OPINION NO. 338

An employee served as a director of a division which was responsible for administering state health care facilities. The employee indicated that at times in the past, particularly as a result of religious or cultural practices, a patient or the family of a patient or expired former patient had attempted to donate a monetary gift to employees of the facility at which that patient was receiving or had received care. While the donor had normally been persuaded to donate the money to the facility under a statute which provided for the acceptance of gifts for such facilities' construction, improvements, or equipment, some individuals had insisted that the gift go to the direct benefit of the employees. Of immediate concern was a $100 gift by a facility employee and his family whose mother was a patient at the facility. The money was specifically given to help finance a Christmas party which was given by employees annually to thank the voluntary workers at the facility.

The division director asked this Commission if the ethics code placed a dollar or fair value limit for gifts which might be accepted by an individual employee or if there was a dollar or fair value limit per employee and/or per volunteer when the gift was given to a group of employees.

We answered both questions in the negative. The code does not specify a limit on the value of a gift which may be accepted. The gifts provision, HRS §84-11 states:

> 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.

We pointed out that the fact that the code did not place any value limit on the gift was a recognition by the drafters of the code that a particular gift might be acceptable in some circumstances and might not be acceptable in others. The standard set forth in the code was whether the gift was given under circumstances in which there was a reasonable inference of an attempt to influence official action or of an intent to give a reward for past official action.

We explained that the Commission had long recognized the custom in Hawaii of giving small gifts of appreciation to those people with whom one deals both in business and in government. And, we had not, as expressed in Opinion No. 42, prohibited the occasional unsolicited box of candy or pastries or basket of fruits shared by members of an office or facility. We had also allowed larger individual gifts when, after close scrutiny, we had determined that the ultimate beneficiary of the gift was the State and that there was no attempt on the part of the donor to influence official action. For example, we had permitted the acceptance of a gift of airfare for a state equipment repairman to attend a repair school on the Mainland. We stated here, however, that the State would not benefit from the type of gift which was of concern to this director. Instead, the employees of the facility would be the direct beneficiaries.

We indicated to the director that we had never considered a gift with a value of $100 or more to be a token gift of aloha. While it might amount to only a few cents a person to the recipients, it was a substantial sum to the donor, a fact that would be recognized by the recipients. It would be a rare individual who would look at a gift of this nature solely in terms of what percentage of the gift would accrue to him or her. Rather, that employee would look at it in terms of the cost to or generosity of the donor and react to it accordingly.

Certainly patients at such facilities and their families were particularly vulnerable to opportunities which they might think were available to them to ease the patients' stay. If a gift to the employees might result in better treatment, we noted that the temptation was there to give. In the long run an individual's health was more important than a business decision. Therefore, we saw an individual employee's or a facility's acceptance of a gift from a patient or patient's family as troublesome.

Specifically, we stated that the $100 gift from the employee and his family to the employees' coffee fund should not be accepted and should be returned. We felt that the amount exceeded that of a token of aloha. In addition, the gift had been given by the person not as an employee but as a private individual whose mother was a patient at the hospital. It was considerate of the family to specify that the money be used to help defray the cost of the party given to honor the volunteers, but since the employees bear that cost, the money would lessen their burden. Thus, they were the actual beneficiaries. We pointed out that if the employee and his family wished to thank the volunteers they might give the money to them or some organization of theirs. As volunteers they were not state employees and the code would not apply to gifts given to them.

We did not believe that the administrators of these facilities or employees should accept monetary gifts from patients or their families unless the money was specified for an item which would be acceptable as a gift of aloha. For instance a patient who might wish to purchase some pastry or coffee for the employees' coffee break could give the money with that proviso without having to find a way to actually purchase the item.

In addition, we noted that gifts to the facility for the purchase of equipment or for building purposes were not only specifically acceptable under HRS §323-3 but would also be acceptable under the ethics code. The gift in that case was a gift to all the people of Hawaii rather than a few state employees.

Finally, the director stated that some gifts had been given to special trusts which had been established. One such trust was for employee education. We saw such gifts, if not earmarked for a specific individual who cared for the patient, as being acceptable. A gift to such a trust would be of benefit to the State in that employees would be gaining additional knowledge to be used in their jobs. The employee or employees who received the aid would also benefit, but if there were no official relationship between the donor and the employee the required inference of intent to influence or reward would not be present. These factors would be consistent with the guidelines established by the Commission in Opinion Nos. 42, 121, and 265.

We commended the director for his desire to establish guidelines for all employees of the facilities directed by his division. We suggested that if at any time a specific gift raised a question under the code he should contact us.

Dated: Honolulu, Hawaii, June 15, 1978.

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

Note: Vice Chairman I.B. Peterson was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee was not present during the discussion and consideration of this opinion.