

## OPINION NO. 346

A state division was responsible for administering a state facility out of which certain food handlers operated. The chief of the division asked the Commission to determine the propriety of the division accepting small donations of food from these handlers for the annual division Christmas party.

There were a number of guidelines the Commission looked to in answering gifts questions. These criteria concerned the business relationship between the donor and the recipient of the gift, the relationship of the gift to the official functions of the recipient, the benefits to the donor and the recipient of the gift, and the likelihood that the gift would diminish the public standing of state employees and state government as a whole.

The division chief advised us that immediately prior to the Christmas party between ten and twenty of the handlers donated small items of food. From year to year different operators donated the food; they also donated food to other persons they did business with in the area. Finally, the Christmas party was not solely for the employees of the division but also for individuals who did business in the area.

The division was responsible for assigning space in the state facility. While the demand was greater than the space available, it was given out on a first-come, first-served basis and there was very little discretion involved. Once a space was awarded to a handler, the division exercised no control over the business operations of that individual.

The division's responsibility was for the maintenance of the facility, the policing of it to prevent unauthorized persons from occupying the facility, and for the general cleanup and security of the area.

Finally, we understood that the gifts were not necessarily given to those employees who had the most direct contact with the handlers but that, rather, the gifts were given to the division as a whole.

It was our view that the gifts he had described in his request for an opinion were traditional tokens of aloha rather than gifts which would be prohibited by the gifts section of the statute. The relevant language was contained in HRS §84-11 and provided that an employee may not accept a gift "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." Under the criteria we had noted we concluded that the relationship between the donor, the handler, and the recipient, the division, was an official one and did require discretionary action from time to time. Further, the gift had little relevance to the actual functioning relationship between the division and the handlers. That is, these gifts could not be seen as fulfilling or advancing a state function.

Nevertheless, we also saw little benefit to be gained by the donors in terms of the amount of food given and the kind of action the division took with respect to the donors. We did not see, under the circumstances, any real likelihood that these gifts would impugn the integrity of the division or the department or state government in general. We understood that this tradition had gone on for many years and, while that fact would not justify a bad practice, we felt here that the practice fell within the tradition of extending a token of aloha at certain times of the year to those

persons one does business with. Accordingly, we ruled that this practice was permissible and might continue. We cautioned him, however, to closely monitor this matter to ensure that large gifts were not given to the employees and that the gifts were used solely for the Christmas party.

We also commended him for instituting a rule prohibiting the acceptance of food by individual employees for their personal use. Even in those circumstances where the food would otherwise be thrown away, it nevertheless had value for the employee who received it and had a tendency to undermine the integrity of the division and the department.

We appreciated his bringing this matter to our attention and suggested that he raise additional questions with us in the future if the guidelines we had set forth here should not cover particular matters that might arise.

Dated: Honolulu, Hawaii, August 8, 1978.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered.