

## OPINION NO. 408

In Advisory Opinion No. 395, this Commission responded to a request concerning the propriety of members of a state board receiving free tickets to events regulated by the board from the promoters of the events. During the course of our inquiry into this matter, we had learned that the board also distributed its own admission tickets. We were advised that it had been a long-standing board practice to issue four such tickets to each board member for each event. The board members, in testifying before us, indicated that they generally gave these tickets to family members, friends, and associates.

In our opinion, we held that the receipt of tickets from promoters was in violation of the gifts provision (HRS §84-11) of the ethics code and ordered that this practice be terminated. The Commission went on to note that, while the additional tickets had no face value, they did represent a benefit to the board members that, under the board's own rules, was not authorized. Accordingly, we held that the issuance of these tickets was also improper under the ethics code.

In the course of making our findings, we noted that the board's ticket rules seemed inconsistent. The board's staff member advised us that the board had begun to reformulate its rules, including the rules pertaining to tickets. One of the rules to be adopted would concern the distribution of the board tickets. The board proposed two such rules to the Ethics Commission and asked us to determine the propriety of each of them separately. The proposed rules were as follows:

- A. Board tickets will be distributed by the board, through its staff, to appropriate individuals.
- B. Board tickets will be distributed by the board staff to the following classes of people:

- Board Members and the Staff
- Event Officials
- Event Inspectors
- Press/Media
- Other Government Officials on official business
- Visiting Dignitaries
- Representatives of Boards from Other States
- Show Promoter
- Special Guests

Before commenting on the appropriateness of these proposed rules, we again brought to the board's attention HRS §84-11, the gift section, and HRS §84-13, the fair treatment section. The gift section prohibits the solicitation or acceptance of any gift under circumstances in which it can be inferred that the gift is given or received to influence official action. The fair treatment section prohibits state employees and officials, including board and

commission members, from using their positions to grant unwarranted advantages to either themselves or others.

Accordingly, while the board had jurisdiction over the board tickets, the tickets were the property of the board as an entity and not its individual members. Therefore, while the board might distribute board tickets, it could not distribute them in a manner that would be in violation of either HRS §84-11 or HRS §84-13. This meant that certain classes of people might not receive tickets under any circumstances, whether those tickets be board tickets, which had no face value, or promoter's tickets or arena tickets which did have face value.

The foregoing comment eliminated the proposed Rule A because it was not specific enough as to what was meant by the term "appropriate." While it might be assumed that the word "appropriate" was defined, to some extent, by the ethics code's standards, we believed that it would be preferable if the word "appropriate" were better defined.

Proposed Rule B identified the groups of persons who would receive tickets and indicated the order in which they would be distributed. This Commission did not have the authority to advise the board as to how to distribute its tickets except in those areas where such distribution violated the ethics code. Accordingly, whether priority was given to officials, inspectors, or members of the press was a matter for the board to decide. The first four classes of people identified in the proposal were people who had to be in attendance in order for the event to be carried on in a meaningful way. The fifth class identified "other governmental officials on official business." So long as it was understood that the "official business" of such government officials had to be related to the carrying on of the event itself, this also seemed to be a class that was necessary for the conduct of the event. While visiting dignitaries and representatives of boards from other jurisdictions were not essential to the conduct of the event, they were, nevertheless, a class of persons that fell within very traditional protocol rules. We saw no possibility that tickets given to such persons would undermine the ethics code or would cast any doubt upon the integrity of the board. The reason for including the show promoter category was not as clear to us. If the show promoter were to be included among those persons who received board tickets, then the purposes of such tickets had to be more specifically set out because of the relationship that existed between promoters and the board. Accordingly, we reserved judgment on this class of tickets pending receipt of additional information from the board.

With regard to the next class, special guests, we noted that the board tickets, while not having a face value, were, nevertheless, very desirable seats. It was our position, with respect to the board tickets, that, so long as all persons having a working relationship to an event were provided with sufficient tickets to accommodate their needs, those tickets still available after distribution might be used by the board members at their discretion. We noted, however, that such use was still subject to HRS §84-11 and HRS §84-13. We particularly emphasized here that it was our view that the press was an integral part of the staging of these events. We made special comment on this point because at a prior hearing on this matter we were advised that the members of the board, in the past, had received their four tickets even if members of the press were excluded from these seats at popular events

because of limited seating. Such a practice was clearly inappropriate and could not be continued in the future.

Because of the continuing application of HRS §84-11 and HRS §84-13, the board members were prohibited from distributing tickets to government officials who exercised jurisdiction of any kind over the board or the participants in the events. Nor could the tickets be distributed to other government officials or private individuals who were in a position to benefit the board before the government agencies that might have jurisdiction over the board. This restriction applied to employees and officials in the department the board was attached to, legislators, and officials and employees in the offices of the governor and lieutenant governor.

In addition, these tickets could not be used to gain advantages for individual board members. We stated that it would be naive of us to think that the issuance of a ticket to an individual did not carry with it an element of prestige and status. If, for example, a board member should make tickets available to persons he did business with or hoped to do business with, it would be foolish to think that this would not be advantageous to that board member.

At the same time, it was our conclusion that HRS §§84-11 and 84-13 could not be interpreted as prohibiting the distribution of those tickets not needed for official purposes to the members of the board members' families and to close friends with whom the members had no business relationships. We did not here comment upon the propriety, outside of the ethics code, of the members making such personal use of available tickets but merely decided that the ethics code could not be interpreted as prohibiting such action.

We stated further that the distribution of all tickets had to be made with the exercise of utmost discretion if their use was not to be in violation of the ethics code and was not to cast doubt upon the integrity of the board and its members.

Some additional points were emphasized. While the members of the board put in a great deal of time in carrying out their duties, there was also a great deal of prestige in being a member of that board and in exercising its very significant powers. This was particularly so where a member was a fan of the events regulated by the board. And it was our understanding that most members of the board in the past and at the present time were ardent fans. Therefore, attendance at the events could hardly be termed an unpleasant burden. Secondly, the members of many commissions put in long hours, making very difficult decisions. In most cases, such commissioners received no compensation and received no perquisites. Thirdly, our decision was based primarily upon the board's argument that the members had to attend the events to properly carry out their duties and that such attendance was an imposition upon family members and friends. Our decision that we could not prohibit this limited use of tickets for personal reasons was to be interpreted in the light of this underlying rationale.

It was our conclusion that the ticket distribution plan proposed by Rule B, would, if adopted, be in compliance with the ethics code so long as the additional modifications and guidelines set out in this opinion were complied with by the members of the board.

The Commission expressed its appreciation for the candor of the board members' remarks recorded at our last meeting on this matter and thanked the staff of the board for its full cooperation in our investigation and review of this case.

Dated: Honolulu, Hawaii, April 15, 1980.

STATE ETHICS COMMISSION  
Gary B.K.T. Lee, Chairman  
Paul C.T. Loo, Vice Chairman  
Edith K. Kleinjans, Commissioner  
Robert N. Mitcham, Commissioner

I dissent from the majority opinion.

Dorothy K. Ching, Commissioner