OPINION NO. 350

We received a request for an opinion from the chairman of a state board. A candidate for election to the Legislature had asked him to permit the use of his picture in a campaign brochure. The chairman asked the Commission to determine if such use of his picture would be in violation of the state ethics code.

We stated first of all that the state ethics code does not directly regulate political campaigns. We noted, however, that HRS §84-13, the fair treatment section, does prohibit the use of position for unwarranted advantages. Therefore, campaign activities were subject to the regulation of the Commission and the state ethics code to the extent that a state employee used his position to unfairly advantage the political campaign of a candidate for office. Such regulation included, but was not limited to, using state time, equipment, and facilities for campaign purposes.

It was our view that a state employee might not permit the use of his position title in campaign literature, or for other political purposes. A state employee gains his title and position at the pleasure of the taxpayers to perform services on their behalf. We could not see that the lending of this position title to a person campaigning for office could be justified as serving the public interest. It was our finding that position titles might only be used for public purposes.

The more difficult question here related to the use of an employee's picture or name by a person campaigning for office. We did not believe that the state ethics code could go so far as to prohibit an individual from permitting a candidate for office from using either his picture or his name in campaign literature. To prohibit such action would be, in our view, to deprive the individual state employee of a basic right to participate in political campaigns. While such activities might be regulated by other statutes, such as the federal Hatch Act, we did not believe that the state ethics code extended this far.

However, we were also cognizant of the fact that certain state employees unavoidably carry their offices with them because of the nature of their positions. In this case, the chairman was a well-known figure in the community and was known as the chairman of a powerful and significant state board. It was clear that it would be very difficult for the public to separate him from his office, whether he specifically identified himself as the chairman of this board or simply used his name and picture with no reference to his title. We believed that an individual in such a position ran the risk of damaging the integrity of his agency by permitting the use of his picture and name in political literature. The danger was heightened in this case because of the fact that this board was pledged to be a politically objective and neutral agency. The endorsement of any particular candidate might appear to associate the agency with the views of that candidate and might give a false impression as to the views of the board itself.

As stated, however, we did not believe that the ethics code permitted this Commission to prohibit him from using his picture and name in a political brochure. We suggested that he consider the factors we had noted above in determining whether he should voluntarily refrain from permitting such use for political purposes. We believed that in each particular instance this judgment must be made by the individual state employee. We felt, however, that employees, particularly those in high ranking positions, should consider the effect of such endorsements upon the agencies they served.

We commended him for bringing this matter to our attention and for demonstrating a sensitivity to the ethics principles involved.

Dated: Honolulu, Hawaii, September 20, 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.