

## OPINION NO. 258

A state legislator advised the Commission that certain legislative facilities and equipment had been used for a political purpose. The legislator requested that the Commission determine if this use of legislative equipment was in violation of HRS §84-13(3), the fair treatment section, of the ethics code. The legislator stated in his request that it was his understanding that a previous opinion (Informal Advisory Opinion No. 13) issued by the Commission had application to this question and he wished to know if the guidelines stated in that opinion were still applicable.

We invited the legislator who had authorized the use of the facilities and equipment to meet with the commissioners to discuss this matter at length.

The legislator stated that a political party had asked a legislative employee if the party could use the equipment to prepare material for a convention. The employee then raised this question with this legislator. The legislator was advised that such use had been made of the equipment in the past and, on this basis, he granted permission to the party to use this equipment on the condition that the party supply its own materials and personnel to run the machinery. The legislator indicated that in his view there was a public purpose to be served in cutting down the cost of the public campaign process. He stated that the materials had to be printed very quickly and that the providing of this service by a private printer would have been quite expensive. The legislator also stated that he saw the convention process as being a special situation. He felt this situation justified the use of public facilities for this limited purpose.

The Commission learned from the legislator that other political parties had not used this equipment in the past; to his knowledge none had ever asked to use this equipment.

In Informal Advisory Opinion No. 13, the Commission held that a state employee who had used certain government facilities for the purpose of contacting former associates in a government organization with a plea for campaign funds for a presidential candidate and his running mate had misused state facilities in violation of HRS §84-13(3). While we believed that the facts of the case before us were distinct from those of Informal Advisory Opinion No. 13, we believed that the principle of that case was nevertheless applicable.

HRS §84-13(3) (Supp. 1975) provides:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to ...

(3) using state time, equipment or other facilities for private business purposes.

First, while the equipment was under the jurisdiction of the legislature and subject to rules and regulations that the legislature deemed should apply to its use, this equipment, having been purchased by public monies, was nevertheless state equipment. Then, while the functioning of a political party, including the holding of conventions, might ultimately serve a public purpose and was certainly part of the public electoral process, the functions of a particular political party, in the Commission's view constituted a private business purpose rather than a public purpose.

In the law, traditionally, the word "business" has been vaguely defined. Under HRS §84-3(1), the term is defined very broadly to include "a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit" (emphasis supplied). We noted here that this political party, as

other political parties, was an organization of individuals who had specifically joined the party as members. Participation at the convention was open only to members of the party and not to members of the public generally. We also believed it was clear that a political party basically exists to serve its own ends, to disseminate its own views, and to get its own members elected to office. Clearly, this was a part of a larger public process. We did not believe, however, that this part could be considered a public as opposed to a business purpose. We therefore found that the functions of this party or any other political party constituted a private business purpose and were therefore subject to the requirements of HRS §84-13(3). We believed that the mandate of HRS §84-1, that the chapter be construed to promote high standards of ethical conduct, supported this finding.

We had stated in past opinions (Opinion Nos. 139 and 150) that the use of public facilities for a private business purpose was not improper or unwarranted under the ethics code if the facilities or equipment used were available to the public at large under guidelines established by the custodian of the equipment. For example, in Opinion No. 150 the Commission had noted that teachers were not in violation of HRS §84-13 when they used state facilities and equipment in providing private lessons. We had noted that state facilities and equipment might be used by teachers in teaching private lessons when the facilities and equipment are made available to the teacher in accordance with Department of Education procedures which make them available to the public at large. In the instant case, we noted that no specific guidelines concerning public use of such equipment had been published. We found, therefore, in this particular instance, that the use of this equipment by the party for its convention was unwarranted. While some theoretical costs might have accrued to the State because of an indeterminate amount of depreciation in the equipment, we did not feel the necessity of requiring any specific recompense in this matter.

We believed, moreover, that the legislative equipment might be made available to this party or any other organization or individual if it would be feasible for the legislature to make its facilities available to the public at large. While we felt that the legislature would be justified in establishing guidelines for the protection of its equipment by requiring that competent personnel handle the machinery and that it be made available at only certain limited hours, and certain other guidelines that might, of necessity, be required for the protection of the equipment, we did not believe that it would be appropriate to limit the use of the equipment to political parties. This, in our view, would not be making the equipment available to the public at large. Since the equipment was public property it did not appear to us to be fair to provide access to that equipment to only certain groups. We stated that if use of the equipment in the manner we had outlined was not feasible or acceptable then it was our view that its use should be limited to legislative purposes.

We commended the requester of the opinion for his concern for ethics in government and thanked the legislator who testified before the Commission for the full cooperation he had provided to the Commission and staff in the consideration of this matter.

Dated: Honolulu, Hawaii, July 6, 1976.

STATE ETHICS COMMISSION  
Audrey P. Bliss, Chairman  
Dorothy K. Ching, Commissioner  
Gary B.K.T. Lee, Commissioner

Note: Vice Chairman Paul C.T. Loo did not subscribe to this opinion. Commissioner I.B. Peterson was excused from the meeting at which this opinion was considered.