OPINION NO. 417

We received a request for an advisory opinion from the director of a state agency who had received an offer of travel from the owner of a private company. While the director believed that such a trip would be of advantage to him in executing his responsibilities, the department did not have the funds to support such a trip. Accordingly, he wished to know if the gifts provision of the ethics code, HRS §84-11, would permit him to accept the offer.

The company making the offer used a Hawaii product in its business. The production of this product was recognized as an important industry in the State. The director had learned that other countries were beginning to produce these products in large quantities. Because it was felt that this production could affect the world supply, there was a possibility of federal action that could have a significant and negative impact upon the Hawaii industry. Because the donor made use of the product in its business, it was understandably concerned about the stability of the market in Hawaii.

The owner of the company felt that it would be advantageous for the director to have a first-hand look at this industry so that he would be in a better position to defend the Hawaii industry when and if actions were considered that might threaten it. The director agreed that this foreign production might indeed have a significant impact upon the Hawaii industry and that the opportunity to see foreign production could assist him in his role as head of the state agency.

The donor's company was not directly regulated by the state agency. Its only contact with the department came under an inspection authority of the agency. Such inspections were rare, however, except in the cases of companies that were known violators of the standards being enforced. The director had indicated that this company had only rarely been inspected and had never been found to be in violation of the law. Other than this one area, the company was not subject to the regulation of the department.

We were aware, and the director agreed, that the stability of the industry in Hawaii was of concern to the donor company and that continued stability would be to its benefit. However, the desirability of stability in this industry was of concern not only to this company but to the state government as well. Accordingly, whatever benefits the donor might derive from the continued stability of this industry was an indirect effect of an already existing state and departmental program. The industry and the companies most directly affected were, of course, the producers of the products themselves rather than the donor company.

The Commission had already issued a number of opinions interpreting the gifts section of the ethics code. That section provided that a state employee may not accept a gift which is given under circumstances which indicate an intent to influence official decision-making. The intent of the statute was to prevent an official from being placed in circumstances in which the official might decide a case to the advantage of the individual making the gift. In deciding these cases the Commission had considered a number of factors including the official relationship between the employee or official and the donor of the gift, the tendency of the gift to undermine public confidence, the benefits to the donor as well as to the recipient of the gift, and whether the gift would redound to the benefit of the State.

While it could not be said that the department had no official relationship with the donor company, that official relationship was minimal, having no significant effect upon the company. Nor was there reason to think that the department's official relationship to the company would change significantly in the near future. Accordingly, the offer of this travel subsidy could not bring about a change in official responsibilities or actions taken by the department that would benefit the company in any unauthorized way.

The gift was, of course, related to the director's official functioning because it was an attempt to acquaint him with specific market conditions in an important Hawaii industry.

The personal benefits of this gift appeared to be minimal. He did not intend to extend his trip beyond the time required to exercise his official functions, nor was he to receive any benefits other than his travel and basic maintenance costs. While the donor company might indirectly benefit if he was better prepared to assist the Hawaii industry, that benefit was not only indirect at best but arose as a consequence of an already well established state priority.

Finally, it appeared that the overall advantage of this gift was primarily to the benefit of the State and one of its important industries and not to the director personally or to the donor.

Our conclusion was that this gift was not intended to influence the director in an unwarranted manner. Accordingly, we found that the gift was acceptable with certain limitations.

First, we advised the director that he should not extend his trip beyond the time required to fulfill his duties. Secondly, we stated that he should not accept entertainment or other benefits that went beyond his cost of travel and maintenance.

We commended the director for his sensitivity to the ethics issue in this matter.

Dated: Honolulu, Hawaii, October 2, 1980.

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

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.