

OPINION NO. 247

A member of a state professional regulatory commission who was also an executive officer and member of the executive board of an international organization regulating the same profession requested our opinion in a certain matter. The state commission was responsible for the regulation of all matters concerning this profession in the State. The international body was concerned with only a limited range of matters affecting this profession. All commissioners in this area of professional regulation were eligible for membership in the international organization but only such commissioners could be members.

This commissioner had recently attended a meeting of the executive committee of the international body. As the organization did not reimburse persons of his office for travel expenses, he had to bear this expense out of his own pocket. However, prior to his deciding to attend this meeting, a representative of a licensee of the state commission advised him that the licensee was concerned that a representative of the state commission attend the meeting to the extent that the licensee was willing to underwrite his travel costs. He did decide to attend the meeting and asked us to determine if acceptance of such payment would be in violation of the ethics code.

He advised us that in September of 1975 the international body had held its international annual convention. At that time an attempt was made to deny this licensee his license. The commission member had attended the convention and successfully argued that a determination on this individual's right to a license should be made by his local commission rather than by the international body. Following that convention, and at the request of the international body, the state commission conducted an investigation. On the basis of that investigation the state commission decided that the individual should be relicensed.

At the time of the executive board meeting there was a concern on the part of the state commission and this commissioner and on the part of the licensee's representatives that certain members of the international body might renew the past attempt to take away this individual's license. It was for this reason that the licensee was concerned that a member of the state commission appear at that meeting and protect his interests.

The commissioner stated that he felt that attendance by a member of the state commission was important in order to protect the integrity of the commission, as well as to protect its licensee. He also stated that the expense of such attendance was sufficiently substantial that without the offer of reimbursement he might have decided not to attend. No other state commissioners had planned to attend.

We were advised by the director of the agency with jurisdiction over this commission that the members were given only limited travel allowances to attend meetings of the sort involved in this matter. No such funds were available for this meeting, however. When a commission member was required to travel interisland on a commission function, then all travel expenses were paid; such reimbursement was not made for mainland and international travel. The director also pointed out, and the commission member confirmed, that the great percentage of local matters were not related to the international body's jurisdiction. Matters before the international body were of concern to only a limited number of the state commission's licensees.

It was our opinion that acceptance of reimbursement for his travel expenses would constitute a violation of HRS §84-11 (Supp. 1975). That section states:

No ... 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 him in the performance of his official duties or is intended as a reward for any official action on his part.

While he attended the executive board meeting as a state commission representative and as a member of the international body's executive committee, it was clear that his duties as a state commission member did not require his attendance. He did state that the state commission would benefit by his presence at meetings such as this. A representative of the licensee stated that it was in the licensee's vital interests that a state commission representative be in attendance at the meeting.

We concluded that there was probable cause to believe that the offer of reimbursement was made to influence him in the performance of his official duties, in this instance his attendance at the meeting. As stated, we recognized that his state duties did not require his attendance. However, it was only as a commissioner that he was permitted to attend. Accordingly, we construed his attendance to be in pursuance of official, though not required duties.

In reaching our conclusion we considered the fact that the licensee was subject to the commission's jurisdiction. We believed that the acceptance of a gift such as this by a commissioner might well affect the independent posture that a commission member must maintain with respect to those individuals the commission regulates. We recognized that our decision worked a hardship on the commissioner; and, from all the circumstances, we believed his attendance at the meeting did serve a proper function. However, it was our view that reimbursement for such a trip should properly come from either the department which had jurisdiction over the commission or the legislature. The present policy, however, appeared to be that members of this commission not be reimbursed for such expenses. It was our view that it would be improper to avoid this departmental and legislative decision by acceptance of expenses from a licensee.

We took particular note of his cooperation in this matter and the assistance provided by the licensee's representative. That he brought this matter to our attention at an early date was, we felt, a testament to his honesty and integrity.

Dated: Honolulu, Hawaii, April 7, 1976.

STATE ETHICS COMMISSION
Audrey P. Bliss, Chairman
Paul C.T. Loo, Vice Chairman
Gary B.K.T. Lee, Commissioner
I.B. Peterson, Commissioner

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered.