

OPINION NO. 121

A state administrator inquired whether the State ethics law prohibits the acceptance of air transportation (\$220), lodging (\$53.55), and registration fee (\$25) from a local corporation in relation to a proposed trip by a state technician for attendance at a seminar on the West Coast. The justification for this proposed travel was:

"To provide trained personnel for servicing ... equipment ... and to acquaint ... personnel with the latest innovations in equipment considering the rapid change in ... equipment format." (Note: words or phrases which would identify the individual have been deleted.)

This Commission, by its staff, interviewed the employees involved. The significant facts relevant to this opinion were as follows:

The seminar was a repair course for equipment of a particular brand. The course was primarily intended for technicians, but was also to be attended by some salesmen to better their sales ability. The state technician would learn to repair and maintain this type of equipment and would become familiar with the brand's latest innovations in this type of equipment. The employee indicated that some of this knowledge would be applicable to the repair and maintenance of other brands of equipment but not to equipment which was unique to each individual line.

HRS, §84-11, relating to gifts states in part that:

"No ... employee shall ... accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can be reasonably 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."

The application of this provision to any one particular situation requires consideration of such matters as 1) the business relationship between the donor and the recipient of the gift, 2) the relationship of the gift to the official functions of the recipient, and 3) the benefits to the donor and the recipient of the gift.

With respect to the first consideration, we had been informed that the technician's responsibilities did not include recommendation or decision relating to the purchase of this type of equipment. As a technician, it was his responsibility to repair equipment and to advise his superiors about the technical aspects of the equipment. Since his employer, the State, is broadly speaking, also a recipient of the travel privileges, we also considered the fact that the State has purchased some equipment from the donor and may continue to make purchases in the future. The most significant question for our consideration was whether the receipt of travel privileges obligated the State to the donor in such a manner that it could be inferred that

the travel privileges were intended to influence the State in the conduct of its future business with the donor or was intended as a reward for past purchases.

The travel privilege apparently was closely related to the responsibilities of the employee recipient. Attendance at this seminar would increase the employee's technical knowledge. The travel privilege, therefore, would ultimately benefit the State in that the technician would have first-hand knowledge on the repair of equipment, which knowledge he has informed us, will be applicable to the repair of other brands. This will result in reducing the expenses of sending equipment out to be repaired by private companies. An incidental benefit will be improving his ability to evaluate the technical qualities of this type of equipment in general.

We acknowledged that the donor may benefit from the travel in that it may have increased sales of its equipment to the State, but the offer of travel privileges was, in our judgment, not a reward for past purchases nor given under circumstances which would necessarily obligate the State to the donor. We noted that it is customary for vendors of equipment to provide some training with respect to the use and maintenance of their products. Therefore, it was our opinion that whether the offer of travel privileges was made under circumstances in which it could be reasonably inferred that the offer was intended to influence this employee or his superiors in the performance of their official duties must be, in this instance, finally determined by the administrator.

It was our opinion that this offer of travel privileges may be accepted without violation of HRS, §84-11, if the following conditions and terms were met:

1. The administrator must determine that the donor was unable to provide the necessary training locally.
2. He must determine whether this seminar was sufficiently important and valuable so that he would send his technicians if he had the state funds to do so.
3. The technician should not extend his trip to take some of his vacation, nor should he accept items of hospitality or entertainment which were unrelated to the purpose of the seminar.
4. If the administrator determined that training was not available locally and that this training was so valuable to the State that the State would pay for the technician's trip if State funds were available, these travel privileges may be accepted, provided 1) the conditions in item 3 were met and 2) he advised the donor in writing that the acceptance of the gift in no way obligated the State to future purchases of equipment from them. The donor should be further advised that the technician must excuse himself from seminar portions primarily related to sales promotion and that he could not accept entertainment or other hospitality other than meals normally incurred in the course of out-of-state travel.

We requested that, in the event the trip was taken, a copy of the letter to the donor as discussed in item 4 be sent to this Commission.

We thanked him for his concern about the acceptance of the travel privileges and for his cooperation on the matter. We expressed the hope that we had set forth sufficient guidance so that he could exercise his administrative responsibilities in a manner consistent with our mutual objective of making decisions which are both ethical and beneficial to the State.

Dated: Honolulu, Hawaii, October 21, 1971.

STATE ETHICS COMMISSION
Vernon F.L. Char, Acting Chairman
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner
Fred S. Ida, Commissioner

Note: The vacancy created by the resignation of James F. Morgan, Jr. has not been filled.