

OPINION NO. 352

The director of a state division requested an opinion of the Commission which called for our response to two questions concerning the use of the division's facilities and equipment.

The first had to do with the establishment of an organization which had been formed as a public-oriented support group for the division. It was designed to assist physically, financially and morally in the extracurricular activities of the division. Persons interested in joining the organization paid membership fees to a state foundation. The members of the organization were entitled to invitations to preview receptions, discounts at certain events and other related benefits. Membership categories had been scaled to accommodate different financial positions. To promote contributions of \$100 and more, the executive committee of the organization had decided that certain items would be produced at the division and given to these major contributors as gifts. It was in the nature of the organization as a support group that these items were to be made by employees of the division.

The actual mechanics of this gift policy had not been finalized. It was our information, however, that the works to be executed would be small multiple originals which would be relatively easy and inexpensive to reproduce. The employee who would do the particular work would be selected by one of several means and would probably do the work at the division's facilities. The employee would be paid from division funds.

Because the Commission had issued a previous opinion (Opinion No. 308) which prohibited certain uses of state facilities by members of this division in the execution of their private works, the director had asked the Commission to determine if this particular program would fall within that proscription or would be an exception to it.

The second question related to a visiting employee program which had been instituted at the division. The director had indicated that because of the limited funds that were available for this program, visiting employees would come to the division for only short-term stays of approximately two weeks. However, it was his view that many such potential visitors would stay for a longer period if they were able to execute private works while visiting the division. He wished to know if such visitors would be prohibited from executing commissioned works at the division's facility.

It was our conclusion, after a review of Opinion No. 308, that that opinion would not prohibit the two anticipated uses he had presented to us.

The organization had as its goal the support of the division. It was clear that the encouragement of membership in that organization, particularly by persons able to afford the level of contributions they sought to encourage by the gift program, was important to the success of this program. Because this was a state program, we believed that the use of state facilities for the membership-generating idea they had conceived was justifiable. While there would be some incidental benefit to the state employees who were selected to execute the works, the main purpose of the gifts was to support the division rather than the individual employees. The use of state facilities would permit the division to make this idea more economically workable than if the employees were required to execute the work elsewhere. Accordingly, we held that those employees who were chosen to execute the contemplated works would be permitted to use state facilities and equipment.

We recognized that the visiting employee role was a special one that carried with it a benefit to the division that was distinct from the role played by permanent employees. The visitors generally possessed particular skills that the division desired to bring not only to itself but to the state community as well. It would be unfair and impractical to require a visitor to establish and maintain private facilities for executing his works. Despite our ruling in Opinion No. 308, we did recognize the value of students actually seeing employees executing both commissioned and non-commissioned works. In the context of that opinion, we felt that it was preferable for that experience to be realized at privately maintained facilities rather than at state facilities. The visiting employee, however, was not in the same position as the permanent employee. The experience he provided to the student, however, was at least as valuable, and in some respects might be even more important. For a visiting employee to execute a private work would undoubtedly be of significant value to the division and justified encouragement. Accordingly, we concluded that should the visiting employee program proceed to the extent that a visiting employee was offered a commission such commission might be executed on state facilities and with state equipment.

We cautioned the director that because the visiting employee program was in its early stages there might be circumstances which we could not envision at the time the opinion was issued. The director was advised, therefore, to return to us when he had more specifics to ensure that the use of state facilities and equipment would be in accord with this opinion.

We commended him for bringing these questions to us for a decision at an early time and wished the division success in its ambitious programs.

Dated: Honolulu, Hawaii, September 22, 1978.

STATE ETHICS COMMISSION
I.B. Peterson, Vice Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner

Note: Chairman Paul C.T. Loo 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.