

ADVISORY OPINION NO. 94-3

The Honorable Bertrand Kobayashi
Senator
State Office Tower, Room 401
Honolulu, Hawaii 96813

Dear Senator Kobayashi:

This advisory opinion is issued to you in response to your letter of March 17, 1994. In your letter, you asked for confirmation of the advice provided to you over the telephone on February 25, 1994. On that date, you telephoned this office and stated that you and other legislators had attended a sit-down dinner sponsored by The Retail Merchants of Hawaii, an association under the umbrella of the Honolulu Chamber of Commerce. You stated that you were invited to this dinner in your official capacity as a legislator and that you attended in your official capacity as a legislator. You went on to say that during the course of the dinner, a drawing was held for door prizes. Your name was drawn, and the door prize was two round-trip airline tickets to a neighbor island together with overnight accommodations while on the neighbor island. You added that you had not yet received the tickets or other specific information about the door prize, but you estimated the total value of the door prize to exceed \$200. The question you posed to us in February was whether section 84-11.5, Hawaii Revised Statutes ("HRS"), the gifts disclosure law, required you to disclose the door prize.

Whenever the State Ethics Commission is asked for advice, it is guided in its interpretation of the law by standards set forth in both the Constitution of the State of Hawaii and in the State Ethics Code, chapter 84, HRS. Article XIV, entitled "Code of Ethics," of the State Constitution begins with a profound declaration that the "people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct" (emphasis added). Article XIV goes on to direct the Legislature to adopt a code of ethics for elected officials and employees of the State of Hawaii.

In response to this constitutional directive, the Legislature adopted chapter 84, HRS, the State Ethics Code. The Legislature incorporated into the State Ethics Code section 84-1, HRS, which provides that the State Ethics Code "shall be liberally construed to promote high standards of ethical conduct in state government" (emphasis added). The Legislature included this provision in the State Ethics Code in furtherance of the constitutional declaration that public officers and employees are to exhibit the highest standards of ethical conduct. The State Ethics Commission is thus required to interpret the State Ethics Code in a fashion consistent with these important constitutional and legislative mandates.

Your specific question in February was whether section 84-11.5, HRS, the gifts disclosure law, would require you to disclose the door prize. Before reaching the question of whether this law would require disclosure of the door prize, an initial determination must be made as to whether any other provision of chapter 84, HRS, would prohibit you from accepting the door prize in the first place. The section of the State Ethics Code relevant to this initial issue is section 84-13, HRS, entitled "Fair treatment." Section 84-13 reads, in its entirety, 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; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's 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 the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

The State Ethics Commission believes that the first paragraph of section 84-13 prohibits you from accepting the door prize, since doing so would constitute, in the Commission's opinion, granting yourself an unwarranted advantage or privilege. The Commission notes that you attended the dinner in your official capacity as a legislator, and that legislators are compensated fairly by the State for the work they do. The Commission believes that acceptance for personal use of a door prize, substantial in value, given in conjunction with the performance of one's state duties is unwarranted.

That this interpretation of the State Ethics Code is justified is bolstered by analogy to section 84-13(2), HRS, which prohibits state officials and employees from accepting any "compensation" or "consideration" for the performance of state duties beyond the compensation or consideration that is provided for by law. Since section 84-13(2) explicitly prohibits acceptance of any additional compensation or consideration not provided for by law, the Commission believes that there is a legislative intent with respect to section 84-13 that state officials and employees are not to be unjustifiably enriched for performing their state duties. The Commission believes that section 84-13(2) supports the Commission's belief that section 84-13 was intended to preclude state officials and employees from acquiring unwarranted benefits for themselves in the form of valuable door prizes obtained in conjunction with the performance of state duties.

In making this determination, the Commission is again mindful of the legislative mandate in section 84-1, HRS, to construe chapter 84 liberally to promote high standards of ethical conduct. Further, the Commission is mindful of the constitutional mandate, in Article XIV of the Constitution of the State of Hawaii, that the people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct.

The Commission realizes that state officials and employees may from time to time receive items of value while performing their official duties. Whether the items can be accepted or not must, in the Commission's mind, be decided on a case by case basis. Items of a nominal or inconsequential value may pose no problem, while expensive items should be cleared with the State Ethics Commission.

As you requested in your letter of March 17, 1994, the Commission will send a copy of this advisory opinion to other state senators. We thank you for soliciting our advice in this matter.

Dated: Honolulu, Hawaii, June 22, 1994.

STATE ETHICS COMMISSION
Rev. David K. Kaupu, Chairperson
K. Koki Akamine, Vice Chairperson
Sharon "Shay" Bintliff, Commissioner
Don J. Daley, Commissioner

Note: Commissioner Cynthia T. Alm participated in the discussion and consideration of this opinion but was unavailable for signature.