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Hawaii News

Charter proposal bars lobbyists' gifts

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City officials and employees would be barred from accepting or soliciting any gifts from registered lobbyists — without exception — under a proposal advanced by the Honolulu Charter Commission.

The proposal, introduced by commission member Donna Ikeda, would also add language barring an elected or appointed official or any other employee of the city from soliciting or accepting any gifts from nonlobbyists as well if it is “intended as a reward for any official action.”

Currently, the law states no city employee can receive gifts totaling more than \$200 from a single donor, or less than that if it can be “reasonably inferred” that such gifts were meant to influence the employee’s actions.

Despite some testy exchanges at a meeting Friday, Charter Commission members and Chuck Totto, the Ethics Commission executive director and chief legal adviser, said the amendment, if approved by the electorate, should make it easier for the public to understand the law regarding gifts.

The commission won’t complete its work until summer, and any proposed amendment could be nixed or changed up to that point. But Friday’s vote received unanimous approval from the members present, so it’s likely the question will be put before Oahu voters in November in the form of a charter amendment question.

David Rae, Charter Commission chairman, recused himself from the discussion and

ensuing vote on gift laws. A retired executive of the the James Campbell Co., Rae was identified by former Councilman Romy Cachola as a lobbyist from whom Council members received meals, actions for which Rae was interviewed by the Ethics Commission. Cachola was later fined.

Rae said the Ethics Commission advised him it would be OK to take part in the ethics discussions but felt it best to recuse himself anyway.

The action comes as the Ethics Commission is embroiled in controversy.

Totto appears to be at odds with a majority of the seven-member commission, and was suspended for a month in March for allegedly not creating a positive work environment.

Much of the commission's work has focused on gift-giving. Last year Cachola and another former Council member, Nestor Garcia, agreed to pay fines to settle claims that they accepted gifts improperly from lobbyists who could benefit from votes they cast.

Cases against Council members Ikaika Anderson and Ann Kobayashi, and former members Todd Apo and Donovan Dela Cruz, after reaching a preliminary stage, were dropped by the commission. One of the reasons stated by the commission for suspending Totto was that he sought to coerce a subordinate to proceed with the investigation into the Council members despite insufficient evidence.

At Friday's meeting Ikeda made it clear she was proposing changes to the gift laws because of what she contends have been heavy-handed and intimidating actions by Totto to pressure individuals being investigated by the commission to agree to settlements, thereby avoiding more severe penalties.

Ikeda said she was troubled by language in the existing "Conflicts of Interest" section of the City Charter that states "it can be reasonably inferred that (a) gift is intended to influence." Totto has used this, combined with the definition of lobbyist in city ordinances, to suggest any gift from a lobbyist, regardless of value, is a violation of the law.

In some cases the Ethics Commission has told the accused that "there is a rebuttable presumption" that a gift seeks to influence, leaving it up to the accused to prove there was no intent to influence. "That bothers me," she said.

"What you're saying is, 'You prove it ... prove that (a gift) is not a violation,'" Ikeda said. "And that's not right. And you've used this to intimidate people."

Ikeda actually submitted three proposals aimed at altering the gifts language.

Currently charter language is overly broad, Ikeda said, and she contends those who wrote it did not intend to bar all gifts from lobbyists.

However, that has been Tutto's interpretation, she said, and if others on the commission agreed with that intent, the proposal should simply make it clear that all gifts from lobbyists would be illegal. Ultimately, her colleagues opted to support a complete ban on lobbyist gifts.

Totto, under questioning by commission members, said he would support a blanket ban on lobbyist gifts.

After the meeting, Tutto said the version passed, in principle, not only bans all lobbyist gifts, but keeps intact language that bars everyone else from gift-giving valued at more than \$200 as well as gifts equal to or less than \$200 "where a reasonable person could conclude that the gift was offered to influence (an) official in carrying out his/her duties."

Ikeda, after the meeting, said "the cut-and-dry, clean, fast way was to eliminate all gifts from lobbyists so that he cannot use that as an intimidation factor as (Totto) has."

Totto and other open-government advocates objected to Ikeda's original proposal, which would have taken out language stating it can be "reasonably inferred" that a gift is intended to influence. In its place she proposed that the ban be on gifts "which are intended to influence" a city employee into a decision favoring the donor.

Totto told commission members that language would have required the Ethics Commission to prove intent, a difficult standard of proof, he said.

"Ours would be the only jurisdiction in the state, and probably the country, that requires proof of intent for unlawful gifts," he said. "There will be a surge of gifts to city officials which would, in turn, lower the public's trust in city government officials. We should not revive the culture of gift entitlements that created the ethics problems of the past."

Ikeda's third proposal would have barred all gifts totaling more than \$200 "from any single source that could reasonably be known to have a legislative or administrative interest." Ikeda said that would allow people to continue to give small gifts, such as lei, as is often customary in Hawaii.

But Tutto said he objected to language allowing for all gifts under \$200 without any checks. In certain circumstances, gifts valued at less than \$200 could reasonably be inferred to be intended to exert influence, he said.

Even in situations where a gift was not intended to influence a city official's decisions, it's human nature "to treat people who give me something slightly different from those who don't."

The proposal now goes to the commission's "style" committee to ensure its language meets formal and legal requirements.

