

## ADVISORY OPINION NO. 87-7

A member of the state Legislature who does much traveling interisland and some traveling to the mainland on state business, requested an advisory opinion regarding her husband who had been hired as an outside sales representative by a local travel agency who would pay her husband on a commission basis. The legislator wanted to use her husband as her travel agent for her state business trips. However, before directing state travel purchases to her husband, she requested an opinion from the State Ethics Commission in regard to the following issues:

1. Was it appropriate to use her husband as her travel agent? If it was appropriate, could her husband receive commissions on his sales of travel services?

2. Was it appropriate for her to use the travel agency her husband worked for, whether or not her husband received commissions from the travel agency for her trips?

The applicable provision of the State Ethics Code was HRS, section 84-13, dealing with fair treatment. HRS, section 84-13 states in relevant part as follows:

**§84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others....

A review of the legislator's circumstances under HRS, section 84-13 required a determination of whether by directing state travel purchases to her husband or the travel agency he worked for, her husband or the travel agency would obtain an unwarranted advantage over other sales representatives or travel agencies. Accordingly, the reason for which the legislator wanted to direct her state travel to her husband had to be examined.

The legislator indicated that she wanted to use her husband as her travel agent for her state business trips mainly for the purpose of giving him business. While as his spouse this inclination may have been understandable, under HRS, section 84-13, this constituted an unwarranted advantage afforded to both her husband and the travel agency he worked for because both her husband and the travel agency would be earning commissions on state purchases due to her husband's spousal relationship to her. HRS, section 84-13 therefore prohibited the legislator from using her husband as a travel agent if he would be receiving commissions earned on the sale of travel services for her state business trips. This provision of the ethics code also prohibited the legislator from using the travel agency if her reason for selecting the travel agency was her husband's association with the travel agency, whether or not her husband received commissions on the State's purchases of travel services.

However, if commissions were not received by her husband on the State's purchases of travel services from the travel agency, if the reason for the legislator's selection of this travel agency was unrelated to her husband's association with the travel agency, and if the legislator was in no other way giving the travel agency an unwarranted advantage, the legislator may have used the travel agency for her state business trips without violating HRS, section 84-13. But, in using this travel agency, in order to avoid raising any allegation of a violation of HRS, section 84-13, the legislator was advised to rotate travel agencies to the extent possible. Previous Commission advisory opinions similarly advised the rotation of travel agencies (Advisory Opinion Nos. 320 and 374). In Advisory Opinion No. 374, the Commission stated as follows:

While we recognized that certain agents might be more willing and better able to serve the needs of a particular state agency than others, at the same time, our review of the travel business indicated that a number of agencies did seem capable of meeting such demands. Therefore, it was our view that the best policy appeared to be to rotate this business to the extent possible. The state agency must of necessity retain the ability to exclude, on reasonable grounds, those agencies that could not demonstrate the resources or expertise needed to satisfy its requirements.

In summary, under HRS, section 84-13, the legislator may not have used her husband as her travel agent if he would have earned commissions on the State's purchases of travel services. The legislator may not have used the travel agency her husband worked for if her reason for selecting this travel agency was her husband's association with the travel agency, whether or not her husband received commissions on the State's purchases. However, if her husband would not be earning commissions, if her reason for selecting the travel agency was not related to her husband's association with the travel agency, and if she was not in any other way giving the travel agency an unwarranted advantage, she may have used the travel agency for her state business trips. However, the Commission advised the legislator to rotate travel agencies for her state business trips to the extent possible.

The Commission thanked the legislator for consulting the Commission prior to engaging her husband as her travel agent for her state business trips. The Commission appreciated the legislator's awareness of the ethical considerations in this matter.

Dated: Honolulu, Hawaii, October 13, 1987.

STATE ETHICS COMMISSION  
Rabbi Arnold J. Magid, Vice Chairperson  
K. Koki Akamine, Commissioner  
Cynthia T. Alm, Commissioner  
Rev. David K. Kaupu, Commissioner

Note: Chairperson Laurie A. Loomis was not present during the discussion and consideration of this opinion.