

OPINION NO. 419

We received a request for an advisory opinion from legislative employees who had worked for a state legislator during part of the 1980 legislative session. While there, they noted that the legislative staff and office facilities were being used in a manner that might be inconsistent with the ethics code. Because the employees wished to have the matter clarified, they asked this Commission to determine whether the legislator's use of his staff was appropriate under the State Ethics Code.

In its investigation, the Commission's attention was directed to the production of an issue of a campaign publication. The publication and distribution costs of this issue were, as were all previous issues, paid out of the legislator's private campaign funds. The question we had to decide, however, was whether any state time was involved in the writing or production of the contents.

When the employees appeared before this Commission, they both stated that the majority of their time, at the legislator's direction, was devoted to the research, writing and production of the publication. As the legislator's committee clerk, employee A's duties included research of issues, legislative drafting, and assisting a house committee. In addition, he acted as liaison between the legislator and lobbyists and constituents and was assigned to work on a newsletter as time permitted. Employee B's duties as the whip clerk included assisting a house committee with research, attending hearings and reporting on them, keeping records, and writing for a newsletter.

Both employees noted that they had initially presumed that they were to write a legislative report to constituents. Both testified, however, that shortly after they began the project, the legislator directed them to slant all articles toward garnering votes for his re-election. The employees further stated that, as time passed, the newsletter rapidly became the first and only priority of the entire office and that the purpose of the newsletter became clearer as increasing emphasis was placed on the publication as a critical campaign tool. They estimated that seventy-five percent of employee B's time, ninety percent of employee A's time, and at least fifty percent of the secretary's time was spent on the newsletter. The employees testified that most of the articles appearing in the publication were essentially their work products as amended by the legislator. They contended that, aside from some stylistic changes, the only change made to their drafts was the addition of campaign rhetoric which they had declined to write into their own draft articles.

The legislator appeared with his counsel before the Commission to defend his use of legislative staff, asserting that the staff worked only on legislative matters and did not do any campaign work on state time. He stated that he, and not staff members, had authored nearly all of the articles which appeared in the newsletter. He also stated that he had used legislative reports as a basis for some of the articles but reiterated that the articles were his own original work. He noted that he had asked his staff to research and write legislative reports emphasizing his perspective and that of the district he represented rather than to write from a general perspective about the issues they researched. He commented that he did not like to receive reports written in conventional report style and consequently asked his staff to

write him "story-like" drafts which showed the interrelationship between himself and the facts and issues. Finally, he stated that he never requested his staff to slant reports toward his re-election and that he had added the "campaign plugs" to the articles himself.

The legislator's position, in summary, was that a broad range of matters are of interest to a legislator and that, in order for a legislator to perform satisfactorily, he must be able to ask his staff to research any subject. It was his feeling that he should not be penalized for choosing to share the material gathered in the course of a legislative session with his constituents in his privately funded newspaper rather than disseminating the information in a more formal legislative newsletter from his office.

The applicable section of the ethics code was contained in HRS §84-13 and provided as follows:

No legislator ... shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others; including but not limited to the following:

...

- (3) Using state time, equipment or other facilities for private business purposes.

We noted that the Commission, in the past, had had occasion to determine the applicability of HRS §84-13(3) to political activity. In Informal Advisory Opinion No. 13, where an employee asked his secretary to type and send political solicitation letters, and department stationery and the state mailing system were used to do so, the Commission found a violation of this section. Thereafter, we reaffirmed our position in Advisory Opinion No. 258, stating that political activities constitute a private business purpose and should be kept separate from state time, facilities and equipment.

In our view, the facts indicated that the legislator had overstepped the bounds set by the ethics code. Whether it had been intended or not, in reality, campaign material had been produced by the legislator's legislative staff while on state time. The Commission realized that a conscientious legislator must make an effort to communicate with his or her constituents. We stated, however, that there was a difference between communicating with one's constituents and campaigning for office. In this instance, legislative aides had researched and written articles on topics of concern to the legislator and his district. Although the legislator stated that he had directed his staff to write legislative reports, not news articles, it was clear that the staff was under a different impression and initially viewed their work products as articles destined for a newsletter and later as campaign material.

Using legislative staff to research issues of interest to one's constituents is acceptable under the code if the newsletter is informational and not campaign oriented. However, the overall tone of the publication was promotional rather than strictly informational. While we understood that the legislator's intent was to present information in a more palatable form by interspersing articles highlighting important issues among light feature stories and cartoons,

this format was inappropriate because it also included promotional ads soliciting attendance at various fund-raising activities for the legislator's re-election campaign. Further, we noted that some of the staff's drafts bore a striking similarity to the final versions which appeared in the newsletter. In view of these facts, we found that there had been a misuse of state time, in conflict with HRS §84-13(3), when the legislator used his staff to assist in the production of material appearing in a campaign publication.

It had been our experience that legislators, for the most part, had been able to distinguish between permissible and impermissible uses of their staffs. Therefore, we did not deem it necessary to issue detailed guidelines with respect to this matter. We noted that in Informal Advisory Opinion No. 22, this Commission had recently reviewed some of its past decisions and reaffirmed its position concerning employees' political and private affairs. We commented that if public officials adopted the general guideline stated in that opinion, and separated their political activities and private affairs, to the extent possible, from their state affairs, the likelihood of inadvertently running afoul of the ethics code provisions would be minimal. We remarked that a legislator who was not certain whether his or her staff could be utilized in a particular manner could always consult in advance with this Commission.

Because the legislator had assured the Commission of his intention to make all necessary changes required to bring his actions and those of his staff within the guidelines of the ethics code, the Commission determined that further action was not necessary and a charge would not be filed. Since the legislator had stated that any violation of the ethics code on his part had been inadvertent, the Commission requested that he be more aware of the ethical considerations involved in his position as a legislator and that, if questions arose in the future, he consult with the Commission in advance.

We expressed our appreciation for the cooperation of the legislator in this matter.

We commended the employees for their initiative in bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, October 3, 1980.

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

Note: Chairman Gary B.K.T. Lee and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.