



**HAWAII  
STATE  
ETHICS  
COMMISSION**

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

December 21, 2006

**CONFIDENTIAL**

**VIA MAIL AND FACSIMILE: 587-4380**

Mr. Dennis Ihara  
Deputy Registrar  
Department of Land and Natural Resources  
Bureau of Conveyances  
P.O. Box 2867  
Honolulu, Hawaii 96803

Dear Mr. Ihara:

This letter is in response to your recent inquiry to our office regarding gifts recently given to the employees of the Bureau of Conveyances ("Bureau"). These gifts are from individuals or entities that do business with the Bureau, who are thus subject to the discretion of Bureau employees.

Based on our review of the facts of this situation, along with the fact that we have been involved in advising your office with regard to gifts over the last ten years or so, we have concluded that the acceptance (or solicitation) of gifts by Bureau employees from persons, businesses, or others who are subject to discretionary action by the Bureau, is prohibited under the State Ethics Code, Chapter 84, Hawaii Revised Statutes.

Please note that Article XIV of the Constitution of the State of Hawaii provides that: "The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct . . ." (Emphasis added.) To achieve this end, Article XIV established the Hawaii State Ethics Commission, and mandated that the Legislature "adopt a code of ethics" for state officials and employees.

Pursuant to Article XIV of the Constitution of the State of Hawaii, Chapter 84, Hawaii Revised Statutes ("HRS"), which sets forth a code of ethical conduct for state officials and state employees (the "State Ethics Code"), was duly enacted into law. The State Ethics Commission has been in existence since January 1, 1968.

Please note that HRS section 84-1 of the State Ethics Code mandates that the State Ethics Code shall be "liberally construed" to promote high standards of ethical conduct in state government. In accordance with this section of the State Ethics Code, the Hawaii State Ethics Commission ("State Ethics Commission") is charged with the duty to liberally construe the State Ethics Code when applying the various provisions of the State Ethics Code. "Liberal construction" of the law

means that a statute can be interpreted broadly to meet cases that are within the spirit or reason of the law, or within the "evil" the law was designed to remedy. The State Ethics Commission thus is charged with the duty to interpret the State Ethics Code, and to apply "liberal construction" when appropriate.

Please note that in keeping with the mandate of Article XIV of the Constitution of the State of Hawaii, the State Ethics Code contains provisions pertaining to gifts and provisions pertaining to the misuse or attempted misuse by a state employee of his or her "official position." These provisions will be discussed below.

### The Gifts Law, HRS section 84-11

HRS section 84-11, entitled "Gifts," is the primary law that prohibits state officials and employees from accepting or soliciting gifts in certain circumstances. This provision of the State Ethics Code 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. [Emphasis added.]

This section of the State Ethics Code prohibits a gift to a state official or state 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.

In determining whether HRS section 84-11 prohibits any particular gift, the State Ethics Commission reviews relevant factors, including the value of the gift, the circumstances under which the gift is given, whether the gift benefits the recipient personally or whether the gift benefits the State, and the nature of the relationship between the donor of the gift and the recipient of the gift. The Gifts Law is aimed at preventing both the actuality, and the appearance of, impropriety. 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 HRS section 84-11. As stated above, HRS 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 State government.

Because of the important functions of the Bureau with regard to those subject to the Bureau's official actions, Bureau employees are particularly susceptible to the appearance of impropriety with regard to gifts. The Bureau of Conveyances takes significant state action. Members of the public who do business with the Bureau can be significantly affected by its actions. There can be major legal ramifications based on the Bureau's actions. Thus, with respect to gifts, serious concerns arise when Bureau employees accept gifts.

While it has been the State Ethics Commission's general policy that acceptance of an occasional, inexpensive "token of aloha" that is shared with the office would not generally be prohibited under the Gifts Law, we do not believe it is accurate to describe gifts from persons or entities who do business with the Bureau as simply "tokens of aloha." Given the nature of services the Bureau provides and the nature of the relationship between the Bureau and those subject to its action, a reasonable inference can be made that a gift given to the Bureau, raises a "reasonable" inference that the gift is given to influence or reward official action. In fact, our office has been told that ~~companies providing gifts often ask for special consideration in having their work processed.~~ Under such circumstances, serious ethical concerns are raised.

Over the past decade or so, our office has been dealing with complaints and inquiries about gifts being received or solicited by Bureau employees from persons or corporations that do business with the Bureau.

Under both a (1) "liberal construction" and (2) straightforward interpretation of the Gifts Law, HRS section 84-11, we conclude, given the totality of the circumstances in this situation, that all gifts of any value beyond a de minimus value or minimal value (such as logo pens, etc.) given to the Bureau or Bureau employees, by persons who do business with the Bureau, raise, at a minimum, a "reasonable inference" that the gifts are given to influence or reward Bureau employees with respect to the services the Bureau provides to the public. Therefore, we interpret HRS section 84-11 as prohibiting the Bureau and employees of the Bureau from accepting gifts from customers of the Bureau. This would include gift baskets and gifts of food or beverages, and other gifts of a similar or greater value. Such gifts cannot be accepted, even if shared by the office, because of the important nature of the action the Bureau takes, not to mention the fact that the Bureau receives requests from some of its gift-giving customers for special favors.

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The Fair Treatment Law, HRS section 84-13

HRS section 84-13, entitled "Fair Treatment," states, in relevant part, 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; including but not limited to the following:

...

- (2) 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.

HRS section 84-13, known as the Fair Treatment Law, 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. More particularly, HRS section 84-13(2), a part of the Fair Treatment Law, prohibits state officials and 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 except as provided by law. [Emphasis added.]

HRS section 84-13(2) prohibits state officials and state employees from accepting or soliciting any "compensation" or "consideration" for the performance of their 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" 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. This situation arises when gifts are tied to requests for special favors. HRS section 84-13(2) applies as well to gifts that are given because of a state employee's mere status as a state employee. In this case, the ability to accord a special favor, whether done or not, creates a "status" gift.

HRS section 84-13(2) was enacted to prevent state officials and state employees from unjustly enriching themselves by soliciting or accepting any money,

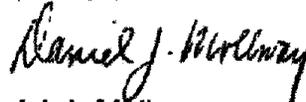
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~~gifts, or anything of value, simply because of the performance of their official duties, or because of their mere "status" as state employees.~~

It is evident and credible from what our office has been told over the years that Bureau employees are receiving gifts given by individuals, lawyers, and corporations who hope to obtain special favors or believe they must provide gifts in regard to the handling of their submittals to the Bureau. However, as state employees, Bureau employees are ~~already paid by the State~~ to perform certain duties and responsibilities for the Bureau of Conveyances, including giving proper attention to the work of Bureau customers and processing the work in an expeditious and ~~impartial~~ manner. Thus, Bureau employees are not entitled to receive any ~~additional compensation~~ (i.e., things of value) for performing the same duties and responsibilities that they are already paid by the State to perform.

Bureau employees who accept gifts or anything of value under the circumstances discussed above, would be in violation of ~~HRS section 84-11, 84-13(2), and 84-13, in our opinion.~~ We thus conclude that Bureau employees may not, in light of the above, accept gifts from those subject to the official action of the Bureau.

Very truly yours,



Daniel J. Mollway  
Executive Director and General Counsel

DJM/dch

c: Peter Young  
Robert Masuda

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