

OPINION NO. 374

We received a request for an advisory opinion concerning the application of the ethics code to the award of travel business by state agencies. We determined that the fair treatment, contracts and conflicts of interests sections of the code all had application to the award of such business, particularly where the person receiving the business was a state employee or where the travel agency enlisted to provide the travel service had legislators or state employees among its substantial owners.

The contracts section, HRS §84-15(a), prohibits a state agency from entering

... into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract has been awarded through an open, public process.

The provision also establishes a procedure for awarding contracts to legislators or employees or to the companies in which they hold controlling interests when bidding is not feasible. In such situations the state agency is simply required to notify the Ethics Commission of the proposed contract and describe its rationale for awarding the contract to the particular vendor.

The bidding requirement of the contracts provision applied only to contracts involving state officials and employees and companies in which they held controlling interests when the value of the contract exceeded \$1,000. We pointed out that an interest is controlling if it is sufficient in fact to control a business and need not constitute a greater than 50 percent interest.

In addition, the contracts section also prohibited the award of a contract to a business which was personally assisted or represented by a person who had participated in the subject matter of the contract in his or her state capacity. This prohibition applied regardless of amount and whether or not the contract had been put out to bid.

The fair treatment section, HRS §84-13, though relevant to the question raised here, did not apply as directly as did the contracts section. It prohibited a state official from using official position to grant unwarranted privileges, contracts, or other advantages. Whether or not a particular benefit granted to a person, such as travel business to a travel agent or agency, was unwarranted depended upon the particular facts of the given situation. We stated that, generally, if one vendor is given a very high percentage of the total business over a long period of time without a showing that such award is justified, an appearance of unwarranted advantage will be created.

While we recognized that certain agents might be more willing and better able to serve the needs of a particular state agency than others, at the same time, our review of the travel business indicated that a number of agencies did seem capable of meeting such demands. Therefore, it was our view that the best policy appeared to be to rotate this business to the extent possible. The state agency must of necessity retain the ability to exclude, on reasonable grounds, those agencies that could not demonstrate the resources or expertise needed to satisfy its requirements.

We stated finally that no employee or legislator should play a role in awarding state business to his or her own company or to a travel agency that employed the legislator or employee. This restriction was imposed by the conflicts of interests section, HRS §84-14(a).

In summary, we felt that the greatest concern was in the application of the contracts section. Its provisions had to be met when the agency desired to purchase goods or services worth in excess of \$1,000 from a legislator or state employee or from a business in which such a person held a controlling interest.

The fair treatment section, while applying to contracts, would only come into play where circumstances strongly indicated that a travel agency or agent had received business because of favoritism.

The guideline set by the conflicts section was the common sense rule that a person should not award business to his or her own company or to a company he or she might be employed by.

Dated: Honolulu, Hawaii, March 19, 1979.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.