

OPINION NO. 490

An instructor of a certain state office asked the Commission to determine whether employees in his office might sell fundraiser tickets for a certain food item in order to raise money for a graduation ceremony for twelve employees in his office who had completed a one-year training program.

The instructor explained to the Commission that last year approximately \$1,000 in state funds was used to pay for most of the expenses of the graduation ceremony. The 300 or so guests in attendance paid approximately \$15 each for their meal at the ceremony, which was held at a hotel, and the state funds were used to cover hotel costs and food for the graduating employees, honorary guests, and guest speakers. This year, however, state funds were not available for the ceremony, and thus the instructor considered selling the tickets to raise the money needed for hotel costs, entertainment, and dinners for the graduating employees and guests of honor. The instructor stated that he planned to sell about 500 tickets at \$5 apiece.

In reviewing the instructor's case, the Commission initially questioned whether the graduation ceremony was a private or public function, and spent considerable time discussing this issue. Although the graduation ceremony was obviously related to the employees' training program, the Commission concluded that the ceremony was more in the nature of a private affair. The Commission believed that such ceremonies were not generally part of state training or educational programs. This conclusion appeared to be supported by the fact that although the State funded the training program, the State would not provide monies for the ceremony this year. Furthermore, the ceremony was to take place at a hotel, and food and entertainment were to be provided at a fairly substantial cost when compared to the size of the graduating class. These facts led the Commission to conclude that the ceremony resembled a private function more than the fulfillment of a state duty or objective.

Because the ceremony was more in the nature of a private function, the Commission believed that selling the tickets for the ceremony would violate HRS §84-13, which prohibits state employees from using their state positions to secure unwarranted advantages for themselves or others. Furthermore, the Commission believed that the selling of the tickets would also violate HRS §84-13(3), which bars the use of state time for private financial activities. HRS §84-13 and HRS §84-13(3) read as follows:

§84-13 Fair treatment. No legislator or employee 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.

Since the ceremony was a private function, the employees of the office, if allowed to sell the tickets, would be using their state positions and possibly their state time for a private benefit. Even if the employees were allowed to sell the tickets on their own time, the Commission believed that an appearance of impropriety would be created, since it would appear that the tickets were being sold for a state objective.

The Commission realized that the graduating employees had worked very hard to complete their training program and appreciated their instructor's concern in rewarding them or celebrating their accomplishments. However, as stated above, the Commission concluded, although there were arguments to the contrary, that the graduation ceremony as it existed was a private function.

The Commission noted that because the instructor had requested an advisory opinion but was unable to hold off placing an order for the tickets for the food until the Commission's meeting, the instructor was given provisional approval to sell the tickets, although the Commission had serious reservations about the propriety of his office selling the tickets and using state time to do so. Because of this initial advice, the Commission told the instructor that he could finish selling the tickets, if he had not already done so. However, the Commission informed the instructor that this opinion would be applicable to similar situations that might arise in the future.

The Commission commended the instructor for bringing this matter to the attention of the Commission and told him that it also appreciated his candor in discussing the case.

Dated: Honolulu, Hawaii, March 24, 1983.

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

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered. Commissioner Allen K. Hoe was not present during the discussion and consideration of this opinion.