

OPINION NO. 321

The director of a state program met with the Commission to discuss a plan under which certain items would be provided to particular personnel for their personal use. The director asked the Commission to determine the effect of the ethics code on such a plan.

The relevant sections of the statute were HRS §84-11 (Gifts) and HRS §84-13 (Fair treatment). HRS §84-11 (Supp. 1975) provides:

No legislator or 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 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.

HRS §84-13(2) (Supp. 1975) prohibits an employee from

... accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

We stated first of all that we did not believe that the gifts section would in any way prohibit the plan he contemplated. A gift is improper under this section only if given under circumstances from which it can be inferred that the donor's intent is to influence the state employee in his or her official action. Because the personnel who would receive these items had no official relationship with the donors, we could not see that these gifts could possibly influence them in the exercise of their official duties.

The more relevant section here was the fair treatment section and specifically paragraph (2) of that provision. The legitimacy of extending the use of these items to state personnel was dependent upon whether the receipt of them constituted proper compensation. It was our view that, given certain guidelines and restrictions, such compensation was proper.

The director had indicated that he might wish to offer these items to personnel in two specific instances. First, it was fairly common in other states for such personnel to be extended the use of these items. Therefore, when he recruited such personnel he felt it necessary to offer the use of these items as an added inducement to such people to accept the State's offer of a position. Secondly, he had also stated that the use of such items might be offered to personnel who were being recruited by other states. We could readily see that it was far less expensive for the State to establish this plan with the assistance of private dealers than to either purchase the items for the personnel, provide compensation for the personnel to purchase or lease their own items, or to extend to them the use of State-owned items.

We stated that so long as the department maintained strict control of the plan the extension of the use of these items was part of the package of compensation offered to the personnel rather than compensation in addition to what was provided by law. Since the items were to be provided by the director as a representative of the department in an open and straightforward manner, this would be compensation anticipated and provided by law.

We held that certain strict safeguards should be adhered to in this plan. First, it should be administered by the program director. Our concern was that under no circumstances should the personnel involved directly or indirectly solicit dealers for the use of these items. The provision of the items under that circumstance would be in direct violation of HRS §84-13(2).

Secondly, the personnel receiving the items were not to endorse the products or the dealers who provided the items.

Thirdly, the plan was to remain under the control of the department at all times; all decisions with respect to the allocation of the items were to be made by the department.

We noted that quite often this kind of matter came to the attention of the Commission only after action had been taken and problems had arisen. These problems, even when they did not constitute conflicts of interest under the code, nevertheless raised an appearance of impropriety that was damaging to the state institution that was involved. His bringing this matter to the attention of the Commission at an early time made such a result highly unlikely. We commended him for taking this initiative.

Dated: Honolulu, Hawaii, November 30, 1977.

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