

OPINION NO. 316

A newly created state commission had as one of its responsibilities the education of the public in the subject matter that was its concern. One of the members had suggested that members of the business community and other individuals might be willing to donate money to help finance this commission's projects. The chairman directed the legal counsel of that commission to ask the Ethics Commission to determine if that commission could receive such contributions for its projects.

The donation of money by the business community would constitute a gift for purposes of the ethics code. We noted that the provision dealing with gifts was found in HRS §84-11 (Supp. 1975). The 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.

We pointed out that this statute applied to specific employees and not to the subject commission as a body. Both the paid staff and the appointed members of this commission were employees for purposes of the ethics code. Therefore, no staff member or commissioner could solicit or accept any money under circumstances in which it could reasonably be inferred that the gift was given with the intent to influence him in the performance of his official duties or was a reward for any official action on his part. However, if a reasonable inference of attempted influence or reward did not exist in the gifts contemplated by this commission, the ethics statute did not specifically prohibit a staff or commission member from soliciting or accepting such gifts. We pointed out that in the past we had identified certain criteria which were helpful in determining the validity of a gift under the gifts section. These included: whether the gift was related to the public job of the recipient; whether the gift would redound to the benefit of the individual or the State; whether the solicitation was of one member of an industry or of all; whether the employee's department presently had before it, or had had before it, an application affecting the donor; and what benefit the donor stood to gain from the gift. (Opinion No. 45.) It appeared that the subject commission was unlikely to take official action directly affecting potential donors; further, the gifts would clearly redound to the benefit of the State rather than to the individuals who might solicit the gifts. Finally, it did not appear that the donors would stand to gain anything from making a donation to the commission. Accordingly, it was our view that the receipt and solicitation of such gifts would not be in violation of the ethics code.

In addition, however, we suggested to the commission as we had to others in the past, that it fully consider the position in which a solicited business would be placed by such solicitations. While the commission might not take action directly affecting a specific business, it did act as a representative of an all-pervasive state government. Some programs were designed to require public as well as private financial assistance, but that fact would be known at the outset. In the case of this program, businesses were not expecting to be asked to contribute and if asked might be placed in a rather awkward position. In addition, non-solicited but specific gifts which benefitted the State might raise a question of the advisability of allowing private business or industry to pay for expenses which were within the government's responsibility to bear. The savings to the taxpayers had to be weighed against the loss of credibility and trust by the public that

might be occasioned by solicitations of persons and businesses to support government projects. (See Opinions No. 279 and No. 311.)

We suggested to the chairman that he was in the best position to weigh these various considerations in each individual case. We pointed out that should the commissioners decide to solicit gifts, however, HRS §84-13 would prohibit them from using their positions to secure unwarranted advantages. This meant that the staff and commission members should be careful not to place any undue pressure on a business or individual while seeking funds.

We understood that the enabling statute for this commission contained no provision for the acceptance of gifts or of matching funds. We pointed out that whether this commission as a body had the legal authority to accept the gifts the staff and members might solicit was a question which was not within our authority to determine.

Dated: Honolulu, Hawaii, October 14, 1977.

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

Note: Commissioners Dorothy K. Ching and Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.