

OPINION NO. 311

The director of a state department had been asked to participate in a panel discussion at a meeting of an industry association to be held at a neighbor island hotel. The industry association had also invited him and his spouse to remain as their guests at the hotel for the weekend. The director asked the Commission to determine if his acceptance of the complimentary lodgings would be a violation of the ethics code. At the same time we also considered the propriety of his accepting the travel expenses offered by the association.

The section of the ethics code most applicable to his question was HRS §84-11 (Supp. 1975) which deals with the acceptance of gifts. 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.

The initial question we had to address was whether he might accept the airfare to and from the conference which had been offered to him by the association. Travel is also a gift for purposes of the ethics code.

The Commission had previously dealt directly with the acceptance of travel expenses by a state employee in order to participate in a business association conference. In that opinion, No. 279, the Commission had used certain criteria to determine whether the gift was acceptable. Those criteria had been established in past cases dealing with gifts and included evaluating the business relationship between the donor and the recipient of the gift; the relationship of the gift to the official functions of the recipient of the gift; the benefits to the donor and the recipient; and whether the gift would redound to the benefit of the State. (See Opinion Nos. 45, 121, and 265.)

In applying those criteria to this situation, we noted that the director did not take action in his state position that specifically affected the industry. However, action he took in his position would be of great interest to this major state industry. As a member of the cabinet, for example, he was an advisor to the Governor. This relationship, while not as direct as the one in Opinion No. 279, was significant. Then, the gift of airfare was intended to defray the costs of his travel to participate in the conference. The statute outlining his duties as director did not require him to engage in such educational activities. However, we could see that because of his position he would be a good resource person for a group such as this. Therefore, while this type of participation was not mandated by the statute, we felt it was an inherent duty of a state officer to be available to the public as a resource person in reasonable situations. Thus we viewed his acceptance of this trip to participate in this conference as being related to his official duties.

Finally, the benefits to each party were fairly obvious. By providing him with airfare, the association would be aiding itself in gaining his participation as a panelist; he would be receiving a trip to a neighbor island to participate in this conference. In addition, however, we could see that it might also be to the State's benefit to have the director participate in a panel concerning one of the State's major industries. Therefore, given certain restrictions, we found that his acceptance of this trip would also benefit the State.

The restrictions we had imposed on other state employees attending business association conferences and training sessions went to the heart of his question concerning his acceptance of complimentary lodgings. In the past, in order to thwart the inference of attempted influence or reward and to help preserve the public's confidence in state employees, we had required that the employee not extend the trip for a personal vacation, not accept any lodgings unless necessary, and not accept any meals or favors from individuals or small groups on a non-conference situation. (See Opinion No. 279.) We felt that these restrictions should also apply in this case.

The association did have an active interest in the State's policy towards their industry. The director's recommendations to the Governor would constitute official action and there was the possibility that state policy toward the industry could be influenced through him. The offer of complimentary lodgings for the weekend, while undoubtedly in part made in the spirit of aloha, would still create an opportunity for the industry to present its views in a less than neutral atmosphere. This could not but help create a reasonable inference of attempted influence.

In practical terms the restrictions we had outlined meant that while he was an active participant in the conference, he might accept such hospitality as was offered generally to the entire group. For instance, if during his participation, the association had a dinner or luncheon for its members and panelists, he might attend. In addition he was advised that he should travel to and from the conference on the same day if practical. However, if his participation extended into Friday evening and he found it more practical to leave the next morning, he might accept the night's lodgings. This determination was to be made by him when he became aware of the extent of his active participation.

With regard to the association's offer to his spouse or to any member of his family, the gifts provision of the ethics code did not prohibit family members of state employees from accepting a gift unless the gift was actually one to the employee under the guise of a gift to the family member.

Therefore, if a family member were offered complimentary lodgings by the association because of his or her relationship to the director, he or she should not accept. If he or she were offered the lodgings in his or her own right rather than because of his or her relationship to the director, we had no authority to determine whether that family member should accept.

We commended him for his awareness of the ethical questions involved in accepting such an invitation and for his timely request for an opinion. We enclosed a copy of Opinion No. 279 for his information.

Dated: Honolulu, Hawaii, August 11, 1977.

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

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