

	DEPARTMENT OF PUBLIC SAFETY DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: JUN 15 1993	POLICY NO.: ADM.03.01
		SUPERSEDES (Policy No. & Date): ADM.03.01 December 15, 1992	
	SUBJECT: ETHICS CODE, GIFTS, AND UNWARRANTED PRIVILEGES		Page 1 of 5

No. 93-19777

1.0 PURPOSE

To establish ethical conduct guidelines for Department employees in relation to the acceptance of gifts and the securing of unwarranted privileges.

2.0 REFERENCES AND DEFINITIONS

.1 References

State Code of Ethics, HRS Chapter Sections 84-11.5, 84-11, 84-13, 84-19.

.2 Definitions

- a. Gift - Money, any type of service, loan, travel, lodging, entertainment, hospitality, thing, or promise, or in any other form.
- b. Employee - All full and part-time personnel, including board and commission members, working for the Department of Public Safety. This shall include those with the status of permanent Civil Service, exempt, excluded, emergency hires, and volunteers.
- c. State time - Actual time during which an employee is paid by the State to perform their official duties. State time excludes lunch time, break time, and vacation time.
- d. State equipment - All equipment belonging to the State such as copy machines, telephones, typewriters, computers, etc., and vehicles such as trucks, cars, and vans.
- e. State facilities - All State offices, conference rooms, working areas, grounds of a correctional facility and so forth.
- f. State supplies - Stationery, paper, stamps, envelopes, and other office supplies.

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3.0 POLICY

Employees of the Department are expected to exhibit the highest standards of ethical conduct at all times. In accordance with the provisions of Chapter 84, Hawaii Revised Statutes, an employee shall not:

- .1 Solicit or receive, directly or indirectly, any gift under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of the employee's official duties or is intended as a reward for any official action on the employee's part.
- .2 Use or attempt to use the employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for oneself or others.
- .3 Use or employ State time, equipment, employees, supplies, facilities, or inmates of correctional institutions in any way which may be construed as personally benefiting any employee or other person.

4.0 PROCEDURES

.1 Obtaining approval for the acceptance of gifts

Before accepting any gift for the Department or for themselves in connection with their official duties, employees shall first consult with their supervisor to obtain approval and the proposed relegation of the gift.

If the ethics of the acceptance of the gift is in doubt, the State Ethics Commission shall be consulted for advice. For procedures in requesting an advisory opinion, consult Section 4.5.

.2 Gifts disclosure requirement

The law requires a Department employee to file a gifts disclosure statement with the State Ethics Commission under certain conditions. The attached document from the State Ethics Commission outlines these conditions, instructions for filing a gifts disclosure form, when to file, and a sample of a completed form.

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.3 Gifts of travel and lodging

- a. The State Ethics Commission shall be consulted for advice regarding any offer of travel or lodging that an employee receives in connection with the employee's official duties. Refer to Section 4.6.
- b. Every approved gift of travel or lodging shall be reported in writing to the Deputy Director for Administration. The report shall include:
 1. The name of the employee and title of position receiving the travel gift.
 2. Brief description of the advice received from the State Ethics Commission.
 3. Name of the donor.
 4. Purpose of the trip.

The Deputy director for Administration shall use this information to ascertain if more than one employee has accepted the same travel gift and to determine if it is in the Department's interest to send more than one employee on the same trip.

- c. Employees shall be especially cautious about accepting gifts of travel or lodging from donors with whom the employee transacts State business or donors who will be subject to any recommendation or discretionary action by the employee. Such gifts shall always be discussed with the State Ethics Commission prior to acceptance. Refer to Section 4.6.
- d. If an employee is offered a fact-finding or informational trip from a donor with whom the employee transacts State business or a donor who will be subject to any recommendation or discretionary action by the employee, the employee shall advise the donor in writing that the purpose of accepting the trip is for its informational value and that acceptance of the trip will in no way obligate the State or the employee to the donor.

A copy of the written notice sent to the donor shall be included in the information package sent to the Deputy Director for Administration (reference Section 4.3.b.).

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- e. Employees who receive approval to accept a fact-finding or informational trip shall prepare and submit to their supervisor a written report summarizing the information obtained during the trip.
- f. An employee who wishes to extend their gift of travel for a personal vacation shall consult first with the State Ethics Commission since the Ethics Code may prohibit this. Refer to Section 4.6.

.4 Unlawful employment of correctional institution inmates

Inmates shall not be used or employed in the manufacture, repair, refurbishment, servicing, maintenance, cleaning, etc., of any item which is, or will become, the personal property of an employee.

