

ADVISORY OPINION NO. 96-1

On behalf of a state agency ("Agency"), a state employee of the Agency requested an advisory opinion from the Hawaii State Ethics Commission ("Commission"). The employee asked the Commission to review the Agency's practice of distributing free tickets to events under the jurisdiction of the Agency. The tickets carried an admission price, and thus the distribution of free tickets raised an ethics issue.

This advisory opinion addresses two related subjects: The distribution of free tickets to events under the jurisdiction of the Agency, and the free seating (by way of a special pass) of officials of the Agency and others in a special section of the place where events were held. The employee's request for advice concerned only the distribution of free tickets. In the course of reviewing this matter, the Commission learned that individuals also received, by virtue of a special pass, seating in a special section of the place where events were held. This also raised ethics issues that were related to the distribution of tickets. Therefore, the Commission addressed both seating practices in this opinion.

The Commission applied the relevant provisions of the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS") to the issues in this case. As mandated by Article XIV of the Hawaii State Constitution, the State Ethics Code was established on the premise that "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct. . . ." In issuing this opinion, the Commission was also guided by HRS section 84-1, which states that the State Ethics Code "shall be liberally construed to promote high standards of ethical conduct in state government." [Emphasis added.]

A. Powers and duties of the Agency.

It was the Agency's responsibility to oversee certain events, and to oversee the place where the events were held. It was also the Agency's responsibility to persuade others to conduct certain events, subject to the Agency's oversight, for the purpose of generating revenue to the State.

B. Distribution of free tickets.

If an event was held under the Agency's jurisdiction, the Agency had access to a number of free tickets that were to be used for certain purposes in keeping with the Agency's duties. These tickets were the subject of this opinion.

The Commission noted that historically, the employee (or predecessors of the employee) had allocated more than one of these free tickets to officials of the Agency and to other persons. Officials of the Agency and other individuals had used their extra tickets for the purpose of having their family members, friends, and guests accompany them without charge to events.

The list of persons who received free tickets had changed over time. The list now included certain officials of the Agency; the employee and the employee's assistant; a former official of the Agency, and a former employee of the Agency; a deputy attorney general assigned to advise the Agency; and the head of a company that provided contract services to the Agency. In the past, other state officials were also included on the list. Each person on the list received free tickets to all major events held under the jurisdiction of the Agency.

C. Free seating by virtue of a special pass.

Officials of the Agency also had access to free seating in a special section of the place where events were held. These officials used the seats in this section for themselves and their guests. Other guests also were allowed into the special section by invitation. The Agency, through the employee, controlled seating in this special section. Admission to this section was by special pass issued by the employee. There were no tickets to this section available for purchase. Organizations holding events, businesses, and other guests were seated in this section at the employee's invitation. On occasion, the employee invited government officials to attend events and to sit in this section. Dignitaries and special guests also were seated in this section.

Within this special section were other special seating sections. These additional special sections were reserved for a high-ranking state official and for use by officials of the Agency.

D. Application of the State Ethics Code, chapter 84, HRS.

The section of the State Ethics Code that was relevant to the issues in this case was HRS section 84-13, the "Fair Treatment" law. Section 84-13 states in relevant part:

§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:

...

- (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.

Section 84-13 prohibits an employee from using the employee's official position to secure an unwarranted privilege or advantage for the employee or for others. Section 84-13(2) prohibits an employee from receiving any compensation or consideration for the performance of the employee's official duties except as provided by law. The State Ethics Code defines an "employee" to also include officials of state agencies.

The Commission determined that section 84-13 prohibited the Agency's distribution of free tickets and passes in a manner that created an "unwarranted privilege or advantage" for Agency officials or other persons. The Commission developed guidelines to review the Agency's practice of providing free seating to its officials and others. The guidelines were as follows:

1. Tickets and seating that were controlled by the Agency were state property, and could not be used to grant unwarranted privileges or advantages to Agency officials or others.

