

OPINION NO. 359

The director of a division in a state agency had applied for and received permission to organize an annual event. This event had national implications and had been sanctioned by a national organization.

Because the solicitation of this event had generated controversy and because of his concern that his participation in this project be free of conflict under the State's ethics laws he had asked the Commission to indicate the guidelines that would apply to his solicitation of approval for the event and his eventual participation in the running of it. We noted that the rules we would set forth would apply to another state employee who was also involved in this matter. Additionally, we were aware of the fact that he might ask for withdrawal of the sanction already given to this event, whereupon he would reapply for the approval of the national organization.

Three sections of the code had application here, the gifts section, HRS §84-11, the fair treatment section, HRS §84-13, and, most critically, the conflicts of interests section, HRS §§84-14(a) and (b).

First of all, it was quite clear from the material that we had reviewed concerning this event that he had been acting as a representative of the State of Hawaii in this effort. We noted that many benefits would accrue to the State if the event went ahead as planned.

Accordingly, we stated that state monies might be given to him in the form of travel expenses and state time and facilities might be appropriately utilized by him as he proceeded in his dealings with the businesses, organizations and persons who would be involved with the event.

In the same manner, we were aware that he would be using his official position to persuade the national body to sanction the event and for private persons and businesses to support it. Because this was conceived to be, in essence, a state program, such use of position was warranted and not in violation of HRS §84-13.

At the same time, however, and as a consequence of his acting in his state capacity, he was advised to exercise caution as he dealt with the various entities who would of necessity be involved in the production of this event. Because he would be making state judgments he might not, for example, accept gifts of any kind that might be inferred as being attempts to influence his judgment. Our advice to him was that he accept no gifts from the people he dealt with in this matter.

Also, he would be dealing with people who would have business with his agency. Though he was not seeking any personal advantage he had to be cautious in avoiding the appearance that state action might turn upon the cooperation and support of persons or businesses he dealt with.

This brought us to a discussion of the conflicts section. This provision has application to those interests one may possess before acquiring state position or office and those interests one acquires after becoming a state employee. It was this latter provision, HRS §84-14(b), that had most direct application here. It provides:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

Once the event was actually sanctioned some entity would have to run it. It was anticipated that a non-profit corporation would be established under the corporate laws of the State.

The participation of these two state employees in this organization would be dependent upon two factors: (1) The actual position they would occupy with the organization and (2) the relationship that might exist between the non-profit corporation and the agencies they each represented.

We noted initially that the non-profit corporation would be a business for the purposes of the ethics code. The participation of these two employees in the corporation would be dependent upon the relationship that might exist between it and their respective state agencies. We were already aware that the second employee would certainly be involved with the event. Accordingly, he had been previously advised that he might not acquire a financial interest in the organization that was ultimately established to operate the event.

In the same manner the employee requesting this opinion was advised that he might not acquire a financial interest in the organization if he anticipated that he would be required to take official action that would affect it.

While we realized that this might seem to be an overly restrictive rule, the matter, in our view, had to be seen in terms of what could eventuate in situations like this. While at the time the interests of the state government, the various agencies, and the future corporation appeared to coincide and complement each other, we pointed out that once the organization actually took form it would have a life of its own and a board of directors that would be independent of the other entities. And it was very possible, and even likely, that at some point the interests of the event and the interests of the State and its agencies would in fact conflict. For this reason we felt that it was in everyone's best interests for the conflicts provision to be fully applied here.

We commented upon those interests that might constitute financial interests under the code. These are set forth in HRS §84-3(6) and include:

- (A) An ownership interest in a business.
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- (C) An employment
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- (E) A loan or other debtor interest.
- (F) A directorship or officership in a business.

Accordingly, the second employee could not acquire any of these kinds of interests in the corporation that was eventually formed to run the event.

As concerned the requesting employee's own situation, he had stated that, as director of his division, he would not be called upon to take official action that would directly involve the event. Accordingly, we advised him that he could be an officer and/or director of the corporation.

Finally, it was our view that both employees had conducted themselves properly. They had both had the foresight to request advice concerning their participation before becoming deeply involved in this venture. It was also our view that this particular employee's integrity had brought respectability to his division and evidenced the concept that governmental policies must be based upon sound foundations of values if they are to make a real and long-lasting contribution to the community. We noted that it was easy to take ethical shortcuts in the hope of guaranteeing successful programs. But such shortcuts were generally more apt to favor individual interests than the community's. And even if such success were gained in this manner we wondered at the eventual cost that must come from the community's moral loss. We were aware that our position on this issue was unwelcome to some but we believed that the regard now held for the division's programs rested in large measure upon this employee's open and frank approach to the problems the division faced.

We were aware that the employee's present plan of action might be altered by circumstances he could not anticipate at the time we issued this opinion. In such event he was advised to contact the Commission again for further guidelines.

Dated: Honolulu, Hawaii, November 29, 1978.

STATE ETHICS COMMISSION
Paul C.T. Loo, Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.