



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

ADVISORY OPINION NO. 2011-1

A state legislator requested an advisory opinion as to whether she could accept an invitation from a private trade organization to attend a reception. The legislator explained that the private organization hosts an annual reception in January, prior to the opening of the legislative session. Members of the organization and state officials are invited to this event to meet and share information. The organization was planning the following year's event, which would take place in January of 2012. The event would involve an informal cocktail and pupu reception and a brief formal program. The organization informed the legislator that it was planning to invite the legislator and a guest to this event. According to the organization, the value of the event would be approximately \$45 per person. The organization is a lobbying organization and registers a lobbyist with the State Ethics Commission in accordance with the State's Lobbyists Law, Hawaii Revised Statutes (HRS) chapter 97.

Whenever a legislator is invited to this type of event, especially where the invitation is from a lobbyist or a lobbying organization, concerns arise under both the gifts section and the fair treatment provision of the State Ethics Code, HRS chapter 84.¹

The gifts law, HRS section 84-11, prohibits a state employee or a legislator, from receiving or accepting a gift, including food, drink, and invitations to events, if it can reasonably be inferred that the gift is being offered to influence or reward the employee or legislator.² The statute does not require an actual intention to influence or reward official action; rather, the law is violated if there is a reasonable appearance that the gift is offered with the intent to influence or reward official action.

¹ Because the Commission believed that the gifts law, HRS section 84-11, prohibited the legislator from accepting the invitation, the Commission did not consider whether the invitation would be allowed under the fair treatment law, HRS section 84-13. That section prohibits a state employee or legislator, from using his or her state position to gain an "unwarranted" benefit, advantage or privilege. Stated differently, a state employee or legislator may not accept a substantial benefit, simply because of his or her state position, if that benefit does not serve a legitimate state purpose.

² HRS section 84-11 provides:

§84-11 Gifts. 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.

In construing the gifts law, the State Ethics Commission considers several factors: 1) the value of the gift; 2) the relationship between the donor and the intended recipient; and 3) the extent to which the gift may benefit the state, or serve legitimate state interests.

In this case, the legislator was offered two invitations valued at \$45 each to the reception. The organization hosting the reception lobbies the legislature. From the information that the legislator provided, the planned reception appeared to be a "goodwill lobbying" type of event, i.e., an opportunity for the organization to informally meet and discuss issues with legislators and other state officials. As such, there did not appear to be a sufficiently close nexus between the planned reception and the legislator's official duties to outweigh the reasonable inference that the event was intended to influence the legislator in the performance of her duties.

Given that: (1) the event was hosted by a lobbying organization, and (2) there did not appear to be a legitimate state benefit in the legislator attending the reception, the State Ethics Commission believed that the \$90 combined value of the two invitations raised a reasonable inference that the invitations were intended to influence or reward the legislator and, therefore, could not be accepted under the State Ethics Code. The State Ethics Commission previously has concluded that, generally, for events such as the planned reception, there was no reasonable inference that an invitation was intended to influence or reward the invitee where the actual cost was less than \$25 per person. Where the cost exceeded \$25, the Ethics Code, generally, does not prohibit acceptance of the invitation if there was a legitimate and significant state benefit, such as a reasonably close nexus between the event and the invitee's official duties.

In summary, based upon the information that the legislator provided, it was the State Ethics Commission's opinion that the gifts law did not allow her to accept the invitation from the private organization to attend its reception, as currently planned. The Commission expressed its appreciation to the legislator for consulting with the Commission in advance of the invitation.

Dated: Honolulu, Hawaii, July 20, 2011.

HAWAII STATE ETHICS COMMISSION

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