OPINION NO. 42

The purchasing division of a state department asked about the receipt of gifts by members of that department.

The gift consisted of an undetermined number of tickets to the Hawaiian Open Golf Tournament; the donor asked how many the division could use. Each ticket was for five days and, at approximately $5 a session, was valued at approximately $25. The company, which sells certain commodities to the State, presently has a very large contract with the department, which was obtained through state bid procedures.

The tickets were a complete gift, having no relation to the job of those receiving them at the department or to the contract between the department and the distributor.

The receipt of gifts by state employees is governed by section 84-11 of the ethics law (chapter 84, HRS). Gifts, in whatever form, are permissible except when received "under circumstances in which it can reasonably be inferred that the gift is intended to influence (the recipient-employee) in the performance of his official duties or is intended as a reward for any official action on his part." [Section 84-11.]

In deciding whether a gift is given under circumstances in which it can reasonably be inferred that it was "intended to influence or reward," the Commission must look at many factors. These circumstances include:

1. The official duties of the recipient-employee, and whether they include official action directly affecting the donor.

2. The business relationship of the recipient and the donor.

3. The existence of past, present, or possible future contracts between the donor and the State.

4. Whether or not the contract is bid.

5. The size of the gift.

6. Whether the gift relates to the job of the recipient and thus redounds to the State's benefit.

7. What benefit the donor stands to gain from giving the gift.

In this instance, sales by this company to the State go through this division, or are affected by it. While the contract is effected through bids, this division makes the decisions on the bids. The implementation of the contract must be currently administered by the department, and more particularly by the department's employees.

The size of the gift, in this case, is not insignificant. In addition to the dollar value of the tickets, one must consider that the scarcity of these tickets further enhances their value.

Finally, there is here absolutely no relationship between the gift and the employee's job, such as enhancing the employee's work or effectiveness. The benefit redounds purely to the employee in allowing him to view a sporting event.

Because of these factors, we feel that it is reasonable in these circumstances to infer that the tickets were intended to influence those receiving them in the department to continue favorable action on behalf of the donors. Thus, we hold that their receipt would have been in violation of section 84-11.

We do not, in this instance, mean to rule out all gifts to public employees. In Hawaii we have long had, in line with the aloha spirit, the custom of giving small gifts of appreciation to one with whom one does business, whether he is in state government or private industry. Thus, in most instances, we would not condemn the occasional unsolicited small box of candy or pastry shared by the members of a department and provided by a person dealing with the department. But such gift-giving is a matter of degree, and must be exercised with great caution. We feel, in this instance, the gift would have exceeded the bounds of a mere token of aloha.

Dated: Honolulu, Hawaii, November 18, 1969.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
James F. Morgan, Jr., Vice Chairman
S. Don Shimazu, Commissioner
July Simeona, Commissioner

Note: Commissioner Margaret W. Smalley was excused from the meeting at which this opinion was considered and adopted.