.5 Unlawful use of State property

- a. Employees shall not use or employ State time, equipment, facilities, supplies, or other employees, in the manufacture, repair, refurbishment, servicing, maintenance, cleaning, etc., of any item which is the personal property of an employee.
- b. Employees shall not use or employ State time, equipment, facilities, supplies, other employees, or inmates of correctional facilities for private business purposes or personal benefit of any kind.

.6 Request for an advisory opinion

For an informal advisory opinion on proper ethical conduct of State employees, an employee may contact the State Ethics Commission by telephone.

If a formal written advisory opinion is desired or the issue is extensive or complex, a written request to the Commission shall include the following:

- a. Name of the individual requesting the opinion.
- b. Employing State agency and the individual's position in the agency.
- c. Nature and duties of the requesting individual.

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- d. Office address and telephone of the requesting individual.
- e. Statement of the facts and circumstances which may constitute a violation of the State Ethics Law.

5.0 VIOLATION OF THIS POLICY

Violation of this Policy may result in prosecution under HRS Chapter 84, Code of Ethics. Conviction of a violation of the State Code of Ethics could result in an employee being placed on probation, suspension, or discharge from service. In addition, the Office of the Attorney General may prosecute to recover the value of any benefit, product, or service gained by the employee.

6.0 SCOPE

This policy shall apply to all employees of the Department.

APPROVAL RECOMMENDED:

Robert C. Vidney

Deputy Director for Administration

JUNE 16, 1993

Date

APPROVED:

Gay Sumner
 Director

6-15-93

Date



STATE ETHICS COMMISSION

MAIL: P.O. BOX 616 • HONOLULU, HAWAII 96809 • (808) 587-0460 • FAX (808) 587-0470
1001 BISHOP STREET, PACIFIC TOWER 970 • HONOLULU, HAWAII 96813

MEMORANDUM TO: State Legislators, State Employees, and State Board/Commission Members

FROM: Hawaii State Ethics Commission

SUBJECT: Hawaii Revised Statutes, Section 84-11.5, Gifts Disclosure Law

DATE: February 22, 1993

On July 6, 1992, Act 322 was signed into law by Governor Waihee. Act 322 (HRS section 84-11.5) establishes a gifts disclosure requirement that applies to all state legislators, state employees, and state board and commission members. (Justices and judges are exempt, since they are not subject to the jurisdiction of the State Ethics Commission.) The State Ethics Commission will administer the new gifts disclosure law. A copy of the new law is attached for your information.

Gifts disclosure requirement. Section 84-11.5, HRS, requires a state legislator, state employee, or state board or commission member to file a gifts disclosure statement with the State Ethics Commission if all of the following conditions are met:

- (1) During the gifts disclosure period (June 1 of the preceding calendar year to June 1 of the year of the disclosure report), the state official or employee, or a spouse or dependent child of the state official or employee, receives from one source (a) any gift valued in excess of \$200, or (b) any gifts whose combined value is in excess of \$200. This applies to all gifts, including gifts in the form of money, service, goods, travel (for example, trips to neighbor islands, the mainland or to foreign countries), entertainment, or in any other form.
- (2) The source of the gift or gifts has interests that may be affected by official action that the state official or employee takes in his or her state capacity. "Official action" is defined as a decision, recommendation, approval, disapproval, or any other action which involves discretionary authority.
- (3) The gift is not exempted by law from the reporting requirements. See Exempted Gifts, below.

If all of the above conditions are met, the state legislator, employee, or board or commission member must report the gift(s) received by filing a gifts disclosure statement with the State Ethics Commission.

Information to be reported on gifts disclosure statement. The following information must be provided for gifts that are reported on a gifts disclosure statement: (1) the name of the person or organization from whom, or on behalf of whom, the gift was received; (2) a description of the gift; (3) the date on which the gift was received; (4) a good faith estimate of the fair market value of the gift; and (5) the aggregate value of all gifts from a single source.

Importance of keeping gifts records. To ensure accurate gift reporting as required by law, the State Ethics Commission suggests that all state officials and employees maintain records of gifts that they receive that potentially may be subject to disclosure. This is especially important for any gift which, individually, may not exceed \$200 in value, but which may exceed \$200 when combined with other gifts from the same source.

Public records. Gifts disclosure statements that are filed with the State Ethics Commission are public records and will be made available for public inspection and copying.

Effective date of law. The gifts disclosure law became effective on July 6, 1992. Therefore, all gifts received on July 6, 1992 and afterwards are subject to the disclosure requirements.

Filing deadline. The first filing deadline for the gifts disclosure law is June 30, 1993. All reportable gifts received between July 6, 1992 and June 1, 1993 must be reported to the State Ethics Commission by June 30, 1993. Thereafter, gifts disclosure statements must be filed by June 30 of each year. Each report covers gifts received during the period from June 1 of the preceding calendar year through June 1 of the year of the report.

