

OPINION NO. 486

An employee, the head of a state agency, asked the Commission to determine whether members of his office could accept invitations to grand openings at hotels. The Commission understood that in the past the employee's entire office had attended the grand opening of a hotel, and the 300 or so guests in attendance were treated to a dinner and show. According to the employee, his office had provided certain services to the hotel before it had opened and would be required to provide services to the hotel in the future. The services performed by the employee's office were provided to all businesses located within his office's jurisdiction.

Two provisions of the ethics code, HRS §84-11 and HRS §84-13(2), were relevant to the question the employee posed. HRS §84-11, the gifts section of the code, prohibits state employees from soliciting, accepting, or receiving, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence them in the performance of their official duties, or is intended as a reward for any official action on their part. HRS §84-13(2), a part of the fair treatment section of the code, prohibits state employees from accepting, receiving, or soliciting compensation or other consideration for the performance of their official duties or responsibilities except as provided by law.

Although the invitations offered by the hotel may have been offered as a gesture of aloha for the services the employee's office rendered, the Commission informed the employee that it believed that receipt of a dinner and show exceeded what may be accepted by a state employee under the standards of the gifts section of the code. The Commission noted that it had stated in the past and in its recent gifts brochure that a state employee could receive, for example, a box of candy or basket of fruit so long as the candy or fruit was shared with the employee's entire office. Such gifts, when shared by an entire office, did not go beyond being a mere token of aloha. On the other hand, the Commission pointed out that an individual dinner and show at an exclusive hotel went beyond the Commission's standard, since others could reasonably infer that the dinners and shows were offered as a reward for past official action or to influence future official action, whether or not that was in fact the case. Although many people were invited to the grand opening, the Commission was of the opinion that this fact did not entirely negate an inference of a gift given to influence or reward official action. The Commission emphasized that the appearance of an attempt to influence or reward was just as significant as the reality of such, since the purpose of the ethics code is to maintain and improve public confidence in state employees.

The Commission also held that the receipt of a dinner and show by members of the employee's office was prohibited as well by HRS §84-13(2), which bars state employees from accepting extra compensation or consideration for performing their official duties. Clearly, the invitations were offered because the employee's office had had a role in establishing the hotel. However, the Commission stated that members of the employee's office received state salaries for performing their work and, under the ethics code, were prohibited from receiving additional compensation because of the dangers of misuse of position. The Commission

believed that a dinner and show at an exclusive hotel was sufficient to constitute additional compensation or consideration.

The Commission noted that in the past it had frequently received complaints by citizens about the propriety of state officials receiving such invitations. The Commission explained that since state officials and employees were employed by and represented citizens of the State, and received a salary for doing so, citizens had objected to the officials and employees receiving further compensation or favors simply by virtue of their public employment. The Commission believed that since citizens paid the salaries of public officials and employees, gifts, compensation, or other consideration offered by those who dealt with public officials or employees should redound to the benefit of the State--not to the benefit of individual state employees.

In conclusion, under the facts of the case and the relevant code provisions, the Commission advised the employee to refuse such invitations in the future. The Commission stated, however, that invitations to grand openings could be accepted when dinners or shows were not involved, or when an entire community had been invited.

The Commission told the employee that it appreciated his bringing this matter to the attention of the Commission and appreciated his candor in discussing this matter with the Commission's staff.

Dated: Honolulu, Hawaii, February 17, 1983.

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

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.