

OPINION NO. 429

We received a request from a division chief who provided assistance to trade associations. He had learned that some of the associations were granting membership status to persons and businesses that were not actually involved in the kinds of businesses the associations were established to assist. Because they received state funds, he wished to know if the ethics code applied to this practice.

In his request for an advisory opinion, he had made specific reference to two associations. At one time his division had provided staff assistance as well as state funding to both of these associations. At the time of his request, however, both employed their own staffs; the department continued to underwrite a significant percentage of the costs of the promotions the associations organized on behalf of their members. Since the State was no longer providing monies to support the staffs of these associations, they were required to raise funds for this purpose. The principal means of raising these funds was the assessment of membership dues of approximately \$600 per year. These fees were set by the associations.

It appeared that in order to raise additional funds the associations were accepting as members individuals and companies that were not involved in the manufacture of Hawaiian goods. The requester had become concerned that the non-related members had joined merely to benefit their own private businesses. By becoming members of the associations, these businesses would be better able to persuade the associations and their members to do business with them rather than with their competitors.

He asked us to determine if the practice of granting membership to persons and businesses that were not involved in manufacturing was appropriate under the ethics code.

As he was aware, the associations and their members were not state employees. Accordingly, this Commission had no jurisdiction over either group.

We stated that the only relevant section would be HRS §84-13, the fair treatment section, which prohibits a state employee from using his position to advantage any person or business in an unwarranted manner. This provision applied even if the state employee or official did not receive a personal benefit from the action taken.

In this case, the State had awarded considerable funds to both associations in order to assist in their maintenance and in the organizing and underwriting of promotions. It was also true that the purpose of these associations was to assist manufacturers of Hawaiian goods. While the State was no longer providing either staff or funds to support staff at the time of the request, it was still providing substantial sums for the promotion of products. Accordingly, if private individuals were receiving an advantage over competitors by joining the associations and if the associations accepted such memberships solely for the purpose of increasing revenues, it could be argued that the State's funds were being used in an unwarranted manner. It could further be argued that a state employee who authorized the payment of state funds to the associations, with the knowledge that some of those funds

were being channeled to members of the association who were selling services to either the association itself or its members, would be using his position in an unwarranted manner.

It was our view, however, that, under the circumstances he had reported, we would not proceed to file charges against him should he continue to authorize the granting of state funds to these associations. Certainly the circumstances would not justify a finding that he had acted improperly even if the associations themselves had. We did not have jurisdiction over the associations themselves and so could not charge them with violations of the statute.

We appreciated his sensitivity to the broader ethics issue involved here, but believed that the resolution of this matter was beyond our jurisdiction.

Dated: Honolulu, Hawaii, November 20, 1980.

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

Note: Commissioners Dorothy K. Ching and Robert N. Mitcham were excused from the meeting at which this opinion was considered.