2. The distribution of free tickets or passes to any person by the Agency had to serve a valid state purpose.
3. Persons who could receive free tickets or passes included the following:
 - a. Persons with a work relationship to an event;
 - b. Government officials on official business related to an event under the jurisdiction of the Agency. Tickets and passes could not be distributed routinely to government officials in the absence of an official business purpose.
 - c. Persons involved in encouraging organizations to hold events that came under the jurisdiction of the Agency; and
 - d. A limited class of dignitaries and other persons who fell within traditional protocol rules. Questions as to whether or not persons fell within traditional protocol rules had to be reviewed by the Commission on a case-by-case basis.
4. Additional free tickets or passes for guests could not be distributed to Agency officials or to other government officials unless there was a valid state purpose related to their acceptance and use.
 - a. It did not serve a valid state purpose to distribute additional free tickets or passes to Agency officials or other government officials so that they could be accompanied to events by a spouse, family members, or other personal guests.
5. Agency officials and other government officials should return unused tickets or passes to the Agency before an event was held, or if that was not possible, as soon as possible after an event, to provide accountability for the use of those tickets or passes and to obviate concerns about the possible misuse of tickets or passes.
6. The Agency should maintain, for each event, a written record of persons or organizations to whom free tickets and passes were distributed to enable review by the Commission of any ethics questions or complaints that could arise in the future. Keeping such a record also comported with normal administrative practices of accountability.

Application of guidelines to the distribution of tickets. The Commission applied these guidelines to the Agency's current practice of distributing tickets. The Commission determined that the current practice raised concerns under HRS section 84-13 and section 84-13(2).

Free tickets to current Agency officials. Current Agency officials each received a number of free tickets to every major event under the Agency's jurisdiction. Agency officials used these tickets for themselves, their spouses and family members, and other personal

guests. There were no restrictions on the transferability of tickets. Agency officials could use these tickets themselves or give them away to others.

The employee explained that Agency officials themselves had to attend events in keeping with their official duties. The employee explained that to address problems and concerns about the events, Agency officials had to have firsthand knowledge of the events.

The Commission felt that this established a valid state purpose for providing Agency officials with a ticket for the official's use. The Agency's duties were to oversee the events under the jurisdiction of the Agency. The Commission believed that there was justification for Agency officials to feel it was their duty to attend events and to receive a free ticket for their official use.

The receipt of additional free tickets for family members and friends of Agency officials was more problematic. HRS section 84-13(2) prohibited Agency officials from receiving compensation or consideration for the performance of their official duties "except as provided by law."

It was the Commission's opinion that HRS section 84-13(2) bars compensation or consideration not provided for by law given for the "performance" of one's official duties, or merely because of one's status as a state official or employee. The Commission stated that if unauthorized compensation or consideration is prohibited if given for the performance of official duties, such compensation or consideration would all the more be barred if given merely because of one's status as a state official or employee.

The Commission believed that the receipt of free tickets for personal guests constituted "compensation or consideration" to Agency officials within the meaning of HRS section 84-13(2). The receipt of these tickets by Agency officials without statutory authorization and in the absence of a valid state purpose was prohibited by HRS section 84-13 and section 84-13(2).

HRS section 84-3 defines "compensation" for purposes of the State Ethics Code as follows:

"Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

The Commission believed that the additional free tickets given to Agency officials constituted "compensation" as defined by the State Ethics Code. These tickets received by the Agency officials bestowed upon them a substantial economic benefit. The Commission noted that the market value of the tickets was substantial, and that each Agency official received several hundred dollars worth of tickets each year for personal guests. The aggregate value of free tickets received by Agency officials was well into thousands of dollars.

The Commission noted that there was no statutory authorization for Agency officials to receive free tickets for personal guests.

The employee provided several explanations for giving Agency officials additional free tickets. Initially, the employee stated that Agency officials preferred to attend events with companions. The employee noted that it was customary for the public to attend events with family members and friends. The employee stated that Agency officials would not want to come alone to these events.