Exempted gifts. The following gifts are exempted by law from the disclosure requirements and do not have to be reported on a gifts disclosure statement:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiance or fiancée, any relative within four degrees of consanguinity, or the spouse, fiance or fiancée of such a relative. A gift from any such relative is a reportable gift if the person is acting as an agent or intermediary for someone who is not covered by this paragraph. For purposes of this exemption, relatives within four degrees of consanguinity include the following: Parents, grandparents, and great grandparents; children, grandchildren, and great-grand children; brothers/sisters, uncles/aunts, great uncles/aunts, nephews/nieces, grand nephews/nieces, and first cousins;
- (4) Political campaign contributions that comply with state law;
- (5) Anything that is available to, or distributed to, the public generally without regard to the official status of the recipient;
- (6) Gifts that, within 30 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; and
- (7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.

INSTRUCTIONS FOR FILING GIFTS DISCLOSURE FORM

WHO SHOULD FILE THIS FORM

The State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"), requires you to file a gifts disclosure statement if you are a state legislator, state employee, or state board or commission member, and if all of the following conditions are met:

- (1) During the period covered by the gifts disclosure statement (see When To File below), you or your spouse or your dependent child receives, directly or indirectly, from one source: (a) any gift valued in excess of \$200, or (b) two or more gifts whose combined value is in excess of \$200. This applies to all gifts, including a gift in the form of money, service, goods, travel (for example, airline trips to the mainland or to foreign countries), entertainment, or in any other form.
- (2) The source of the gift or gifts has interests that may be affected by official action that you take in your state capacity. "Official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves discretionary authority.
- (3) The gift is not exempted by law from the reporting requirements. See Exempted Gifts below.

If all of the above conditions are met, you must file a gifts disclosure statement with the State Ethics Commission.

EXEMPTED GIFTS

You do not have to report the following gifts, which are exempted by law from the reporting requirements:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiance or fiancée, any relative within four degrees of consanguinity, or the spouse, fiance or fiancée 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 someone who is not covered by this paragraph. For purposes of this paragraph, relatives "within four degrees of consanguinity" include the following: Your parents, grandparents, and great grandparents; your children, grandchildren, and great-grand children; your brothers/sisters, uncles/aunts, great uncles/aunts, nephews/nieces, grand nephews/nieces, and first cousins;
- (4) Political campaign contributions that comply with state law;
- (5) Anything that is available to, or distributed to, the public generally without regard to the official status of the recipient;
- (6) Gifts that, within 30 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; and
- (7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.

WHEN TO FILE

The first filing deadline is **June 30, 1993**. All reportable gifts received between July 6, 1992 (the effective date of the gifts disclosure law) and June 1, 1993 must be reported to the State Ethics Commission by June 30, 1993. Thereafter, gifts disclosure statements must be filed by **June 30** of each year. Each report covers gifts received during the period from June 1 of the preceding calendar year through June 1 of the year of the report.

WHERE TO FILE

By mail: State Ethics Commission
P.O. Box 616
Honolulu, HI 96809

By personal delivery: State Ethics Commission
1001 Bishop Street, Pacific Tower Suite 970
Honolulu, HI

INSTRUCTIONS FOR COMPLETING THE GIFTS DISCLOSURE STATEMENT FORM

A filer must provide the following information on his or her gifts disclosure statement:

- (1): **Donor.** The name of each person, business entity, or organization from whom, or on behalf of whom, a gift was received by the filer, the filer's spouse or dependent child.
- (2): **Description of gift.** A description of each gift that the filer, the filer's spouse or dependent child received.
- (3): **Date received.** The date on which each gift was received.
- (4): **Gift value.** A good faith estimate of the fair market value of each gift.
- (5): **Aggregate value.** This item applies only if the filer, the filer's spouse or dependent child receive more than one gift from the same donor during the reporting period. The filer must report the value of each gift received (under Item No. 4, above) **AND** the filer must also report the aggregate or combined value of the gifts (under this Item No. 5). The aggregate value of gifts from the same donor need only be entered once on the form. (See sample gifts disclosure statement form.) Please note that if only one gift was received from a donor, no aggregate value need be reported.

PUBLIC RECORDS

Gifts disclosure statements that are filed with the State Ethics Commission are public records and are available for public inspection.

FAILURE TO FILE

Failure of a legislator, employee, or board or commission member to file a gifts disclosure statement as required by the State Ethics Code constitutes a violation of state law. Persons who violate the State Ethics Code may be reprimanded, put on probation, demoted, suspended, or discharged from state office. In addition, the State Ethics Commission may issue a public finding of a violation and the State, by the Attorney General, may recover any gift received by any person as a result of a violation of the State Ethics Code.

