

Questions and Answers on the Gifts Disclosure Law

Hawaii Revised Statutes section 84-11.5, Act 332 (1992), The Gifts Disclosure Law, requires legislators and state employees to file a gifts disclosure statement with the State Ethics Commission on June 30 of each year if all of the following conditions are met.

- 1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in other form;
- 2) The source of the gift or gifts has interests that may be affected by official action or lack of action by the legislator or employee;
- 3) The gift does not fall into an exception to the reporting requirement.

The exceptions to the reporting requirement are as follows:

- 1) Gifts received by will or intestate succession;
- 2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- 3) Gifts from a spouse, fiance, fiancee, any relative within four degrees of consanguinity or the spouse, fiance, or fiancee of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- 4) Political campaign contributions that comply with state law;
- 5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- 6) Gifts that, within thirty days after receipt, are returned to the giver or delivered 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;
- 7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

Important: Hawaii Revised Statutes section 84-11 prohibits a state legislator, or a state employee (including members of boards or commissions) from accepting any gift under circumstances in which it can reasonably be inferred that the gift is intended to influence or reward official action. Under many circumstances, section 84-11 may prohibit a state employee or legislator from accepting a gift of even a relatively small value. The gifts disclosure law should not be interpreted to automatically allow any or all gifts. Whether a particular gift would be violative of section 84-11, HRS, should be checked with the State Ethics Commission.

Note: Part of the duties of the staff attorneys at the State Ethics Commission include assisting legislators and employees in determining the requirements of chapter 84, Hawaii Revised Statutes, the State Ethics Code. Thus, legislators and employees need not hesitate to contact the State Ethics Commission's staff attorneys for advice regarding the State Ethics Code.

In order to assist legislators and employees in determining the requirements of the gifts disclosure law, the State Ethics Commission offers the following sample Questions and Answers.

1. Gifts of travel.

Question: If a legislator or employee takes official action that may affect the interests of a business and that business offers to pay the legislator's or employee's travel costs for a state trip, must the travel costs be reported?

Answer: Yes, if the \$200 threshold amount is met, then the gift of travel must be reported. Gifts of travel must be reported even if the travel serves a state purpose.

2. Consolidated reports by immediate family members.

Question: Must a legislator or employee file a "consolidated" report, that is one which includes all gifts received by the legislator or employee, her spouse, and her dependent children, or must the legislator or employee, her spouse, and her dependent children each file a separate report?

Answer: The legislator or employee must file a report that includes all reportable gifts received by the legislator or employee, her spouse, and her dependent children. The legislator's or employee's spouse and dependent children are not required to file separate reports.

3. Computing \$200 threshold amount for family units.

Question: Does the \$200 threshold amount apply to the family unit consisting of the legislator or employee, her spouse, and her dependent children, or is each member of the family unit accorded a separate \$200 threshold?

Answer: The \$200 threshold amount applies to the family unit. If an employee receives a gift worth \$100 and her spouse receives a gift worth \$101 from the same source, then the threshold requirement is met.

4. Gifts of meals.

Question: Do gifts include lunches and dinners and invitations to parties that are not evenly exchanged?

Answer: Yes. If (1) the value of the such gifts exceeds the \$200 threshold requirement, (2) the legislator or employee receiving the gifts takes action that may affect the donor of the gifts, and (3) the gifts are not covered by one of the exceptions to the reporting requirement, then they must be reported. Thus, if, within the disclosure period, the donor of the gift gave four meals to the legislator or employee and the aggregate value of these meals was in excess of \$200, then they must be reported.

5. Special occasion gifts.

Question: Do gifts include baby shower, wedding, get well or sympathy gifts which are not evenly exchanged?

Answer: Yes. If (1) the value of the gift exceeds the \$200 threshold amount, (2) the recipient takes official action that may affect the donor of the gift, and (3) the gift is not covered by an exception to the reporting requirement, then it must be reported. The exception for exchanges of equal value given on holidays or special occasions covers only reciprocal gift-giving within the reporting period.

6. Gifts of campaign fundraiser tickets.

Question: Do gifts include campaign fundraiser tickets which someone else has purchased and then gave to a legislator or employee at no cost? If so, how does one value the ticket for purposes of determining whether the \$200 threshold amount has been exceeded?

Answer: Gifts include gifts of campaign fundraiser tickets. The gift of a campaign fundraiser ticket does not fall within the exception of political campaign contributions that comply with state law. The value of the ticket is determined by the market value of the ticket. If the ticket would cost a member of the public \$100 to purchase, then the value of the ticket is \$100.

7. Personal service gifts.

Question: Do gifts include assistance in moving, babysitting services, and renovation or building projects?

Answer: Yes. The law states that gifts may take the form of services. If the gift of service meets the threshold requirements, then it must be reported. The value of the service is determined by a good faith estimate of the market value of the service.

8. Gifts of entertainment.

Question: If the legislator's or employee's spouse is required to entertain or be entertained by clients as part of the spouse's job, and if the legislator or employee takes part in this entertainment, must the legislator or employee report the entertainment as a gift?

Answer: A reportable gift may take the form of entertainment. If the gift of entertainment meets the threshold requirements for reporting the gift, then it must be reported. Keep in mind that in order to meet the threshold requirements, the legislator or employee must take official action that may affect the donor of the gift.

9. Discounts earned through private employment.

Question: Are extensions of reduced rates/discounts to a legislator or employee from the private employer of the legislator's or employee's spouse reportable gifts?

Answer: Reduced rates, discounts, or other benefits earned by a legislator's or employee's spouse may not be considered gifts when extended to include the legislator or employee if such benefits are part of the compensation package of the privately employed spouse. Otherwise, such gifts may be reportable. In these cases, the State Ethics Commission should be contacted for advice.

10. "Official action" defined.

Question: What constitutes "official action" by the legislator or employee?

Answer: "Official action" as defined in chapter 84, Hawaii Revised Statutes, means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

11. "Interests that may be affected" defined.

Question: What are "interests that may be affected"? Must the recipient of a gift anticipate the possibility of her taking action in the future that affects the interests of the donor?

Answer: "Interests that may be affected" are any interests, including personal property, real property, and monetary interests. To an extent, legislators and employees are required to anticipate whether they will take official action that may affect the donor's interests. If, at the time the gift is given, the legislator or employee has reason to believe that she will take action that may affect the donor's interests at any time in the future, then this requirement is met. If a legislator or employee is unsure whether a particular interest is an interest for purposes of the gifts disclosure law, then she should contact the State Ethics Commission for further advice.

12. "Employee" defined.

Question: What is an "employee"? Is an uncompensated member of a board or commission a state employee?

Answer: Hawaii Revised Statutes chapter 84 defines an employee as any nominated, appointed, or elected officer of employee of the State, including members of boards and commission, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges. The gifts disclosure law applies to all state employees and all legislators.

13. Donations to a state agency for agency use.

Question: If a private business donates money or goods or services to a state agency for the use of the agency, and not for any benefit of a particular employee, must this be reported as a gift?

Answer: No. A donation to a state agency for the benefit of the agency is not a reportable gift.

14. Gifts of pupus and drinks.

Question: A company that does business with a state agency invites employees of the agency to participate in a golf game. Although everyone pays for their own golfing fees, the company treats the officials to pupus and drinks after the game. Must the value of the pupus and drinks be reported and how must it be reported?

Answer: If the gift of the pupus and drinks alone or in combination with other gifts from the same source meets the threshold reporting requirements, then it must be reported. The value of the gift is a good faith estimate of its market value.

15. Aggregate value of gifts exceeding \$200.

Question: An employee takes official action affecting the interests of a company. On four occasions during the reporting period the company gives gifts to the employee. The value of each gift is \$60. Must the employee report these gifts?

Answer: Yes. During the disclosure period the aggregate value of the gifts exceeded \$200. Employees should keep track of the gifts that they receive within the disclosure period in order to determine when the value of these gifts exceeds \$200. The disclosure period runs from June 1 of the preceding year to June 1 of the current year. Once the disclosure period has ended, the value of gifts received within that period are not carried forward into the next period.

16. Gifts from family members and relatives.

Question: An employee receives a \$300 wedding gift from her first cousin. The employee takes official action affecting the first cousin. Must the employee report the gift?

Answer: No. First cousins are within four degrees of consanguinity and therefore fall under an exception to the disclosure law.

17. Campaign contributions.

Question: A legislator running for re-election receives a \$500 campaign contribution and reports this as required by the campaign spending laws. Is she also required to disclose it as a gift?

Answer: No. Campaign contributions that comply with state law are exempt from the gifts disclosure law.

18. Gifts of golf and invitations to golf tournaments.

Question: A state employee is given a slot in a golf tournament by a corporate sponsor of the event. The employee takes official action that may affect the sponsor. Must the employee file a gifts disclosure statement?

Answer: Yes. If the value of the gift exceeds \$200, then the employee must report the gift. The value of the gift is a good faith estimate of the fair market value of a tournament slot. The employee must also report any other gifts received in connection with the tournament if they meet the threshold requirements.

19. Computing the full value of gifts received.

Question: A state official is given a season pass to the opera. The state official takes official action that may affect the donor of the pass. The pass is valued at \$250. The holder of the pass may attend all five performances of the opera. The cost of attending each performance of the opera is valued at \$50. The state official attends only two performances. Must the state official disclose this gift?

Answer: Yes. The gift of the season pass valued at \$250 must be disclosed. The gift was what was actually received by the state official, not the portion of the gift that the state official opted to use. If a state employee or official receives a reportable gift, but chooses to make use of only a portion of that gift, then the full value of the gift received must be reported.

20. Disposal of a gift received.

Question: Over the reporting period, a state official receives \$198 worth of gifts from one source. The state official takes official action that may affect the donor

of these gifts. Before the reporting period ends, the official receives a final gift from the donor. The gift is a calendar valued at \$5.00. The state official immediately throws the calendar away. Must the official report all of the gifts received by this donor?

Answer: Yes, the official must report all of the gifts received from this one source. The final gift of the calendar put the value of the gifts received at an amount in excess of the threshold reporting requirement. Although it is understandable that a state employee may wish to dispose of a gift, she may not avoid the disclosure requirements by throwing the gift away. Once a gift has been received, the only way to dispose of the gift is to, within thirty days after receipt, either return the gift to the giver, or deliver it to a public body or a bona fide educational or charitable organization without claiming the donation as a charitable contribution for tax purposes.

21. Receipt of an airline ticket, tickets to future events, invitations, etc.

Question: A state employee receives an airline ticket on May 28. The ticket is for a flight leaving on June 5. The next reporting period begins on June 1. The gift meets all the requirements for disclosure. In which reporting period must the employee report the gift--when the ticket is received (current reporting period) or when the trip occurs (next reporting period)?

Answer: In which reporting period a gift falls will become an issue with respect to certain gifts where the intention to give the gift occurs before the complete benefit of the gift is actually received, and these two events happen in different reporting periods. Certain gifts such as invitations to dinners or special events, or tickets given for future flights or special events may thus "bridge" two reporting periods. Since the nature of a particular gift and factors surrounding delivery and use of the gift are various, which reporting period the gift falls into will have to be answered by the State Ethics Commission on a case-by-case basis. Should the problem arise, contact the Commission for further advice.

22. Gifts directed to the head of the office.

Question: A person brings a gift of food to a state office. The head of the office takes official action that may affect the donor of the gift. The food has a value in excess of \$200. The gift is clearly marked as a gift to the head of the office. The head of the office accepts the gift and then shares it with her staff. Must this gift be disclosed?

Answer: Yes, the gift must be disclosed by the head of the office. When a gift is clearly directed to one person, that person is considered the recipient of the gift and is responsible for complying with the gifts disclosure law. The recipient may choose to share this gift, but this will not relieve her of the responsibility of complying with the gifts disclosure law.

23. Gifts directed to individual staff members.

Question: A person brings a gift of food to a state office. The staff of the office takes official action that may affect the donor of the gift. The food has a value in excess of \$200. The gift is clearly marked as a gift to one of the staff members. The staff member accepts the gift and then shares it with the other members of the office. Must this gift be disclosed?

Answer: Yes, this gift must be disclosed by the staff member who received it. The gift was clearly directed towards the staff person. The staff person is responsible for complying with the gifts disclosure law.

24. Gifts directed to the entire office staff.

Question: A person brings a gift of food to a state office. The staff of the office takes official action that may affect the donor of the gift. The food has a value in excess of \$200. The gift is not clearly marked as a gift to one person. Instead, the gift is marked as a gift for the entire staff of the office. Who must report this gift?

Answer: The head of the office is responsible for complying with the gifts disclosure law by reporting this gift. The value of the entire gift to the office must be reported. The head of the office is deemed the recipient of the gift because the head of the office is responsible as an administrator for determining what gifts, if any, may be accepted by the office.

25. Whether different sections of the University of Hawaii are one source for the purposes of the gifts disclosure law.

Question: A state employee receives a gift from one of the community colleges within the University of Hawaii system. Later, within the same disclosure period, the state employee receives a gift from the University of Hawaii Manoa campus. The combined value of these gifts is in excess of \$200. Must the employee file a gifts disclosure statement?

Answer: The law requires that, if all of the other conditions are met, the recipient of a gift must file a gifts disclosure statement if she receives gifts valued in excess of \$200 from one source. Thus, the question is whether different branches of the University of Hawaii system should be considered one source for purposes of the gifts disclosure law. The Board of Regents has control over all the campuses and colleges of the University of Hawaii. Because all of the branches of the University of Hawaii are ultimately responsible to the Board of Regents, these branches must be considered one source for purposes of the gifts disclosure law. In this case, the employee received gifts valued in excess of \$200 from two different branches of the University of Hawaii. These are gifts from one source and must be reported.