited gift won as a prize at golf tournament when city officer had discretionary authority over association that sponsored the golf tournament.)

Commission staff's investigation revealed that at least two of the participating City employees in addition to Employee, accepted prohibited gifts from Business such as free golf at a private club and a \$100 gift card when these employees had discretion to approve building permit applications. After investigation and counseling, these employees took corrective action by returning the gifts to Business.

Several other city employees who would have been found in violation of accepting a prohibited gift from Business, avoided the violation by making pre-emptive reimbursement to Business equal to the value of the gifts received.

All City employees who participated in the golf tournament used vacation time except for Employee who misused sick leave when he/she attended the golf tournament. City employees are entrusted by the public to use city resources for city purposes and RCH Sec. 11-104 prohibits the use of city resources for non-city purposes. Employee also accepted a prohibited gift from Business in the amount of \$109 consisting of food, drink, and the \$50 gift card. Employee has since taken corrective action by returning the gift card to Business.¹

The Commission previously issued an advisory opinion which discussed this very situation dealing with golf tournaments and the acceptance of prohibited gifts. In Advisory Opinion No. 2004-1, the Commission opined that an association's invitations to the golf tournament targeted participants who could affect its financial interests and business activities. "[City] Officer's invitation to and the payment of his/her greens fee for the golf tournament were based on his/her official status as an elected city officer. Officer's eligibility to win the door prize was linked to his/her invitation to the golf tournament. Taken as a whole, the grand prize was an expensive gift won at a social event sponsored by an organization whose members have interests that may be affected by Officer."

¹ This Advisory Opinion should not be construed to condone the receipt, acceptance, or solicitation of the \$59 gift. Gifts of any amount may be prohibited depending on the factual circumstances.

The Commission agrees with the policy stated by the State Ethics Commission in issuing general guidance prohibiting state officers and employees from accepting golf invitations.

For purposes of the State Ethics Code, it is immaterial that the employee expects to discuss state business during the round of golf; it is immaterial that the golf tournament benefits a charity or other worthy cause; it is immaterial that the round of golf or golf tournament is on the weekend or the employee has taken a vacation day to play; it is immaterial that the employee or legislator is invited by somebody whom he or she knows if the greens fee or tournament fee is paid by the entity.

Ethics Advisory 2013-02 regarding Complimentary Golf (Jul. 3, 2013). The State Ethics Commission also fined a state engineer \$7,500 for improperly accepting an invitation to play golf in a charity tournament paid for by Department of Transportation vendors and accepted prizes arising from his/her participation in the golf tournament. Resolution of Charge 2013-1 (Nov. 20, 2013).

V. CONCLUSION AND RECOMMENDATIONS

In order to prevent future ethics violations, the Commission will continue to work with all Departments to educate and train their employees about prohibited gifts and the city's ethics laws. The Ethics Commission shall also work with the Department and [] on specific policies to address the issue of prohibited gifts.

The Commission has the power to recommend disciplinary action to the appointing authority of a city employee who was found to have violated the ethics laws. In this case, the Commission recommends that Department should suspend Employee 1-3 days to compensate the city for the misused sick day. The identity of the Respondent will remain confidential pursuant to Office of Information Practices Opinion Letter No. 10-3.

APPROVED AS TO FORM
AND LEGALITY:

/S/
CHARLES W. TOTTO
Executive Director and Legal Counsel

/S/
CHARLES GALL, Chair
Honolulu Ethics Commission

Dated: Honolulu, Hawaii, April 25, 2014