The Commission did not believe that this argument established a valid state purpose for providing Agency officials with additional free tickets. The Commission noted that it had addressed a similar argument in its Advisory Opinion No. 86-8. That opinion concerned another state agency that distributed tickets to events that the agency controlled. Agency officials had been receiving free tickets to the events for themselves and their personal guests. The Commission had determined that this practice violated HRS section 84-13(2):

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.... 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 believed that the same reasoning applied in this case. The Commission appreciated the fact that Agency officials made personal sacrifices to carry out their official duties. However, if the Agency felt that its officials should receive extra free tickets, the Commission believed that matter should be taken up with the Legislature.

The employee also asserted other reasons for giving Agency officials additional free tickets. The employee stated the following:

1. Tickets that were given to Agency officials were given for the "promotional" duties of the Agency officials. Recipients of "promotional tickets" were able to invite persons who might help generate business for the Agency. "Promotional tickets" were essential for generating business for the Agency.
2. It was important that Agency officials, the employee, the deputy attorney general who advised the Agency, and the Agency's service provider all sat

in close proximity to each other. This enabled the employee and Agency officials to quickly find each other in order to discuss matters that might arise during an event. If Agency officials had to purchase tickets for their guests in a general seating area, officials would choose to sit with their guests rather than in the Agency's designated seating area. It would be burdensome for the Agency's staff to keep track of everyone's seat assignments. It would also delay group communication and problem solving to have to track down individuals who were seated throughout the place where an event was held.

3. If Agency officials were not allowed to sit in the same assigned seating area with their guests, they would have to meet their guests in a prearranged location and might have to wait alone. This created security concerns, as any person waiting alone could become a victim of crime. The same problem occurred if persons attended events alone and had to make their way back to a car or bus stop without the benefit of companions. This risk could be avoided by allowing Agency officials to have promotional or free seats for their guests adjoining the seats for Agency officials.

The employee and one of the Agency's officials appeared before the Commission to explain the Agency's views and to provide additional information. At this meeting, the Agency modified its prior explanation (as set forth above) for providing Agency officials with additional free tickets. The Agency's revised explanation was that the distribution of additional free tickets to its Agency officials served two purposes: (1) It enabled Agency officials to promote and market events, and (2) it made it more "expeditious" for Agency officials to "monitor" events.

The Agency's laws stated that the Agency's duties included the promoting and marketing of events. It was the Agency's position that all of the free tickets that were assigned to each of its officials were "promotional tickets" and were necessary to enable officials to actively promote and market events pursuant to the Agency's laws. According to the Agency, its officials needed to have easy access to additional free tickets in order to promote events, or the intent of these laws would be frustrated.

It appeared that the employee was primarily charged with the responsibility of promoting and marketing events. The employee received a substantial number of tickets to each event--the largest number of tickets received by any individual. The employee distributed these tickets to people who generated event-related business for the Agency.

Agency officials also used their tickets to help promote and market the events. For example, an Agency official had recently invited someone to an event. This led to discussions with the person about a possible future event-related business opportunity for the Agency.

The Commission believed that it was permissible under the ethics code for Agency officials to receive extra free tickets in order to promote and market events in accordance with the laws that governed the Agency. This served a valid state purpose. However, the Commission noted that this purpose did not account for all of the free tickets that were currently received and used by Agency officials.

Agency officials did not in fact use all of their extra free tickets to promote and market events. The Agency official who appeared before the Commission stated that he himself could not justify automatically giving Agency officials additional tickets for every event for this purpose alone. While Agency officials might need a certain number of tickets for promotional purposes at certain events, the Agency could not predict in advance as set policy exactly how many promotional tickets Agency officials would actually need. The Commission stated that the giving of more than necessary tickets to Agency officials based on mere speculation as to promotional or marketing needs did not, in the Commission's opinion, square with the State Ethics Code.

The Commission stated that the current practice of issuing more tickets than were actually needed for promotional purposes constituted an unwarranted advantage under HRS section 84-13. Agency officials who had automatically received tickets in the past beyond those needed for a bona fide promotional purpose had been free to use these tickets for any other purpose or to even give the tickets away. The Commission believed that this served no state purpose.

