

OPINION NO. 363

A legislator requested an advisory opinion concerning his application for a loan from a state agency. The purpose of the loan was to enable him to purchase a large piece of equipment. He wished to know if the state ethics code would prohibit him from pursuing his application for this loan with the state agency.

The section of the code which had most direct application to his question was HRS §84-13, the fair treatment section. While that section exempted from its coverage conduct of legislators that was related to their state functions, it did have application to actions a legislator might take that were not in an official context; this legislator's application for a loan fell into this category. However, we pointed out that a legislator or an employee would not be in violation of this section unless he or she had used official position to gain an unwarranted advantage. Both factors had to apply in order for a violation to be found.

In this particular case, while it was well known that this individual was and had for sometime been a member of the legislature, his letter to the director of the agency had gone to some length to emphasize that his request for a loan was in his private rather than his official capacity. We saw no reason why the director should not be able to deal with him in this matter on an arm's length basis.

Secondly, we pointed out that the statute neither explicitly nor by implication limited employees or legislators from seeking state action. Accordingly, the result he sought was an appropriate one and so long as no pressure was applied to any state employee to grant him a favor or advantage that would not be given to anyone else, there was no impropriety in his continuing to seek this loan from the agency.

He was advised to continue to conduct himself in such a way as to avoid, to the extent possible, the coloring of this matter by the high office he held.

We also stated that if, in the future, his commercial enterprise became involved in a state contract for services or goods that the contracts section of the code, HRS §84-15(a), would apply. While this section did not prohibit state employees and legislators from becoming involved in contracts with state agencies, it did require that such contracts be awarded through an open, public process.

We commended him for demonstrating a sensitivity to the ethics question involved in his application for the loan and for taking the initiative with the agency to clarify his position in this matter. It was, of course, clear that the department was well aware of his position in the state legislature. It was our feeling, however, that the gesture that he had taken in emphasizing that this was wholly a private matter was of significance and helped to establish an objective and neutral atmosphere in which his loan application could be considered.

Dated: Honolulu, Hawaii, December 29, 1978.

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

Note: There was one vacancy on the Commission.