OPINION NO. 395

We received a request for an advisory opinion concerning the propriety of state board members' receiving admission tickets, for personal use, to events over which the board exercised state control. Some of the tickets in question were given to the members by participants in the events, while others were issued by the members themselves, acting as a board.

For many years, participants in these events had provided complimentary tickets to each board member. In addition, each member received tickets to a working section of the auditorium where the event was held. This section was set aside for persons having duties related to the event. The board was responsible for allotting and distributing these tickets to the persons entitled to sit in this area.

The board members indicated that they generally used one ticket for their own admission to the working area and gave the remainder to friends and family members.

Two sections of the ethics code were relevant to the question presented to us in this matter. HRS §84-11 provides:

> No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties, or use the information for his personal gain or for the benefit of anyone.

The fair treatment section, HRS §84-13, provides:

> No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted exemptions, advantages, contracts, or treatment, for himself or others ....

It was our view that the gifts section had application to the tickets received from the participants and that the fair treatment section applied to the working tickets.

The tickets from the participants were distributed to the members prior to each event. The total number of tickets distributed did not usually exceed four per member. We recognized that the practice of distributing these tickets predated the terms of the present members. Nevertheless, it was our view that the ethics code prohibited this practice.

Generally, this Commission had interpreted the gifts section as prohibiting state officials and employees from receiving gifts of more than nominal value from persons directly subject to their jurisdiction. In this case, the tickets were worth more than a nominal amount. In addition, our review revealed that the board exercised significant powers over persons involved in these events, powers that generally exceeded those granted to other state boards. We did not question the justification for such extensive powers. However, it was reasonable to assume that those persons who earned income from this industry would be particularly sensitive to the position of the board members. It was our view, therefore, that nothing of value should pass between the members and the persons they regulated.

Accordingly, we held that HRS §84-11 prohibited the board members and other state employees who exercised authority over the industry from receiving tickets from participants in the industry.

We did not believe that the gifts section had application to the working tickets because the participants had no jurisdiction over these tickets and could not sell them under any circumstances. They were printed solely for the board and were used to provide admission for persons working at the events. The board's rules mentioned that such tickets should be provided for the members and other persons with duties related to the conduct of the event.

While the issuance of these tickets did not constitute a gift from any person subject to the jurisdiction of the board, the act of the members in issuing these tickets to themselves did come within the language of the fair treatment section. The issue we had to decide was whether the issuance of such tickets granted an unwarranted advantage or privilege to the members.

In deciding this question, we reviewed the board's rules.

It appeared to us that the ticket rules were specific and detailed so as to empower the board to strictly control their distribution. We suspected that this strict language related to ticket problems that had existed in earlier years. It was, nevertheless, quite clear that the language was highly restrictive. One rule stated that tickets would be provided for persons who had duties at the event. At the same time, another rule appeared to restrict the issuance of working tickets, again, to persons having duties at the event.

Our review of this language indicated to us that the board's own rules did not permit the issuance of tickets to persons who were not involved in the regulation of the event. For the board to grant itself a privilege that was prohibited by its own rules was, in the view of the majority of this body, an unwarranted use of position. Nor did we believe that such a restriction was overly harsh when judged against the public responsibilities of board and commission members generally.

The fact that this practice was of such long standing made this a difficult decision for this Commission to reach. If this matter had been raised without the influence of this tradition, we believed that we would have found very little difficulty in reaching our conclusion. But it was difficult to overthrow a tradition that was of such long standing. Nor could we ignore the service provided to the community by the members of the board and the long hours that were required by their attendance at meetings and events. It had always been the view of this Commission, however, that such service is a fulfillment of citizens' community responsibility, offered with no thought or hope of reward. We did not believe it aided the standing of any board or commission to receive gratuities or rewards of any kind, other than those authorized by law, for service on a board.

In sum, we believed that it was very difficult to argue that the board's own rules did not prohibit the issuance of additional working tickets to board members, and it was on the basis of the language of these rules that we concluded that HRS §84-13 prohibited the board members from distributing tickets to persons who were not carrying out duties related to the events.

In the course of the hearing held on this matter, this Commission also learned that the board maintained a guest list of persons who had been receiving free tickets to events. We did not believe that it was appropriate for the board to issue these tickets. The participants might, in accordance with the board's rules, issue complimentary tickets to any person who did not have

regulatory authority over the participant. We ruled, however, that the discretion to issue such tickets should lie with the participant, and that the participant should not be under pressure to issue tickets to friends and acquaintances of board members. This was particularly true in the case of state officials who might have regulatory authority over such participants. Nor did we believe that state officials, generally, should receive free tickets to events. We had found no statute that authorized or encouraged such a perquisite.

We recognized and appreciated the cooperation of the board members in our review of this matter. We were also aware of and appreciated the significant service the members rendered to the community.

Dated: Honolulu, Hawaii, December 19, 1979.

STATE ETHICS COMMISSION
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner
Robert N. Mitcham, Commissioner

DISSENT

I agreed in part and dissented in part from the opinion of the majority.

I agreed, for the reasons stated in the opinion, that HRS §84-11 prohibited members of the board, its staff and other persons having regulatory responsibilities with respect to this industry from receiving tickets from participants in the events involved in this matter.

However, while I believed that the fair treatment section applied to the working tickets and regulated the uses that could be made of them, I did not agree that that section prohibited board members from making personal use of these tickets.

I did note certain inconsistencies in the rules that regulated the distribution of tickets. However, I failed to find any language in these rules that specifically prohibited the board members from making personal use of the working tickets. While, for example, one rule described the persons who *shall* receive working tickets, it did not state that the board might not use these tickets for other purposes. It was my view that these tickets were subject to the control of the board. So long as all persons qualified to work at the events were provided with tickets, I saw nothing unwarranted in members distributing the unclaimed working tickets to friends and relatives. I agreed that such tickets should not be used for the personal business advantage of the members or to influence persons who had official jurisdiction over the board. But I did not feel that the privilege of inviting guests to sit in seats that would be otherwise unoccupied was an unwarranted reward for persons who devoted much time and energy to a public duty for which they received only nominal compensation.

The board's rules were too ambiguous to use as a basis for a finding that they prohibited the use of working tickets by the friends and relatives of the members of the board. Absent such a restriction in the statute and rules that governed the board, I saw no unwarranted advantage here. Accordingly, I dissented from that portion of the majority opinion that prohibited such conduct on the part of the board members.

Dated: Honolulu, Hawaii, December 19, 1979.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairman

Note: Gary B.K.T. Lee, Chairman, dissented from the majority opinion without comment.