

OPINION NO. 45

A state employee requested an opinion regarding the receipt of free transportation by employees in his department and by members of county government.

An unofficial body, composed of members of outside island counties, in cooperation with a state department, has the purpose of increasing economic development in the State. One method of doing this is to publicize portions of the State as developable entities wherever there is potential development and financing.

In pursuit of these purposes, this body planned a mission to the mainland. The persons involved would visit major cities to give speeches, hold meetings and tell the story of the neighbor islands and the State. Because there were insufficient state and county funds to defray the entire expenses of this trip, this employee, as coordinator, wrote to various airlines, outlining the purposes of the trip and asking whether they might be interested in assisting in transportation and other arrangements. Pursuant to the letter, one airlines offered to provide free round-trip transportation to the mainland. He wished to accept this transportation and asked for a Commission opinion as to whether such acceptance would violate the ethics code, chapter 84, HRS.

Section 84-11 of the Hawaii Revised Statutes prohibits any employee from soliciting or receiving any gift, whether in the form of money, travel, etc., under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

It should be noted that it may be advisable for the county personnel to consult the ethics laws of the particular counties involved.

However, the state officer solicited the arrangements for all, and one member of his department will receive this free transportation. This particular solicitation and acceptance is governed by section 84-11.

In determining whether there is a reasonable inference that a gift is intended to influence or to be a reward for official action and thus violates section 84-11, the Commission looks at the following, among other considerations:

Whether the gift is related to the public job of the recipient;

Whether the gift redounds to the benefit of the individual or the State;

Whether the solicitation is of one member of an industry, or of all:

Whether the employee's department presently has before it, or has had before it, an application affecting the donor; and

What benefit the donor stands to gain from the gift.

In this case, the free transportation is job-related, in that it allows the state employee to travel and publicize Hawaiian development, part of his job. The gift, in effect, redounds to the State, as it relieves the State of an expense it would have had to bear to accomplish this job. As this is a work-filled trip, there is little personal benefit from the gift.

All airlines serving Hawaii were approached for help. And the Commission has been informed that there is no application presently before the employee or his department affecting the donor, nor has any official action affecting it earlier been taken.

The donor here receives no direct benefit other than publicity for providing the transportation. It will probably benefit indirectly from the improvement in the neighbor island and state economy, which is the object of the trip.

Thus, in these circumstances, it cannot "reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part"; and, thus, we hold that acceptance of this free transportation in this instance does not violate the state ethics code.

While we hold that there is no *per se* violation of the ethics law in this situation, there are additional considerations. State government pervades all parts of our business and economic life and controls it in many areas. Because of this power, the solicitation of a gift from a business concern which must operate within the system places that concern in an awkward position. If the business solicited does contribute, there is always the suspicion of favored treatment to the detriment of other members of the industry who do not give equally. And a non-contributing concern will never be sure whether its failure to contribute will be remembered at some later time when it is dealing with the State.

Thus, it appears appropriate that the State should take care not to obligate or create the appearance of obligating itself or others in the conduct of its business. Only if the State in its official actions conducts itself on the very highest ethical level can it inspire confidence in state government and high ethical standards of conduct in its employees.

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.