OPINION NO. 279

The director of a state agency stated that his office received requests from various business and industrial organizations for staff members to participate in seminars or on discussion panels which were being presented as part of an association conference. These requests sometimes included an offer to pay for transportation, hotel accommodations, and meals at the conference if it were being held on a neighbor island. He asked whether the staff members in his office could accept these offers if they participated in these seminars or on discussion panels.

We pointed out to the employee that HRS §84-11, the gifts section of the ethics code, states in part that no employee may accept or receive any gift including travel and hospitality "... 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 airfare, lodging, and meals offered were all gifts for purposes of the statute. If the circumstances surrounding the gift gave rise to a reasonable inference that the organization was attempting to influence his staff member in his or her execution of official duties and/or rewarding that person for past actions, then that staff member could not accept the gift. If the circumstances did not give rise to that inference, then the gift could be accepted.

We stated that in past opinions we had set forth the guidelines we considered when deciding whether the acceptance of a gift would give rise to that inference. In those cases we had evaluated the business relationship between the donor and the recipient of the gift; the relationship of the gift to the official functions of the recipient; the benefits to the donor and the recipient of the gift; and whether the gift would redound to the benefit of the State. (See Opinions No. 45, No. 121, and No. 265.)

The employee stated that when his office received these requests he generally sent the investigator/enforcement officer who was most familiar with the subject that the group was interested in. This relationship in and of itself made his question particularly difficult; when a recipient had broad regulatory powers over the donor an inference of attempted influence or reward was raised much more quickly than when such regulating responsibilities did not exist. However, we understood from the statute creating his office that it had a duty to undertake educational activities concerning the responsibilities of the business and industry and of the duties of his office. (We quoted the applicable provisions of the Act.)

We recognized therefore that his office did have a duty to participate in educational functions with industry and business and although the office was meeting that responsibility through certain special programs, the participation of a member of the staff at the kind of industry conferences the director had described would be very helpful in that regard. While the donor would benefit from the participation of the staff member, this benefit was one that the director's agency had a positive duty to confer. The actual recipient, of course, would receive the personal benefit of taking a trip to a neighbor island to participate in the conference or seminar. However, we noted that given certain restrictions on his or her activities, this benefit could be kept within reasonable bounds such that the State would be the ultimate beneficiary of the gift.

We pointed out that we had imposed certain restrictions in the past when we had permitted the acceptance of travel expenses. In those cases, in order to thwart the inference of attempted influence or reward, we had required that the employee not extend the trip for a personal vacation,

not accept any lodging unless necessary, and not accept any meals or favors from individuals or small groups in a nonconference situation.

In the case of this director's staff members those restrictions would translate into traveling to and from the conference on the same day if possible and accepting only meals or hospitality offered generally to the entire group, i.e., a luncheon or dinner meeting where all conferees and guests were invited equally. We stated to the director that he could, of course, expand those restrictions commensurate with the guidelines we had established if he chose to allow his staff members to accept those invitations.

We raised a policy question which applied to situations of this kind. That was, should the government allow private individuals or an industry to pay for expenses which were within its responsibilities to bear. We recognized the arguments on each side of this question, ranging from saving the public from bearing such expenses to avoiding any appearance of impropriety. The ultimate decision rested with this director because he was in the best position to judge whether this savings to the taxpayers would outweigh any loss of credibility and trust by the public. We understood that in the past he had sent staff members to these conferences at state expense and that he had not been forced to decline a request for a participant because of lack of funds. We suggested that this factor should be of some weight in his decision.

We indicated to the director that we appreciated his sensitivity to this question and commended him for requesting this opinion.

Dated: Honolulu, Hawaii, November 5, 1976.

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

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.