



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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## **Guidelines for Gifts Under the State Ethics Code**

The State Ethics Code, chapter 84, Hawaii Revised Statutes (“HRS”), has a gifts law that prohibits state legislators and employees from accepting certain gifts. To assist legislators and employees in better understanding the gifts law and to help prevent inadvertent violations of the law, these guidelines outline the types of gifts that generally may be accepted and the types of gifts that generally may not be accepted under the law. The guidelines are not intended to be a comprehensive discussion of the gifts law; rather, they are a resource to help you quickly recognize the types of gifts that may raise concerns under the law. It is strongly recommended that you contact the State Ethics Commission (“Commission”) for advice if you have questions about any gifts, especially gifts that may not be addressed by these guidelines.

### **The State Ethics Code: The Constitutional Mandate and Statutory Purpose**

The Hawaii State Constitution, Article XIV, entitled “Code of Ethics,” declares that “[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” (Emphasis added.)

With this constitutional mandate as the foundation, the legislature adopted the State Ethics Code directing that the ethics laws be “liberally construed to promote high standards of ethical conduct in state government.” (Emphasis added.) It is in this light that the Commission must interpret the gifts law and the other sections of the State Ethics Code.

### **Gifts Law, HRS Section 84-11**

**§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.

The gifts law prohibits a legislator or employee from accepting any gift if it is reasonable to infer the gift is intended to influence or reward official action. In determining whether or not a gift may be accepted, the Commission considers the following: (1) the value or cost of the gift; (2) the relationship between the donor of the gift and the recipient of the gift, including whether the donor is subject to official action

by the recipient; and (3) whether the gift provides any “state benefit,” including whether the gift will benefit the recipient in the performance of his or her official duties.

A legislator or employee who receives a gift sometimes may contend that the gift will not actually influence him or her. This, however, is not a factor in determining whether or not a gift may be accepted under the law. The gifts law is based on perception: Does it appear to a reasonable person that the gift is intended to influence or reward official action? If the answer is yes, then the gift is prohibited.

### **Gifts Guidelines**

The following guidelines apply to four categories of gifts: Tangible Gifts; Meals and “Food and Drink” Events; Activity-related Gifts; and Travel.

Certain types of gifts, generally, may be accepted under the gifts law. Please note, however, that the guidelines concerning acceptable gifts may not apply to all state employees. In particular, for employees whose official duties include law enforcement, regulation, inspection, or procurement, the acceptance of any gift from certain individuals or organizations may be prohibited. These employees are advised to contact the Commission before accepting gifts from anyone who is subject to their enforcement, regulation, inspection, or procurement duties.

**(1) Tangible Gifts: “Gifts of Aloha” and other nominal gifts may be accepted.**

“Gifts of Aloha” are modest gifts of nominal value, which are traditionally given as part of our local culture as a gesture of aloha or goodwill. “Gifts of Aloha” include, but are not limited to, flowers or a flower lei, or a box of candy, cookies, manapua or malasadas to share with the office.

Other tangible gifts of nominal or minimal value may also be accepted. Examples of acceptable gifts include a calendar, coffee mug, or small promotional business items such as a pen, mousepad, or refrigerator magnet.

Generally speaking, tangible gifts other than “Gifts of Aloha” or gifts of nominal value cannot be accepted. Examples of prohibited tangible gifts include, but are not limited to, cash, gift cards, computer or electronic equipment, jewelry, sports equipment, and gifts of personal benefit that are not of nominal or minimal value.

**(2) Meals and “Food and Drink” Events: Meals and “food and drink” types of events valued at under \$25, generally, may be accepted.**

Examples of meals and “food and drink” types of events include, but are not limited to, breakfasts, lunches, and dinners; pupus; receptions; “meet

and greet” types of events; and fundraiser dinners. These meals and “food and drink” events, if valued at under \$25, generally may be accepted.<sup>1</sup>

The value of a gift generally means its fair market value. With respect to events requiring admission by ticket, such as a fundraiser dinner, the Commission considers the value of the event to be the face value of the ticket, not the net cost of the ticket or the subjective value of the food and drink consumed by an individual at the event.

Receptions and meals, including ticketed events, valued at \$25 or more, may not be accepted by a legislator or employee unless there is a legitimate “state benefit,” i.e., there is a reasonable relationship between the event and the legislator’s or employee’s official duties. Generally, a desire to “show support” for an organization by attending a fundraising function is not, by itself, sufficient to establish a “state benefit.”

**(3) Activity-related Gifts: Gifts that are activity-related, generally, cannot be accepted except in very limited situations.**

“Activity-related” gifts include, but are not limited to, recreational, sports, and entertainment events such as golf (including charity golf tournaments), cruises, tickets to athletic contests, movies, shows, concerts, and tickets or passes to visitor attractions.

**(4) Travel: Travel cannot be accepted absent a legitimate “state benefit,” i.e., a reasonable relationship between the trip and the legislator’s or employee’s official duties.**

Gifts that are travel-related, including, but not limited to, airfare, hotel accommodations, and meals, generally, may be accepted only if there is a legitimate “state benefit” (i.e., the purpose of the travel-related gift must reasonably benefit the legislator or employee in performing his or her official duties).

If you are offered a gift that includes travel-related expenses, it is strongly recommended that you contact the Commission’s office for advice. You will be asked to complete a travel questionnaire that will assist the Commission’s staff in issuing you advice.

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<sup>1</sup> However, as discussed above, for employees whose official duties include law enforcement, regulation, inspection, or procurement, the acceptance of any gift from certain individuals or organizations may be prohibited, so those employees should contact the Commission’s office for advice prior to accepting meals and invitations to “food and drink” events of any value.

Gift Type	What Can Be Accepted
Tangible Gifts	"Gifts of Aloha" and gifts of nominal or minimal value
Meals and "Food and Drink" Events	Less than \$25
Activity-related Gifts	Nothing, except in very limited circumstances
Travel	Must establish legitimate "state benefit"

The Commission emphasizes that these are general guidelines and they may not apply to every gift situation. There may be circumstances that would allow a legislator or an employee to accept a gift that falls outside of the guidelines for acceptable gifts.<sup>2</sup> If you are offered a gift that appears to fall outside of these guidelines, you should contact the Commission for further discussion and advice about your specific situation.

In addition to the gifts law, other sections of the State Ethics Code may also apply. For example, the State Ethics Code prohibits legislators and employees from accepting gifts that amount to unwarranted privileges or benefits to them.<sup>3</sup>

**Reporting of Gifts, Section 84-11.5, HRS**

The State Ethics Code also requires legislators and employees to file a gifts disclosure statement if three conditions are met: (1) the legislator or employee, or the legislator's or employee's spouse or dependent child, has received a gift or gifts valued singularly or in the aggregate in excess of \$200 from one source; (2) the source of the gifts has interests that may be affected by the legislator's or employee's official action; and (3) the gift is not exempted from the gifts reporting requirements.<sup>4</sup> Please remember that a legislator or employee is not allowed to accept a gift under the State Ethics Code just because the gift has been reported on a gifts disclosure statement.

**Contact the State Ethics Commission for Advice**

If you have questions as to whether the acceptance of any gift is permissible under the State Ethics Code, please do not hesitate to contact the State Ethics Commission for advice at (808) 587-0460 or [ethics@hawaiiethics.org](mailto:ethics@hawaiiethics.org).

<sup>2</sup> The legislator or employee must, however, demonstrate that the gift will provide a legitimate state benefit.

<sup>3</sup> HRS section 84-13 et seq. It is beyond the scope of these guidelines to discuss gifts situations that may also raise concerns under other sections of the State Ethics Code. If you have questions about other ethics laws that may apply to a specific situation, please contact the Commission's office.

<sup>4</sup> See HRS section 84-11.5(d).