



HAWAII STATE ETHICS COMMISSION

GIFTS

AND THE

STATE ETHICS CODE

"The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct . . ."

Constitution of the State of Hawaii, Article XIV

GIFTS AND THE STATE ETHICS CODE

Introduction. The State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS") has three statutes that prohibit state officials and employees from accepting certain gifts. The State Ethics Code also has another statute that requires state officials and employees to disclose annually a gift or gifts that exceed \$200 in value received from a single source if the source of the gift or gifts has interests that may be affected by discretionary action taken or not taken by the state official or employee. Gifts given to the spouse or dependent child of a state official or employee are included for purposes of determining whether the gift or gifts exceed \$200.

The purpose of this flyer is (1) to explain in general the three statutes in the State Ethics Code that prohibit the acceptance of certain gifts, and (2) to explain our gifts disclosure law. State officials and employees must always bear in mind that the mere fact that there is a gifts disclosure law does not mean that receiving certain gifts is necessarily acceptable. Again, the State Ethics Code has a number of statutes that prohibit the acceptance of certain gifts. The State Ethics Code applies to state legislators, state officials, state employees, and to state board members. The State Ethics Code does not apply to judges or justices, since they fall under the jurisdiction of the Commission on Judicial Conduct. In this flyer, for convenience, the terms "state official" and "state employee" will be used to refer to state legislators, state officials, state employees, and state board members.

Statutory Construction. This flyer explains how the State Ethics Commission generally interprets a number of provisions in the State Ethics Code that pertain to state officials and employees soliciting and/or accepting gifts. In interpreting these statutes, the State Ethics Commission interprets the statutes in accordance with section 84-1, HRS, which provides that the State Ethics Code shall be "liberally construed to promote high standards of ethical conduct in state government." [Emphasis added.] Black's Law Dictionary (Sixth Edition) states that "liberal construction" of a statute means that statutes can be interpreted to expand the meaning of a statute to meet cases that are clearly within the spirit or reason of the law, or within the "evil" which the law was designed to remedy, provided that the interpretation is not inconsistent with the language of the law. Liberal construction resolves all reasonable doubts in interpreting a law in favor of the applicability of the statute to a particular case. It means that the words of a statute should not be forced out of their natural meaning, but that the language of the statute should receive a fair and reasonable interpretation with respect to the object and purpose of the statute. In interpreting the State Ethics Code, the State Ethics Commission is also mindful of the first sentence in Article XIV of our State Constitution, which states that "the people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct." [Emphasis added.] Article XIV of our State Constitution establishes the State Ethics Commission and mandates the enactment of the State Ethics Code.

THE THREE ETHICS CODE STATUTES THAT PROHIBIT CERTAIN GIFTS

1. Section 84-11, Gifts. Section 84-11, entitled "Gifts," of the Hawaii Revised Statutes is the primary law that prohibits state officials and employees from accepting or soliciting gifts in certain circumstances. Section 84-11 reads in its entirety as follows:

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, 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 legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

This section of the State Ethics Code prohibits a gift to a state official or employee if one can reasonably infer that the gift is intended to reward or influence discretionary action on the part of a state official or employee. It is important to note that this statute is violated simply if it is reasonable to infer that a gift has been given to influence or reward discretionary action. In other words, the statute may be violated whether or not the donor of the gift actually intended to influence or reward discretionary action on the part of a state official or employee. Thus, for example, if a company received a permit from the State and gave a state employee a \$50 gift certificate as a "thank you" for the state employee's hard work, the State Ethics Commission would find that the gift would be prohibited because it would still be reasonable to infer that the gift was intended to reward the state employee.

Similarly, if a company were to give a state employee a gift prior to discretionary action being taken by the state employee, the State Ethics Commission could find that it is reasonable to infer that the gift is intended to influence the state employee's action. Thus, for example, the State Ethics Commission would prohibit a legislator from accepting an expensive gift from a lobbyist if the lobbyist has an interest in pending or proposed legislation, or it is otherwise reasonable to infer that the gift is given to influence or reward the legislator.

In determining whether section 84-11 prohibits any particular gift, the State Ethics Commission reviews all relevant factors, such as the value of the gift, and the nature of the discretionary action the state official or employee has taken or may take. That a state official or employee contends that a gift will not actually influence him or her is not a factor in determining the legality of soliciting or accepting a gift under section 84-11, HRS. As stated above, section 84-11 is violated if it is "reasonable to infer" that a gift has been given to influence or reward official action. Section 84-11 is based on the appearance of influence or reward, not the actuality of such. Prohibiting an "appearance of impropriety" with respect to gifts avoids public suspicion and thus furthers public confidence in government. Furthering public confidence in government is one of the primary objectives of the State Ethics Code.

2. Section 84-13(2), Fair Treatment. Section 84-13(2), a part of the "Fair Treatment" section of the State Ethics Code, prohibits state officials and state employees from using or attempting to use their official positions by:

Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law [Emphasis added.]

This section of the State Ethics Code prohibits state officials and state employees from accepting or soliciting any "compensation" or other "consideration" for the performance of official duties unless the compensation or consideration is provided for by law. The term "compensation" is defined in section 84-3 of the State Ethics Code to mean "any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another." Because the term "compensation" includes any thing of value or of economic benefit, the term "compensation" also includes any gift that may be given to a state official or employee "for the performance of" the state official's or employee's official duties or responsibilities. It is also important to note that the term "consideration" in its general legal sense also includes gifts or anything of economic benefit.

In interpreting this statute in the past, the State Ethics Commission has prohibited a state employee from accepting jewelry that was given to the state employee for giving a speech, which was part of the state employee's official duties. In Advisory Opinion No. 553, the State Ethics Commission prohibited a state employee from accepting a salary supplement and fringe benefits from a non-state source to augment the state employee's state salary.

Thus, in interpreting this section of the State Ethics Code, the State Ethics Commission would interpret this provision of the ethics code to prohibit any gift given to or solicited by a state official or state employee for the performance of the state official's or employee's official duties or responsibilities, unless acceptance or solicitation of the gift is authorized by law. The State Ethics Commission would interpret the term "for the performance of one's official duties or responsibilities" to include gifts that are given to a state official or employee because the state official or employee is performing his or her official duties or responsibilities. Though the term "compensation" is defined to mean that the gift is given "in return for services rendered or to be rendered," the State Ethics Commission interprets this phrase in a liberal manner (in accordance with section 84-1, HRS) to apply also to gifts given because of the performance of official duties or responsibilities.

Further, the State Ethics Commission would interpret the phrase "for the performance of . . . official duties" in section 84-13(2) to incorporate and/or be synonymous with the phrase "in return for services rendered or to be rendered" found in the definition of the term "compensation" in section 84-3, HRS. This interpretation is appropriate since the phrase "for the performance of . . . official duties" is language

specifically inserted in section 84-13(2) in determining the application of the term "compensation" in section 84-13(2).

It appears clear to the State Ethics Commission that section 84-13(2) was meant to prevent state officials and employees from unjustly enriching themselves by soliciting or accepting money, gifts, or anything of value simply because of the performance of their official duties.

3. Section 84-13, Fair Treatment. The initial paragraph of the "Fair Treatment" section of the State Ethics Code prohibits state officials and employees from using, or attempting to use, their official positions to secure for themselves or others any unwarranted treatment or benefits. The initial paragraph of the Fair Treatment section of the State Ethics Code reads as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others . . .

The State Ethics Commission has interpreted this section of the State Ethics Code to prohibit certain gifts. For example, the State Ethics Commission interpreted this section of the State Ethics Code to prohibit a legislator from accepting an expensive door prize given at a dinner while attending the dinner in his official capacity. The State Ethics Commission believes there is little doubt that one of the intentions of this section of the State Ethics Code is to prohibit state officials and employees from receiving substantial gifts merely or solely because of their status as state officials or employees. Thus, the State Ethics Commission believes that this section of the State Ethics Code also prohibits state officials and employees from accepting gifts given to them because of their official position under circumstances in which there is no legitimate reason or justification for the state official or employee to accept the gift.

The State Ethics Commission recently applied this section of the State Ethics Code to prohibit a state employee from accepting a computer as a prize for himself. The state employee's state agency had purchased a computer from a company, and along with the computer was a card that, if filled out and submitted to the company, might result in a prize of a computer. The State Ethics Commission ruled that although the state employee had taken the trouble to fill out the card and submit it to the company, the card was the property of the State and thus the computer belonged to the State.

Under certain circumstances, the State Ethics Commission also believes, as discussed above, that this section of the ethics code would bar a state official or employee from accepting a gift that is given to the state official or employee merely because of his or her status as a state official or employee. The State Ethics Commission may also determine that the gift is in actuality a gift to the State, as opposed to a gift to the state official or employee.

The Fair Treatment section of the State Ethics Code prohibits state officials and employees from using or attempting to use their official positions to secure unwarranted privileges or benefits for themselves. The State Ethics Commission believes that the use or attempted use of one's official position need not necessarily be an active (so to speak) use of position, but can also be passive in nature. Thus, the Commission believes that if a state official or employee accepts a gift that is given solely because of his or her status as a state official or employee, acceptance of the gift may constitute a misuse of the person's position, in the sense that the state official or employee has accepted the gift in his or her capacity as a state official or employee.

ARE ALL GIFTS PROHIBITED?

No. Although the three statutes discussed above prohibit gifts in certain situations, the State Ethics Commission does not believe that all gifts to state officials or employees are prohibited, or even that they should be. Certainly most inexpensive promotional items (which may also be available to the public at large) may pose no problem under any of the three statutes described above. Flower leis and inexpensive tokens of aloha or appreciation would generally also be acceptable. Generally, it would be wise to check with the State Ethics Commission for advice with respect to a particular gift. Requesting advice is important because it is not possible for the State Ethics Commission to generalize to any great extent about particular gifts, given the extraordinary variation of the impact of action various state officials or employees may have on the donors of gifts.

GIFTS DISCLOSURE LAW

Section 84-11.5, Reporting of Gifts. Section 84-11.5, the gifts disclosure law, was enacted in 1992. This law requires state officials and employees to report gifts from a donor valued singly or in the aggregate in excess of \$200 if the source of the gift or gifts has interests that may be affected by discretionary action or lack of discretionary action by a state official or employee. Gifts given to the spouse or dependent child of a state official or employee from one source are also considered in determining if the gift or gifts exceed \$200. Note that the gifts disclosure law does exempt some gifts from disclosure, such as political campaign contributions that comply with state law, or gifts received by will or intestate succession. The gifts disclosure statement must be filed on June 30 of each year, and covers the period from June 1 of the preceding calendar year to June 1 of the year of the report. If gifts meet the criteria for disclosure, they must be disclosed in accordance with the law. However, merely disclosing a gift does not mean that the gift is acceptable under sections 84-11, 84-13(2), or 84-13, as discussed above. Thus, before accepting gifts, state officials or employees may wish to contact the State Ethics Commission for an opinion as to whether a gift is acceptable in the first place. For more information about the gifts disclosure law, please contact the State Ethics Commission.

REQUESTS FOR ADVISORY OPINIONS OR INFORMAL ADVICE

As discussed above, the State Ethics Code has a number of provisions that may prohibit certain gifts. Before a state official or employee accepts a gift, the state official or employee may wish to contact the staff of the State Ethics Commission for an advisory opinion or informal advice as to whether the gift is acceptable under the State Ethics Code. Again, it must be kept in mind that merely disclosing a gift does not necessarily render the gift acceptable under the State Ethics Code. Although State officials and employees may wonder why the State Ethics Commission does not simply issue lists of prohibited gifts, it should be borne in mind that the area of gifts is quite complex, and a gift acceptable for one state official under certain circumstances may be prohibited for another state official because of differing circumstances. Since this is the case, the State Ethics Commission believes it is more helpful for the Commission to describe the statutes and principles that apply to the solicitation or acceptance of gifts.

SUMMATION

While there are three statutory provisions in the State Ethics Code prohibiting certain gifts under certain circumstances, the State Ethics Commission does not believe that all gifts given to state officials or employees are prohibited, nor does the State Ethics Commission believe that all gifts should be prohibited. Certain gifts may be justifiable under certain circumstances. It should also be noted that the area of gifts is particularly problematic, since gifts, which may range widely in value, are given in a myriad of circumstances to state officials and employees who have very different official responsibilities. The State Ethics Commission seeks to prohibit the acceptance of those gifts that are inappropriate under our ethics laws and, in terms of acceptance, are otherwise unjustifiable for one reason or another.

FOR MORE INFORMATION

Contact the Hawaii State Ethics Commission by telephone at 587-0460, by fax, 587-0470, or by mail sent to either P.O. Box 616, Honolulu, Hawaii 96809, or street address: American Savings Bank Tower 970, 1001 Bishop Street, Honolulu, Hawaii 96813.