APPLICABILITY OF GIFTS LAW, §84-11, HRS

Section 84-11, HRS, prohibits a state legislator, employee, and board or commission member 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 official from accepting a gift of even a relatively small amount in value. The gifts disclosure law should not be interpreted to automatically allow gifts of a value less than \$200. Nor should the gifts disclosure law be interpreted to automatically allow gifts that are reported on a gifts disclosure statement. Any gift exceeding a nominal amount (such as a moderately priced box of candy or cookies) should be checked with the State Ethics Commission before acceptance.

QUESTIONS ABOUT GIFTS DISCLOSURE LAW OR GIFTS LAW

Persons with questions about the gifts disclosure statement, the gifts disclosure law, or about the gifts law, section 84-11, HRS, should contact the State Ethics Commission at 587-0460.

Revised 2/22/93

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, fiancée, any relative within four degrees of consanguinity or the spouse, fiance, or fiancée 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.

Penalties for failure to file. Failure of a legislator, employee, or board or commission member to disclose a reportable gift by filing a gifts disclosure statement as required by law constitutes a violation of the State Ethics Code, chapter 84, Hawaii Revised Statutes. Persons who violate the State Ethics Code are subject to disciplinary action, including reprimand, probation, demotion, suspension, or discharge from state office. In addition, the State Ethics Commission may issue a public finding of a violation and the State, by the Attorney General, may recover any gift received by any person as a result of a violation of the State Ethics Code.

To request gifts disclosure forms. To request gifts disclosure forms and instructions, please contact the State Ethics Commission at 587-0460.

Important: Applicability of gifts law, §84-11, HRS. Section 84-11, HRS, prohibits a state legislator, employee, and board or commission member 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 official from accepting a gift of even a relatively small amount in value. For example, state inspectors may be precluded from accepting anything beyond a very nominal gift from those they inspect. The gifts disclosure law should not be interpreted to automatically allow gifts of a value less than \$200. Similarly, the gifts disclosure law should not be interpreted to automatically allow gifts that are reported on a gifts disclosure statement. Any gift exceeding a nominal amount (such as a moderately priced box of candy or cookies) should be checked with the State Ethics Commission's staff before acceptance.

Advisory opinions regarding gifts and other ethics questions. Persons with questions about the new gifts disclosure law (section 84-11.5, HRS) or about the gifts law, section 84-11, HRS, should contact the State Ethics Commission for additional advice. The Commission also advises state officials and employees about the interpretation and application of the State Ethics Code with respect to any conduct that may raise an ethics question under chapter 84, HRS, the State Ethics Code. The Commission provides advice as a service to all state legislators, employees, and board and commission members. To avoid entanglements with the ethics laws, the Commission suggests that persons request advice before accepting any gift or engaging in any conduct that might raise ethics concerns.

Ethics workshops. As part of the State Ethics Commission's educational activities, the Commission's staff attorneys regularly conduct ethics workshops covering the major provisions of the State Ethics Code. All state officials and employees can register to attend the ethics workshops. In addition, the Commission's staff attorneys are available to meet with any state department or agency to discuss the gifts disclosure law or the State Ethics Code in general. For additional information about the Commission's workshops, please contact the State Ethics Commission.

Attachment: Act 322

SAMPLE

STATE ETHICS COMMISSION
 1001 Bishop Street, Pacific Tower 970
 P.O. Box 616, Honolulu, Hawaii 96809
 Telephone: 587-0460 FAX: 587-0470

GIFTS DISCLOSURE STATEMENT

(This report covers the period from June 1 of the preceding calendar year through June 1 of this year and is due on June 30)

NAME: JANE DOE
 STATE POSITION: ADMINISTRATOR
 STATE AGENCY: STATE GOVERNMENT AGENCY
 STATE TEL. NO.: 587-1234
 STATE MAILING ADDRESS: P.O. BOX 123
 HONOLULU, HI 96813

1 DONOR	2 DESCRIPTION OF GIFT	3 DATE REC'D	4 GIFT VALUE	5 AGG. VALUE
COMPANY A	DINNER	7/1/92	\$60	--
"	DINNER	9/13/92	\$50	--
"	LUNCH	12/15/92	\$20	--
"	FOOD BASKET	1/5/93	\$60	--
COMPANY B	BOTTLE OF CHAMPAGNE	4/30/93	\$25	\$215
"	AIRFARE TO BIG ISLAND	11/12/92	\$80	--
"	HOTEL ROOM	11/12/92	\$90	--
"	DINNER	11/12/92	\$40	\$210