

OPINION NO. 265

An employee of a department who provided technical assistance to private landowners under a certain state land use program was asked by one of the landowners in his district to take a trip to the mainland to gather some information to aid it in its land use planning. A mainland firm had contacted the landowner requesting an opportunity to establish certain plantings on its lands. This private firm planned to lease the landowner's lands and grow a certain type of plant for commercial purposes. The firm claimed to have a special variety of the plant that is able to grow in dry-arid regions similar to some areas owned by the landowner.

The landowner had asked the employee to make the two-day trip to the mainland to visit the firm's operation. The purpose of this trip was to verify the adaptability of this plant species to conditions similar to those found on the company's land and to investigate its prospects for commercial values. The landowner felt that it did not have anyone on its staff with the expertise to make that judgment and that the employee was well qualified to do so. All expenses of this trip were to be paid for by the landowner. In order to respond to their request, the employee asked us whether he might accept the trip.

HRS §84-11 was applicable to this question. It states that no employee may receive any gift, including travel "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."

The Commission had previously stated in similar cases that the considerations involved in applying this section of the statute to an individual case included 1) the business relationship between the donor and the recipient of the gift; 2) the official functions of the recipient; 3) the benefits to the donor and the recipient of the gift; and 4) the relationship of the gift to the job of the recipient and whether it redounds to the State's benefit. (Opinions 121 and 45.)

In considering those factors we noted that the employee managed approximately 26,000 acres which the landowner had surrendered for twenty years under a state agreement. As those lands were entirely free from the landowner's control, however, we found that his management functions did not involve official action with regard to the landowner. The employee also served as a technical advisor to the landowner under a state program concerning 200 acres of its land. In addition he also enforced certain regulations which applied to the landowner's land located in a conservation district. Clearly, then, aside from this particular matter, he did exercise official functions with regard to the donor of this trip.

The employee also stated that he was responsible for giving advice concerning management for landowners who sought it. A landowner, however, was not required to either seek or follow such advice. The landowner in question, however, was seeking his advice on this particular matter; indeed his desire to give the landowner an informed opinion was the reason he wished to accept its offer to make this trip. Because he would be advising the landowner in this matter, we believed that he would be taking official action or discretionary action as a state employee. Accordingly, we found he did have an official relationship with the donor and the gift was related to his official functions.

The proposed trip was closely related to his responsibilities in his state position, especially with regard to his duties in the area of multiple use state land management. His job description

indicated that he was responsible for planning and organizing one district program and for initiating and supervising research projects concerned with land use and product utilization. His visit to the mainland operation would enable him to learn of new land use techniques, especially for dry and semi-arid lands; he had indicated that some of the semi-arid lands in his district were being taken out of crop production and had to be replaced with some form of vegetation for conservation purposes. He indicated that he might find that the mainland plant might be suitable for not only the landowner's needs but for the State's also since many dry and semi-arid lands were under state control.

From this it was apparent that the landowner would certainly benefit from his taking the trip. However, because he would have the opportunity to gain new knowledge about management techniques, the State would also benefit from the use to be made of that knowledge in other matters and from the landowner's informed decisions in its own land use and conservation program. We believed that the overall benefit of the trip would clearly redound to the benefit of the State and did not, under the circumstances the employee had described to us, tend to indicate that it was being given to improperly influence him in his official duties. While the employee would be taking other action in the future that would affect the donor, we did not believe that this trip was being offered under circumstances that should affect his judgment in those matters. We noted in this regard that he would receive no particular personal benefit, unrelated to his state position, from accepting this gift of travel. We also noted that he would have no role to play in the actual sale of the product.

Since it appeared that the State would receive the ultimate and most significant benefit from his taking this trip, we found that its acceptance by the employee would not be in violation of HRS §84-11. We stated to the employee that he should not plan to extend his trip with an actual vacation nor should he accept anything from the landowner or the mainland firm other than his actual travel and lodging expenses. He had indicated that he would make the trip on his own time.

We commended the employee for his appreciation of the ethics questions involved in such an offer and for his timely request for an opinion from the Commission.

Dated: Honolulu, Hawaii, August 6, 1976.

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

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.