

OPINION NO. 351

A state employee who was required to review requests for approval of certain land boundaries on Oahu and the neighbor islands submitted this request for an opinion.

Approximately ten percent of the requests he received each year required an actual visual field check. In these controversial requests he had to travel to the neighbor island involved to inspect the subject property. However, because of recent and severe budget cuts, the monies available for travel and subsistence to the neighbor islands for these trips had been substantially reduced. Accordingly, only one such trip for each quarter was scheduled. Because of this restriction the employee had to accumulate requests for site checks before scheduling a trip to a particular island. Once such a trip was made and the funds expended for that quarter, several months might pass before he was able to again travel to that area to make further visual field checks.

Obviously, there were applicants who wished to have a visual field check after he had already visited the island on which their land was situated. As these individuals might suffer severe financial losses while they were waiting for his periodic visit, some had offered to defray the cost of his visiting that island so that the review process might be expedited.

He was concerned that the acceptance of such subsidies might raise an ethical question and asked the Commission to determine the propriety of his accepting air tickets and the additional subsistence necessary to conduct a visual field check under these circumstances. The relevant portion of the statute was HRS §84-11 which provides as follows:

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.

Essentially, a gift problem arises when an employee accepts a gift from a person or business with whom he has a state relationship that calls for significant state action. This employee had indicated that in his evaluations he dealt directly with the land surveyor who prepared the map rather than the actual applicant. However, it was the applicant who would provide the funds or air travel tickets necessary to make the trip and it was the applicant's particular project that was within his jurisdiction to either approve or disapprove. Accordingly, there could be no doubt that an official relationship involving significant discretionary action existed between him and the applicant.

The employee indicated that visual field checks could generally be completed in one day such that he would travel to the particular island in the morning and return during the same day. Accordingly, the amount of money involved concerned a round trip air ticket and, on occasion, ground transportation. Quite frequently, however, ground transportation was provided by another state agency. He further indicated that such a trip might permit him to conduct additional state work at the same time he was making the visual field check for the applicant who had provided his air travel tickets.

Both the employee and the head of his department testified on this matter before the Commission. They indicated that these trips were considered to be extremely important but that economic considerations indicated that the budgets for these trips were not likely to be increased in the near future and that, therefore, the present system would continue for some time. They also indicated that if the Commission should approve a plan under which site trips could be underwritten by persons requesting inspections at unscheduled times that the budget would not be further reduced.

It was our conclusion that the circumstances under which such gifts of travel were accepted did not create an inference that the gift was given to the employee in order to influence him in his official conduct. He received no individual benefit and accepted no fee or personal benefits. The amount of money involved in comparison to the value of the projects that were to be visited was minimal. Accordingly, we stated that if the department could establish a system that would treat all such applicants equitably then the Commission would not be opposed to the acceptance of air fare and the other expenses necessary to making such site trips. We believed that the department should establish certain minimal guidelines for such a program and that these guidelines should be sent to individuals requesting site checks at unscheduled times. We also stated that they should consult with the Commission staff in the process of establishing this program so that they could be sure that the specific guidelines would be in accord with the intent of this decision.

We were most impressed with the candid nature of our discussions with the employee and the department head and we indicated that we appreciated the time and effort taken by them in assisting us in this matter. A copy of this opinion was forwarded to the department head.

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.