

ADVISORY OPINION NO. 86-5

The Commission received a request for an advisory opinion from a state inspector who asked how the State Ethics Code might restrict him in his private business dealings. The inspector stated that in his official capacity he handled complaints regarding certain businesses and was responsible for inspecting a number of businesses.

The inspector stated that he had formed a corporation that planned to construct a facility. In order to build the facility, the inspector stated that he would need various construction supplies, including asphaltic concrete, pipes, and sand. The inspector stated that in obtaining supplies for the facility it would be inevitable that he would have to deal with businesses he inspected as a state official. The inspector stated that some of the businesses he inspected might offer him leftover supplies, such as pipes or sand. The inspector asked the Commission whether his company could do business with companies subject to his inspection and whether he could accept discarded or unwanted construction supplies from these companies.

A number of sections of the ethics code were relevant to the questions the inspector raised. These sections were section 84-11, Hawaii Revised Statutes, pertaining to gifts; section 84-13, pertaining to fair treatment; and section 84-13(4), pertaining to state employees engaging in substantial financial transactions with businesses they supervise or inspect. These sections of the ethics code read as follows:

§84-11 Gifts. No legislator or employee shall solicit, 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 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.

§84-13 Fair treatment. No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

....

- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

Section 84-13(4) prohibits state employees from engaging in substantial financial transactions with businesses they inspect. The Commission advised the inspector that to avoid any problem with this section of the ethics code, his business partner or other employee of his corporation should conduct the negotiations to purchase the construction supplies his company needed. The Commission believed that it would be best, of course, for the inspector's company to deal with businesses that were not subject to action he took as a state official; however, in cases where this was not possible, the Commission believed that the inspector would not violate section 84-13(4) so long as other employees of his corporation purchased the necessary supplies.

Section 84-13 of the State Ethics Code prohibits state employees from using their state positions to obtain unwarranted benefits or advantages for themselves or others. The Commission informed the inspector that he therefore had to be careful to keep as separate as possible his business dealings and his state duties. The Commission advised that when inspecting companies or handling complaints, the inspector not discuss any private business matters.

The gifts section of the ethics code prohibits state employees from accepting gifts if it can be reasonably inferred that the gifts are intended to influence or reward official action. The Commission advised the inspector, therefore, not to accept anything of value from businesses subject to official action he took. The inspector mentioned one particular company that was willing to give his company discarded pipes and unwanted sand. The Commission believed, however, that it would be best for the inspector to refuse the pipes or sand so long as the company was subject to official action he took. The Commission also advised the inspector not to accept any discounts from businesses he inspected unless the discounts were available as part of the normal course of business.

The Commission also informed the inspector that the State Ethics Code prohibits state employees from using state time, state equipment, or state facilities for private business purposes. The Commission mentioned that the inspector could not, for example, use state telephones or state offices in conjunction with his private business activities.

The Commission believed that if the inspector followed the above guidelines he would be able to develop his facility without violating any sections of the State Ethics Code. Finally, the Commission informed the inspector that because the opinion issued to him was based upon the facts he presented, he might wish to consider requesting another opinion if the facts of the situation changed.

The Commission told the inspector that it appreciated his seeking its advice in this matter at an early time and commended him for his sensitivity to the ethical considerations involved in this matter.

Dated: Honolulu, Hawaii, March 7, 1986.

STATE ETHICS COMMISSION
Tim S. Farr, Chairperson
Laurie A. Loomis, Vice Chairperson
Allen K. Hoe, Commissioner
Edith K. Kleinjans, Commissioner
Rabbi Arnold J. Magid, Commissioner