

OPINION NO. 393

We received a request for an advisory opinion from the director of a state agency. He had learned that employees of one of the agency's divisions had been using state time, equipment, and facilities to recycle waste products and had been using the proceeds to establish a fund to provide for special occasion gifts to employees within the division, private tenants of the state facility the division maintained, and other persons and organizations providing services and/or benefits to the employees of the division. He asked us to determine if this practice was in violation of any of the standards of the code of ethics.

It was our view that this practice came within the purview of HRS §84-13, the fair treatment section. The basic language of that provision provides as follows:

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

He had provided us with extensive documentation of the time and equipment used by the employees in carrying out this activity. He had also forwarded account records of the fund showing receipts and disbursements. We noted that the employees had kept accurate records of the time spent, the monies received, and the funds disbursed. This was very much to their credit. It indicated to us that there had been no intent to deceive either the public or his department.

However, we were of the view that the expenditures made from this fund were for the direct personal benefit of the individual employees of the division. As we had noted in a prior opinion, employees of any organization, whether it be public or private, profit or nonprofit, are called upon to make expenditures from their private funds for gifts of aloha that are sent to people who have either suffered personal or family tragedies and illnesses or enjoyed events calling for congratulation. We stated that in our experience it was common for employees to make such personal expenditures at all levels of government and business. Accordingly, if state equipment and facilities were used to create such funds, such that these employees were no longer required to make these expenditures from their own pockets, then this fund was of direct personal benefit to the employees involved. Further, a review of the disbursements made indicated that these were more than nominal amounts.

We recognized that it was a goal of the state government to encourage the recycling of waste products, and we did not wish to place unreasonable impediments between the employees and this goal. However, we did not believe that it was appropriate and reasonable for the employees to use state time and equipment to carry on with the project.

We expressed our appreciation to the director for bringing this matter to our attention and commended his department's continual interest in meeting its state responsibilities in conformance with the standards of the ethics code.

Dated: Honolulu, Hawaii, October 1, 1979.

STATE ETHICS COMMISSION
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