

OPINION NO. 335

We received a request for an advisory opinion from a department head concerning a possible violation of the standards of conduct by a state employee. The employee had solicited gifts on behalf of certain organizations from a number of companies who did business with the department.

The facts in the case were fairly simple and were not in dispute. The employee was responsible for the operations and maintenance activities of two state facilities. He was generally responsible for the operation of the facilities and his duties included the planning, directing, and controlling of their overall functions. Because the facilities were small his direct contact and authority over them was substantial.

For several years he had been the principal organizer of organizations devoted to the promotion of a certain cultural activity on one of the neighbor islands. In order to underwrite the ventures of these organizations it had been necessary to extensively solicit local businesses. Because of the employee's primary role in these endeavors he had been an important solicitor of contributions. Among the people he had approached for gifts had been tenants of the facilities under his supervision. While he had also solicited numerous other businesses, our review of this matter was restricted to those organizations with which he had a state relationship.

The applicable provision of the statute was HRS §84-11 which 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 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.

In reviewing cases coming under the gifts provision, the Commission had established certain criteria which it had used in the past in determining the application of the statute. These criteria included (1) the business relationship between the donor and the recipient of the gift, (2) the relationship of the gift to the official functions of the recipient, (3) the benefit to the donor and to the recipient of the gift.

In this case, there was a clear relationship between the tenants of the facilities and the state employee and this circumstance was of concern to us. We noted the mitigating factor here, however, that the gifts were not for the employee's personal use but were intended for the use and benefit of the organizations he represented. Secondly, the gifts had no relationship to his official functions so they could in no way redound to the direct benefit of the department. Thirdly, he did not appear to have received a personal and substantial benefit from his solicitations of these gifts. Further, while the companies undoubtedly stood to gain a certain amount of goodwill because of the tendering of these gifts, we saw no evidence that they had been granted any advantage because of them.

We noted in analyzing this case that the statute did not establish a broad prohibition against the receipt or solicitation of gifts but rather determined acceptability on the basis of whether the circumstances indicated that the gift was intended to influence the state official in the performance of his duties. We saw no such indication in this case.

As we had already indicated, the employee was not personally benefitted by the gifts. Further, all of the gifts were approved or acknowledged by the headquarters of the various companies so that the solicitations were not handled solely between the state employee and the managers of the local offices. Further, as we had noted in earlier decisions, where solicitations are directed at a very broad group and are not focused on a small part of a group the likelihood of impropriety is reduced. We noted here that he had solicited approximately 70 different businesses and organizations, most of which were located or had offices on the neighbor island where he resided. This indicated to us that this was a broad-based, community supported project which was serving an important community need.

We also recognized that it was difficult to raise funds for the support of the kind of activity these organizations were promoting. We further recognized that these organizations did meet a community need and that this individual was uniquely qualified to help in the achievement of these community goals. When we reviewed the totality of these circumstances we could find no inference that the companies who had responded to his solicitations expected official favors from him.

Nevertheless, we did feel that certain guidelines should be adhered to as he pursued his activities. He indicated that it was no longer necessary for him to directly solicit the tenants for their donations. We believed that this was a practice that should be adhered to as strictly as possible. Despite the fact that the gifts were intended for a community purpose, an appearance might nevertheless be raised that these businesses would receive favorable treatment because of their generosity to organizations that were important to the employee.

Secondly, he was quite frank in revealing that he did use a certain amount of state time to conduct the business of these organizations. Our questioning of him indicated that the use primarily concerned telephone calls and that it was not particularly extensive. Nevertheless, we advised him to keep this use of state facilities to a minimum and to conduct organizational business on his own time. We recognized that occasional phone calls were not a significant intrusion into the performance of a state employee but we stated that this practice must be carefully monitored by the employees involved.

Finally, we noted that his involvement in these organizations had not been explicitly communicated to his supervisor until recently. While we did not believe that any intentional wrongdoing was involved, we pointed out the wisdom of bringing such matters to the attention of supervisors and the Commission as soon as possible.

The Commission commended the department head for continuing the agency's exemplary policy of full cooperation with this Commission. All department personnel involved were frank and open in their discussions of this matter. A copy of the opinion was forwarded to the employee.

Dated: Honolulu, Hawaii, April 10, 1978.

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

Note: Chairman Paul C.T. Loo and Commissioner Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.