

ADVISORY OPINION NO. 86-8

The Commission received a request for an advisory opinion from the executive secretary of a state board regarding whether the board's current method of distributing "board tickets" violated the ethics code. The reason for this request was that another state agency had issued a report indicating that the board's practice in distributing tickets might be in violation of the State Ethics Code. The board tickets were admission tickets to events the board regulated and were created to allow officials regulating the events entry to the events.

The Commission noted that the rules of the board in force at the time of this advisory opinion request included a rule on board tickets that became effective on October 2, 1981, and stated that board tickets included all tickets for seats situated in the first row and for a stipulated number of tickets for "riser" seats to be used for board members, the executive secretary of the board, inspectors detailed by the board for duty, the press, and other officials as designated by the board. The tickets referred to in the above rule consisted of 56 tickets in the first row and 25 riser seat tickets. The practice of the board at the time of this advisory opinion request was to issue for each event four tickets in the first row to each of the board members and three tickets in the first row to the executive secretary. The board members and the executive secretary generally used their extra tickets for their personal guests. The remainder of the front row tickets were distributed to officials, the press, and security personnel. The board's practice with respect to the 25 riser seat tickets was to distribute them to various officials who were required to be at the events. The Commission found that the current practice of the board with respect to tickets was prohibited by the ethics code and was not in accord with Advisory Opinion Nos. 395 and 408, which the Commission had issued a number of years ago with respect to the same matter.

The first advisory opinion, Advisory Opinion No. 395, issued by the Commission on this matter concluded that the board's policy of allotting four tickets in the first row to each board member and the executive secretary was prohibited by the fair treatment section of the ethics code, section 84-13, HRS, which in pertinent part provides:

§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:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (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.

The Commission stated that its conclusion in Advisory Opinion No. 395 was based on the fact that the board's own rules at that time did not permit front row tickets to be issued to persons not involved in the regulation of events under the jurisdiction of the board. The board members and the executive secretary had been issuing three of their four tickets to their personal guests. The Commission concluded that the board had violated the fair treatment section by granting itself a privilege that was prohibited by its own rules.

The Commission noted that the board had attempted to alleviate the restrictiveness of its rules by drafting two proposed changes, and had requested an advisory opinion regarding the application of the ethics code to the proposed changes. The proposed rules were:

- A. Board tickets will be distributed by the board, through its staff, to appropriate individuals.
- B. Board tickets will be distributed by the board's staff to the following classes of people:

- Board members and the Staff
- Event Officials
- Event Inspectors
- Press/Media
- Other Government Officials on Official Business
- Visiting Dignitaries
- Representatives of Boards from Other States
- Show Promoters
- Special Guests

The Commission issued Advisory Opinion No. 408 regarding the proposed rules, concluding that proposal "A" should be eliminated because the term "appropriate" was not specific enough and that proposal "B" would be in compliance with the ethics code so long as board members complied with certain modifications and guidelines set out in the opinion.

With respect to those guidelines, the Commission stated in Advisory Opinion No. 408 that the board had to distribute board tickets in a way that did not violate HRS §84-13, the fair treatment section of the ethics code, or HRS §84-11, the gifts section. The Commission indicated that this meant that the following classes of persons could not receive complimentary tickets in the first row:

- A. Government officials who exercised jurisdiction of any kind over the board or the profession being regulated.
- B. Other government officials or private individuals who were in a position to benefit the board before agencies that had jurisdiction over the board.
- C. Persons with whom the board members or the executive secretary did business, or who were in a position to provide a personal advantage to a board member or the executive secretary.

The Commission stated in Advisory Opinion No. 408 that so long as all persons having an official working relationship to an event were provided with sufficient tickets in the first row to accommodate their needs, the ethics code could not be interpreted as prohibiting the distribution of any remaining board tickets to family members or close friends of the board members or the

executive secretary. At the same time, the Commission emphasized in Advisory Opinion No. 408 that distribution of all first row tickets had to be made with the exercise of "utmost discretion" if their use was not to be in violation of the ethics code and was not to cast doubt upon the integrity of the board and its members.

After the Commission rendered its advice in Advisory Opinion No. 408 regarding the proposed rule changes, the board adopted its current rule regarding board tickets, which is the subject matter of this opinion. In issuing this opinion, the Commission determined that the current rule failed to incorporate the advice and guidelines rendered in Advisory Opinion Nos. 395 and 408. The Commission found that the current practice of the board in administering the rule violated the ethics code in two ways: first, by seating certain officials in the riser area rather than in the first row, and, second, by continuing to provide four tickets to each board member and three tickets to the executive secretary for each event.

The Commission noted that the allocation of 25 tickets for seats in the riser area for officials who were required to attend events was not consistent with the Commission's advice in Advisory Opinion No. 408. The Commission understood that the necessity of allocating those 25 riser seat tickets was due in part to a policy change in effect at one auditorium that required the board to provide tickets for specific seats to the many officials who had at one time entered the arena with passes. The Commission also understood that, of those officials who formerly entered on passes, approximately nine of them required an actual seat in the arena area in order to perform their official duties. The others had official duties outside of the arena area and therefore did not need seats. The Commission noted that arrangements should have been made for at least those nine officials who needed seats to be seated in the first row because Advisory Opinion No. 408 required that the board members could only distribute to their personal guests those seats that were available after all persons having a working relationship to the event were provided with sufficient front row tickets to accommodate their needs.

The Commission found that the practice of continuing to provide four tickets for each of the board members and three tickets for the executive secretary violated the fair treatment section of the ethics code. The Commission understood in rendering Advisory Opinion No. 408 that the number of officials and press members at each event might fluctuate greatly. The Commission noted that it was with this in mind that the Commission had indicated that the ethics code did not prohibit the board from using its discretion, under the guidelines established, in distributing the tickets that were not needed by working officials and members of the press. The Commission found that the practice of continuing to provide tickets for a fixed number of seats at each event to the board members and the executive secretary was not in accord with the obvious intention of Advisory Opinion No. 408.

The board informed the Commission that it had recently eliminated the practice of seating officials in the riser area and that those officials who needed seats during events would be accommodated in the first row. The board also indicated that the practice of using passes for those officials who do not need seats had been reinstated. Thus, the Commission believed that the board had resolved the ethics violations described in this opinion relating to the use of seats in the riser area.

The final matter the Commission addressed with respect to this request for an advisory opinion was the issue of the distribution of front row seat tickets. The Commission noted that, in accordance with Advisory Opinion No. 408, the board was required to distribute board tickets in a

way that did not violate the fair treatment section of the ethics code. Thus, in accordance with that opinion, the Commission again stated that certain classes of persons could not receive complimentary front row tickets and that all persons having a working relationship to an event and needing seats must be provided with sufficient front row tickets to accommodate their needs.

The Commission recognized that there might be fluctuation in the number of tickets required by those persons having a working relationship to events and that, consequently, there might be vacant seats. The board had indicated that vacant seats caused a security problem and that the seating of persons not known to the board in vacant seats also created a security problem. The Commission noted that if such were the case, empty seats could easily be filled with additional security personnel. The board had also indicated that frequently there were more members of the press/media who requested seats than there were tickets available to give them. The Commission stated that these additional members of the press/media could easily be given tickets that become available for a given event. Tickets could also be provided to event promoters. The Commission reiterated that the board had to use the utmost discretion in distributing front row tickets if their use was not to be in violation of the ethics code and was not to cast doubt upon the integrity of the board and its members.

The Commission believed that it was an unwarranted privilege for board members and the executive secretary to receive extra tickets to the events to use for personal guests unless there was a state purpose related to their acceptance and use. The Commission explained that HRS §84-13(2) explicitly prohibits board members and state employees from accepting or soliciting compensation or consideration for the performance of their official duties unless provided by law. The Commission believed that extra tickets for guests were "compensation" or "consideration"; therefore, the Commission believed that their acceptance and use in the absence of a valid state purpose or without valid statutory authorization violated HRS §84-13(2). The board had indicated that attendance at events was an imposition on family members and friends. The Commission indicated that it appreciated that the board members, like members of many other boards and commissions, put in a great amount of time in carrying out their duties; however, the Commission noted that the fact that attendance at the events was an imposition on family and friends did not appear to be a sufficient state purpose to justify receipt of additional seat tickets. To the extent that the above interpretation and application of HRS §84-13 to prohibit the use of board tickets for personal guests or friends was not in accord with Advisory Opinion No. 408, the Commission stated that that opinion was overruled. The Commission noted that if the board members believed that the amount of time taken to effectively carry out their duties required that members receive compensation, that matter could be taken up with the legislature.

The Commission noted that while there was no statute or rule that required the board members themselves to attend each event, there was certainly justification for the board members to feel it was their duty to attend each event in order to properly carry out their official duties and to receive a front row ticket for their own use. The Commission therefore found that no provision of the ethics code prohibited the board members or the executive secretary from using front row tickets for themselves in order to attend the events.

The Commission appreciated the cooperation the members of the board provided during the review of this case.

Dated: Honolulu, Hawaii, November 5, 1986.

STATE ETHICS COMMISSION
Tim S. Farr, Chairperson
Rev. David K. Kaupu, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Cynthia T. Alm disqualified herself from consideration of this opinion, and Vice Chairperson Laurie A. Loomis was excused from the meeting at which this opinion was considered.