It was the Commission's opinion that all promotional tickets should be requested and received from the employee. If Agency officials wished to bring guests to events for promotional purposes, Agency officials could obtain the requisite promotional tickets from the employee.

At the Commission's meeting with the employee and one of the Agency's officials, the Agency raised a new argument as to why its officials should be provided with extra tickets for their family members and friends. According to the Agency official, family members and friends performed a "monitoring function" for the Agency.

According to the Agency official, this argument rested upon a provision in the Agency's laws. The provision basically stated that the Agency could in its discretion exercise any powers that facilitated the Agency in carrying out its duties or were "expeditious."

According to the Agency official, this provision authorized the Agency to exercise all powers that were "expeditious" in carrying out the various purposes of its laws. The Agency had found it "expeditious" for its officials to distribute free tickets to personal guests or family members who were asked to help "monitor" events. The Agency did not keep a list of these guests, but it appeared that they primarily included Agency officials' spouses, other family members, and friends.

The Agency official explained that before and after events and during breaks, guests took note of the conditions of the place where events were held and the services that were offered there. Guests related their personal opinions and observations to Agency officials about the quality of services at events, and other conditions at the place where events were held. The Agency official explained that by performing this monitoring function, guests assisted Agency officials in assuring that events were conducted in a proper fashion.

The Commission did not believe that this argument as put forth by the Agency official established a valid state purpose for issuing Agency officials free tickets for their families and friends. First, these "monitors" provided only what could be described as a modicum

of monitoring services hardly commensurate with the value of the tickets they received. According to the Agency official, such monitors were only required to report on what they noticed of significance on their way to and from an event, and during any breaks. Second, even assuming that this monitoring service was of some value to the Agency, Agency officials could not give preferential consideration to their own families and friends when selecting "monitors."

Even if the Agency had determined that the use of monitors served a state purpose, the Commission believed that the practice of selecting one's own family members and friends for this function was violative of the Fair Treatment section of the State Ethics Code. The Agency justified this practice by explaining that Agency officials had to "trust" the people that they chose to help monitor events. The Agency stated that it could trust the opinions of family members and friends more so than the opinions of other individuals whom they did not know.

The argument that the Agency had to select trustworthy people to perform monitoring functions did not, in the Commission's opinion, justify the preferential selection of family members and friends. The Commission believed that there were certainly other persons who could provide trustworthy opinions to the Agency about the conditions at events. It did not appear that the Agency had even considered the selection of others to perform this function. The Commission stated that there were certainly thousands of individuals in this State who could provide to the Agency their observations about events that were held under the Agency's jurisdiction. Such individuals would also obviously include persons who attended events on a regular basis.

The Agency relied heavily upon a particular provision in its laws for the proposition that it could exercise any powers that were "expeditious" in carrying out its duties. The Agency believed that this provision authorized its officials to receive additional tickets and to distribute those tickets to their families, friends, and other personal guests. The Commission disagreed.

The Commission noted that the Agency's law did not exempt the Agency from the provisions of the State Ethics Code, chapter 84, HRS. The Agency may have believed that its distribution of tickets was "expeditious" for its own purposes. However, the Commission stated, the distribution of tickets still had to comport with the State's ethics laws.

The Commission believed that "expeditiousness" alone could not justify official decision-making. If so, there would be little need, for example, for procurement codes or for procedures for hiring practices. The Commission noted that many procedures of government were quite cumbersome, but were necessary to ensure against abuse, mismanagement, and waste. The Commission believed that the concept of "expeditious" as used in the Agency's law could not be interpreted in a vacuum, but had to be interpreted to mean "expeditious" so long as standard policies of good government, laws, or rules were not set aside in the process.

The Commission recognized that the Agency was vested with broad responsibilities regarding events under its jurisdiction. As broad as those responsibilities might be, the Commission did not believe that this entitled Agency officials to give themselves tickets for

their families and friends. The Commission believed that this constituted the use of one's official position to obtain an unwarranted privilege. This was prohibited by the ethics laws.

Further, the Commission explained that HRS section 84-14(a), part of the State Ethics Code's conflicts-of-interest law, barred a state official from taking official or discretionary action directly affecting a spouse or dependent child. Thus, a state official, as well as any state employee, could not make a determination that his or her spouse or dependent child was competent or trustworthy to perform a service for government in exchange for an economic benefit. The Commission stated that recusal was required in such situations.

Purchase of additional tickets by Agency officials. In discussions with the Commission's staff, the employee asked whether Agency officials could receive additional tickets if the officials themselves paid for the tickets. The Commission believed that HRS section 84-13 prohibited this.

The Commission noted that a number of tickets to events were held by the Agency for administrative and promotional purposes. These tickets were reserved for the Agency's official use and were not available to the general public. The Commission believed that HRS section 84-13 required that the tickets be used for a valid state purpose. Allowing Agency officials to purchase the tickets for family members, friends, and other personal guests did not, in the Commission's opinion, serve a valid state purpose. The Commission believed that if the Agency officials were allowed to purchase tickets in this manner, they would be granting themselves an unwarranted privilege or advantage in violation of HRS section 84-13. The Commission noted that Agency officials were always free to purchase additional tickets in the same manner that the public was able to purchase tickets.

Tickets to current employees of the Agency. The employee received a substantial number of tickets to events. The employee's assistant also received a substantial number of tickets. The employee and the employee's assistant distributed these tickets to persons and businesses to promote and market events. For example, the employee often used tickets as a public relations tool to entice individuals to attend events and to consider holding events that would be under the jurisdiction of the Agency. The employee also gave tickets to others who generated business and revenue for the Agency.

The Commission believed that the distribution of tickets to promote business for the Agency served a valid state purpose. By law, the Agency's duties were to promote and market events. The Agency administered its affairs through the employee and the employee's assistant. The Commission believed that there was justification for the employee and employee's assistant to receive tickets to promote and market events.

Tickets to former Agency officials and former employees. The Agency had traditionally provided its former officials and some of its former employees with free tickets to events. The employee stated that this was done out of courtesy and in appreciation for past services. Currently, one former official of the Agency and one former employee received free tickets to events.

The Commission felt that this practice presented concerns under HRS section 84-13. The Commission believed that it was an unwarranted advantage for former officials and

employees to receive free tickets as a reward for prior state service. There was no statutory authorization for this practice. Nor did the Commission believe that the practice furthered a valid state purpose.

In its Advisory Opinion No. 395 (dated December 19, 1979), the Commission rejected the argument that state service entitled state officials to gratuities or rewards. Advisory Opinion No. 395 involved a longstanding practice by a state board of allotting its members tickets to events over which the board exercised state control. The Commission stated:

[I]t was difficult to overthrow a tradition that was of such long standing. Nor could we ignore the service provided to the community by the members of the board and the long hours that were required by their attendance at meetings and events. It had always been the view of this Commission, however, that such service is a fulfillment of citizens' community responsibility, offered with no thought or hope of reward. We did not believe it aided the standing of any board or commission to receive gratuities or rewards of any kind, other than those authorized by law, for service on a board.

In line with this reasoning, the Commission believed that it was an unwarranted privilege for the Agency to issue former officials and former employees free tickets to events as a reward for, or in light of, past state service. This was not intended by the Commission to minimize the contributions of these individuals. The Commission noted, however, that the law did not provide for the Agency to reward its former officials and employees with tickets.

In discussing this issue with the Commission, the employee explained that some former officials had received tickets because they also happened to hold events under the Agency's jurisdiction or because they assisted the Agency on certain matters. The Commission believed that the employee could provide tickets to these individuals so long as it served a valid state purpose and was not merely a reward for past service to the Agency.

