

OPINION NO. 349

We received a request for an advisory opinion concerning the use of a state residence for political activities.

The relevant portion of the statute was HRS §84-13(3) which prohibits the use of state time, equipment, and facilities for private business purposes. We had previously ruled in Opinion No. 258 that political activities constitute a private business purpose and should be kept separate from state time, facilities, and equipment. The question for our determination here was whether the residence was a state facility for the purposes of the statute.

The request for an opinion had attached to it a copy of a memorandum of April 19, 1977, relating to the use of state time, facilities, and equipment for campaign purposes. The Commission had issued a more detailed memorandum on February 9, 1978, which established more specific guidelines and discussed the general area in more detail. As was pointed out in that memorandum, the state ethics code did not deal directly with campaign activities by state employees or incumbents. It came into play only because of the fact that there was a prohibition against the use of state time, facilities, and equipment for private business purposes and, as indicated, it was our view that campaigning for public office was a private business purpose. Nevertheless, as was recognized in that opinion, a more comprehensive code of conduct that would apply to all persons campaigning for office, including those who held government office, should probably be promulgated to bring uniformity and fairness to this complex area. We noted that many kinds of political activities were not reached by the language of the state ethics code because of the fact that it was not drafted to deal with this area.

It had been the Commission's view in the past that residential facilities, while they are provided by the State, are a different class of facility because they are provided for the personal use of their official residents. It had been our view that they were characterized by the personal use of the individuals and their families and could not reasonably be treated in the same way as other state facilities.

We reviewed this question again in the context of this request, but our view remained the same. It was our conclusion that this residence, while belonging to the State, had the character of being the personal residence of the occupant and was, therefore, not to be treated as a state facility in the sense that that term is used in HRS §84-13(3). The resident and his family would make use of the facility in the same way that other individuals would make use of their homes. Clearly, there were questions of propriety that the occupant had to consider in the use of these premises but it was our view that these were questions that were left to his judgment. We did not believe it was reasonable for this Commission to monitor the private business activities of the occupant and his family that might take place in this residence. And we pointed out that, under the code, campaign activities would be no more subject to regulation than other business activities of the occupant and his family. It was, therefore, our view that political functions might be held at this residence.

Because it was our opinion that the facility was the personal residence of the occupant and that he might make personal use of that residence without violating the ethics law, we did not decide the question of whether the activities complained of here were of a political nature.

As we had noted earlier in this opinion, the ethics code did reach a limited area of campaign activities but the comprehensive regulation of such activities lay well beyond the present law. With

the increased emphasis on fundraising that now characterized the election process, it appeared to us that it was time for the adoption of a state-wide code of campaign regulation that would establish fair campaign standards for all participants in the election process. It was for the Legislature to take such action as it required powers that were well beyond those given to this Commission.

While we did not agree with the conclusions the requester had reached, as expressed in his request for our opinion, we did appreciate and recognize the value of his interest and analysis of questions such as these.

Dated: Honolulu, Hawaii, September 11, 1978.

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

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered.