

## ADVISORY OPINION NO. 87-6

A department director had been invited to attend an annual conference of material suppliers. Air fare and lodgings were offered to the director and her spouse. In exchange, the suppliers asked her to make a five minute presentation regarding the State's projected consumption of the suppliers' products. The director would have also been available to meet with the suppliers and experts in the industry who would be attending the conference.

The suppliers' products were relevant to the work performed by the director's department. The director wanted to attend the conference for general knowledge since the State used so much of the suppliers' products. The director also wanted to meet with industry-related people for general knowledge. The director believed that the experience would not only be helpful in analyzing the problems that may arise with the products, but that the conference would provide the director with the opportunity to exchange ideas with numerous experts in the industry.

In reviewing the director's request for an advisory opinion, the Commission addressed the following issues:

1. Whether the director may have accepted the invitation with air fare and lodgings from the suppliers.
2. Whether the director may have accepted air fare and lodgings for her spouse.
3. Whether the director may have extended the trip.

The provision of the State Ethics Code which was considered for application was HRS, section 84-11, on gifts. HRS, section 84-11 states as follows:

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 the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

A gift of air fare and lodgings for an employee and the employee's spouse may be prohibited by HRS, section 84-11 if the gift may be reasonably inferred to be intended to influence or reward the employee's official action. Official action is defined by the ethics code to mean discretionary action. In applying this section to the director's circumstances, an inquiry first had to be made as to whether and to what extent the director took official action in regard to the suppliers.

The director represented that she took no direct action in regard to the suppliers. For projects undertaken by the department for the State, the department solicited bids from the private sector to carry out the projects. These bidders, not the department, selected the suppliers of products to be used in the projects. The director was not in a position to take official action in regard to the suppliers because the department did not select the suppliers.

Under the above-discussed circumstances, since the director did not take official action in regard to the suppliers, no inference of influence or reward by the suppliers would have arisen from the director's acceptance of air fare and lodgings. HRS, section 84-11 was therefore not applicable

and the director was not prohibited by the ethics code from accepting the invitation with air fare and lodgings provided to the director by the suppliers. The Commission also recognized the benefit that would inure to the State through the director's learning experience and the benefit to the suppliers in gaining insight as to the projected consumption by the State of the suppliers' products.

Under the above-discussed circumstances, the director may have also accepted air fare and lodgings for her spouse. Inasmuch as HRS, section 84-11 was inapplicable to the air fare and lodgings offered to the director, HRS, section 84-11 would also not have precluded the director from accepting air fare and lodgings for her spouse. The director's acceptance of air fare and lodgings for her spouse would not have led to an inference of influence or reward inasmuch as the director did not take official action in regard to the offeror of the gift.

In addition, since HRS, section 84-11 was not applicable to the gift, the director may have also extended the trip for personal purposes so long as vacation time was taken for any portion of the extension which included a state business day. This would have avoided a possible violation of HRS, section 84-13, which prohibits state employees from using the employee's official position to secure unwarranted privileges or advantages.

The Commission thanked the director for bringing this matter to the Commission for review. We appreciated the director's awareness of the ethical considerations which may arise whenever a state employee is offered a gift by a member of the public.

Dated: Honolulu, Hawaii, October 13, 1987.

STATE ETHICS COMMISSION  
Laurie A. Loomis, Chairperson  
K. Koki Akamine, Commissioner  
Cynthia T. Alm, Commissioner  
Rev. David K. Kaupu, Commissioner

Note: Vice Chairperson Arnold J. Magid was not present during the discussion and consideration of this opinion.