

OPINION NO. 356

A state department received a letter, through the Governor's office, from a private non-profit organization requesting assistance from the State in securing warehouse space in Honolulu. The letter indicated that the federal government had warehouse space available but would lease it to only another government agency. The organization had requested that the State lease the warehouse space and then sublease the space to it. The head of this department asked if a state agency could enter into such an arrangement with a private non-profit organization.

This question fell within the ambit of the fair treatment section of the ethics code, HRS §84-13. That section states:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

....

(3) Using state time, equipment or other facilities for private business purposes.

We stated that if the State enters into a lease with the federal government for warehouse space, that space then, in essence, becomes a state facility. We stated that to completely avoid any question of an improper use of position on the part of any department employee who would handle the subleasing arrangement, the department should follow the state laws, rules and regulations that govern leases. Unless there were some applicable exception we assumed that the lease would be subject to competitive bidding. While the organization certainly might bid for the space, so might any other eligible individual or group.

If there were no applicable state rules and regulations concerning such a sublease, we stated that the department must first formulate some non-discriminatory guidelines with regard to entering into such arrangements. While these guidelines might be drafted to accommodate a certain category of persons or organizations, we noted that they had to have a rational basis. We stated that if this department chose to take such an approach, the department head should provide this Commission with a copy of the guidelines adopted.

The Commission commended the department head and his staff for appreciating the problems involved in this organization's request. We requested that his office advise us of the decision made in this matter and of the procedures followed in awarding a sublease if such action were taken.

Dated: Honolulu, Hawaii, November 3, 1978.

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

Note: Vice Chairman I.B. Peterson and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.