Tickets to the Agency's deputy attorney general. The Agency also distributed free tickets to a deputy attorney general who advised the Agency. The deputy attorney general received two tickets to every major event under the jurisdiction of the Agency. The employee stated that the deputy attorney general used one ticket for herself and the second ticket for her spouse or for a friend.

The employee explained that it benefitted the Agency to have the deputy attorney general present during events. The deputy attorney general became more familiar with events and was able to assist the Agency with special problems that might arise. It also appeared that the employee and officials of the Agency occasionally needed to consult with the deputy attorney general during events.

The Commission believed that it served a state purpose for the Agency to provide a single ticket so that the deputy attorney general could attend events as the Agency's advisor. Issuing an additional ticket to the deputy attorney general for every event raised an ethics concern, however.

The Commission noted that the deputy attorney general was subject to the State Ethics Code. HRS section 84-13(2) prohibited the deputy attorney general from receiving any compensation or consideration for the performance of official duties except as provided by law. In addition, HRS section 84-13 prohibited the Agency from granting the deputy attorney general any unwarranted privileges or advantages.

The Commission believed that these sections of the State Ethics Code prohibited the deputy attorney general from receiving additional tickets to events unless there was a state purpose related to their acceptance and use. The Commission did not believe that it served a state purpose to provide the deputy attorney general with an additional ticket so that the deputy attorney general could be accompanied to events by a spouse or friend.

In discussing this issue with the Commission, the Agency suggested that an additional ticket for a spouse or companion helped ensure the deputy attorney general's well-being and safety at events. The Agency also suggested that the deputy attorney general might not come to events without a companion, even though her presence served an important purpose.

The Agency previously raised a similar argument to justify giving its officials additional tickets. The Agency claimed that officials who might have to wait alone to meet their companions at events, or walk alone to a car or bus stop, could become victims of crime.

The Commission stated that it was not insensitive to the Agency's concern for the personal safety of the deputy attorney general and the Agency's own officials. However, the Commission believed that this concern should be addressed in ways other than by providing these individuals with free tickets for their spouses or friends. The Commission discussed this issue with one of the Agency's officials, noting that the Agency had access to security personnel at events. But it was the Agency official's position that security personnel should not be used to escort state officials because this might subject the State to a lawsuit if, in the meantime, other persons were injured at an event. Leaving aside the merit of this argument, the Commission still believed that there were other means of ensuring the safety of state officials. The Commission noted that the Agency could arrange for other people to escort the deputy attorney general to and from her car if necessary.

The Commission observed that thousands of other state employees--including employees who worked during events--also might have personal safety concerns when performing their official duties. These employees had to take reasonable measures to ensure their safety. Such measures did not include having the State pay for their spouses or friends to accompany them to work. The Commission believed that it was an unwarranted privilege for the Agency to provide complimentary tickets to its deputy attorney general so that she could bring a spouse or friend to events.

Tickets to the Agency's service provider. The Agency distributed two free tickets to the head of a company that provided contract services to the Agency during events. The Agency's contract with the company was awarded pursuant to a competitive bid process.

The employee stated that it benefitted the Agency to have a representative from the company present to ensure that services were provided pursuant to specifications set by the company and by the Agency. This established a state purpose for the Agency to provide tickets to the head of the company, who had a work relationship to events. The

Commission believed that there was justification to provide the company with two tickets. The Commission believed it was reasonable for the company to have two representatives present to oversee services at events.

Application of guidelines to free seating for Agency officials in a special section at events. The Commission also applied its guidelines to the Agency's practice of providing free seating to its officials and guests in a special section at events. Admission to this section was by special pass. The Commission found that this practice also raised concerns under HRS section 84-13 and section 84-13(2).

Free seating to promote business for the Agency. The employee issued passes to the special section to organizations that held events under the jurisdiction of the Agency, companies that generated business revenue for the Agency, and other guests. To the extent that this was done to promote business for the Agency, the practice appeared to the Commission to serve a valid state purpose and was not prohibited by HRS section 84-13.

Free seating for government officials. The employee occasionally invited state officials, such as legislators, to the special section to view events. The Legislature provided state funding to the Agency. The employee invited legislators to events so they could see for themselves how events were conducted.

The Commission believed that legislators who were on official business related to the Agency or to a particular event could receive free seating from the Agency. At the same time, however, the Commission did not believe that government officials should routinely receive free admission to events by virtue of their official positions. HRS section 84-13 required that there be a valid state purpose for the Agency to provide free seating to a government official.

Free seating for certain former state officials and other special guests. Two former state officials and a special guest also received free seating in the special section. The Commission believed that seating for these particular individuals was permissible. The Commission believed it was not unreasonable to conclude that the presence of these individuals helped generate good will and promoted business for the Agency because of the unique stature of these particular individuals.

Free seating for certain high-ranking state officials. The Agency had another special seating section for a certain high-ranking state official. The Agency also provided a special seating section for another high-ranking state official whenever that official attended events. The Commission believed that this practice was permissible. There were legitimate security reasons for seating these individuals in a special section. Furthermore, the Commission believed that it was not unreasonable to conclude that the presence of these individuals helped promote business for the Agency.

Free seating for the Agency officials. The Agency also reserved a special seating section for itself. Officials of the Agency took turns using the special seating section for themselves and their personal guests. This did not appear to comply with HRS sections 84-13 and 84-13(2).

The Commission believed that the special seating of Agency officials could be justified under section 84-13 as serving a valid state purpose. It was reasonable for Agency officials to attend events in connection with their official duties and to receive seats in the Agency's special section for their official use. Similarly, the Commission believed that

Agency officials could use the Agency's special section to entertain official guests in order to promote and market events. This also served a valid state purpose.

However, the use of the Agency's special section to seat family members, friends, and other personal guests did not comply with HRS sections 84-13 and 84-13(2). The Fair Treatment law required that the Agency's special section be used for a state purpose. The Commission did not believe that use of the seats in this section to entertain family members and friends served a valid state purpose. The Commission believed that sections 84-13 and 84-13(2) prohibited the Agency from using the Agency's special section to provide free seating for the personal guests of Agency officials.

The Commission further believed that if Agency officials seated themselves in the Agency's special section, they should not receive free tickets for additional seats elsewhere. Those tickets should either be used for a valid state purpose or returned. The Commission stated that the tickets should not be given away by Agency officials to their families or friends, which appeared may have happened in the past.

Currently, officials of the Agency could receive seating for themselves and their guests in the Agency's special section and also could receive additional free tickets for other seats. The Commission believed that this was violative of HRS sections 84-13 and 84-13(2).

Free seating for the Agency's employee. The Agency also had a special seating section controlled by the employee. The employee lent out seating in this section to promote business for the Agency. The Commission stated that the seating of persons involved in promotional and marketing efforts by the Agency served a valid state purpose. The State Ethics Code did not prohibit the employee or the Agency from providing seating for these persons in this special seating section.

E. Conclusion.

The Commission appreciated the Agency's candor and cooperation throughout the Commission's review of this matter. The Commission thanked the employee and the Agency official for meeting with the Commission to discuss the Agency's views. The Commission stated that it was sensitive to the Agency's position and appreciated the significance of the Agency's responsibilities. The Commission commended the employee and the officials of the Agency for their dedication to their state duties.

The Commission understood that this advisory opinion was not in agreement with the Agency's views regarding the distribution of more than one free ticket to Agency officials. The Commission believed, however, that if the Agency felt that its officials were entitled to additional compensation in the form of tickets, that was a matter that should be taken up with the Legislature.

Dated: Honolulu Hawaii, December 23, 1996.

STATE ETHICS COMMISSION
Cassandra J.L. Abdul, Chairperson
Bernard E. LaPorte, Vice Chairperson
Carl T. Sakata, Commissioner

Note: Commissioners Kirk Cashmere and Bernice Pantell participated in the discussion and consideration of this opinion but were unavailable for signature.