

## OPINION NO. 448

A former state employee requested an advisory opinion concerning the actions of his supervisor, who had solicited and received loans from both the employee and another employee in the department.

In his request and in meetings with the Commission staff, the employee stated that shortly after he had started working for the department, the supervisor had telephoned him at his state office and had asked him for a \$200 loan. In discussing the circumstances, the employee noted that prior to his employment at the department, he had been acquainted with the supervisor, but that the relationship was not a friendship. The employee indicated that he had complied with the request for a loan under duress. Further, the employee stated that, on his first day of work as a state employee, the supervisor had informed him that since he was a contract employee the supervisor could fire him whenever he wished. The employee stated that he had felt threatened. As a result, when the supervisor solicited the loan two weeks later, the employee lent the supervisor the money, fearing that he would be fired if he did not comply with the request. After a period of time, the supervisor repaid \$100 of the amount he had borrowed from the employee; the employee received the balance shortly after he initiated this action with the Commission.

In addition, the employee noted that the supervisor had also solicited and received a loan from a temporary worker who at the time had been with the department for only four or five months. In a conversation with the Commission's staff, the temporary worker confirmed that he had lent the supervisor money on two occasions: \$20 initially, and \$100 thereafter. The temporary worker stated that he had lent the money to the supervisor because the supervisor was "a likable person I worked with and he was my boss." The temporary worker did not consider the supervisor to be a friend. Although the supervisor subsequently mentioned to the temporary worker "one or two times" that he owed him money, the supervisor had only repaid the loans recently.

The Commission's staff discussed this case with the supervisor, who readily admitted accepting loans from both employees, but took exception to the factual circumstances as set forth by the employees. First of all, the supervisor stated that although he had accepted the loans, he did not solicit them. And, it was his position that all of the loans had been offered to him on a personal friendship basis. The supervisor's version of what occurred with the employee was that he had told him, "I need money," and that the employee had replied, "Fine, no problem." He also stated that the loan had been a friendly loan and that he never had intimidated or threatened the employee with the loss of his job. With respect to the loans he had received from the temporary worker, the supervisor stated that he had mentioned to the temporary worker that he had been "short of funds," and that in both cases the money had been offered to him. Finally, he noted he had been completely unaware of any rules prohibiting such transactions.

The supervisor was no longer in state service. Nevertheless, pursuant to HRS §84-31(6), this Commission retained jurisdiction over alleged violations of the ethics code for

one year after employees terminated their employment with the State. This matter had come to our attention within the statutory time limit.

The pertinent section of the ethics code was HRS §84-13(4), which prohibits an employee from "[s]oliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or person ... whom he ... supervises in his official capacity." Clearly, loans fell within the category of a substantial financial transaction. Further, both employees came under the direction of the supervisor, in his official capacity.

A finding that the supervisor had solicited loans which were indeed the result of pressure on his part as a supervisor would have increased the seriousness of this situation. The Commission, however, was unable to discern whether the loans actually had been made in friendship or under duress. Similarly, the Commission was not able to determine whether the loans had been solicited by the supervisor or had been offered freely by his subordinates. Nevertheless, the Commission concluded that the loans had been substantial financial transactions prohibited by the ethics code. When applying the fair treatment section of the ethics code in the past, we had noted that an employee's relationship to the persons he dealt with might be of such a nature that the employee should not engage in business transactions with such persons. The Commission noted that the statute was explicit with respect to supervisors and those whom they supervised. Accordingly, the Commission affirmed that private business dealings were inappropriate because subordinates, particularly those hired on exempt or temporary status, could not be expected to deal objectively and effectively in a business relationship with a supervisor. It was our conclusion, therefore, that the supervisor's actions in accepting loans from his subordinates were in violation of HRS §84-13(4). Further, we noted that, in our judgment, the violation was not merely technical in nature. In light of the short-term and temporary nature of both positions, as well as the authority the supervisor had over both employees, it was the Commission's opinion that the actions of the supervisor in accepting the loans demonstrated poor judgment and an insensitivity to the State's standards of conduct.

We appreciated the employee's bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, September 17, 1981.

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

Note: Commissioner Robert N. Mitcham was not present during the discussion and consideration of this opinion.