

OPINION NO. 47

A state employee asks whether the entertainment of members of the legislature at generous luncheons during session time by individuals or by special interest groups who will be affected by legislation will violate the gift section of the ethics law, section 84-11, HRS.

Section 84-11, as it relates to legislators, has not yet been interpreted by the Commission. That section provides in relevant part:

No legislator shall ... accept or receive ... any gift, whether in the form of money ... entertainment, hospitality ... or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties

The question is complicated by lobbying, which is one of the necessities of a system where laws are passed by elected representatives of the people. Lobbying, by all interests, is considered a legal and necessary way to educate lawmakers to the sides of an issue in order to obtain the most enlightened laws possible. However, while the object of persuading a lawmaker to the policy reasons and social justification of a position is beneficial, obtaining adherents amongst legislators to one's position by means of purchase (such as gifts or promises of future reward) is not acceptable. Laws should be based on what the lawmakers, after being as fully informed as possible, believe to be in the best public interest, and not on any private gain the passage of such law may win from those whom the law benefits.

The question posed cannot be simply answered because it is a general one. Were we faced with a specific instance, a specific answer would, of course, be given. We will set down some guidelines, however, in the hopes that they will clarify the situation.

A luncheon, coupled with educational and informational activities, normally is legitimate lobbying and does not violate the ethics code. Because legislators are extremely busy persons, a lunch hour is often the only time a lobbyist can obtain for expounding his views.

However, the luncheon and entertainment may become so elaborate and prolonged as to overshadow legitimate lobbying activities by those giving the entertainment. In these circumstances, the reasonable inference becomes stronger that the gift (lunch and entertainment) rather than the reasoning is what is intended to influence, and section 84-11 is violated.

As specific instances arise, we will further clarify this important area of gift receipt. Among the circumstances which will be considered in deciding whether in a specific instance the donor's intent is to influence in violation of the ethics code are:

1. The monetary value of that received by the legislators (luncheon, entertainment, etc.);

2. The duration and intensity of educational-informational activities conducted at the meeting;
3. The timing; hospitality after passage of a measure will have a greater aura of reward;
4. Whether the entertainment is offered to all or only select members of the legislature; and
5. Custom and practice in the community.

Section 84-11 does have two aims. The first and most important is the achievement of official action based on the public good and not the private benefit to the individual acting. This we have discussed above.

The second is the maintenance of public confidence in state government, in this case, the legislature. The appearance of accepting hospitality purely for the sake of hospitality from interest groups who will be affected by legislation shakes the public trust and gives rise to the often expressed opinion that legislators seek the power of their office solely for personal gain.

In light of this second consideration, legislators should be circumspect in the acceptance of lobbying-hospitality and should limit such acceptance to instances where it is clear to all concerned that lobbying, and not purchase of favor, is the intent of the occasion.

Dated: Honolulu, Hawaii, November 25, 1969.

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