

OPINION NO. 497

An employee of a neighbor island station of a state institution had been writing stock airline tickets to be used by the station's staff for travel. Because writing airline tickets was normally a function of airline ticket agents or travel agents, his supervisor, the county administrator, had asked him to seek the advice of this Commission on the application of the State Ethics Code.

The employee explained that he had undertaken the task of writing airline tickets for the convenience of the station's staff members, who would otherwise have been required to spend a substantial amount of time waiting in airport ticket lines prior to traveling on state business. Previously, the staff members had been unable to take advantage of the "pre-check" system because neither the travel agents nor the airlines would deliver tickets to the station because its location was so far from the main business area. To alleviate the problem, two airlines had offered to supply the employee with stock tickets. Because the employee was able to write the tickets, it was no longer necessary for the staff members to wait in the ticket lines and they had the option of being pre-checked. The employee note that he had only received stock tickets from one airline and had not yet received the tickets from the second airline.

The most applicable section of the State Ethics Code was a portion of the fair treatment section, HRS §84-13 which states as follows:

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

Making travel arrangements was one of the employee's duties at the branch station. The employee noted that the staff members decided which airlines they would use for travel, and that the employee did not suggest or recommend travel on any particular airline. The employee was not a travel agent nor an airline employee and, therefore, did not receive any compensation from outside sources for writing these airline tickets. Furthermore, the employee stressed that the tickets were written only for state travel, and that he did not write tickets for members of the staff or others for travel on personal, private business. The employee suggested that writing airline tickets from the stock tickets was directly related to his state responsibilities and contributed to the smoother operation of the station. Furthermore, the employee had commented that it was difficult for him to make a special trip to the airport or the business district because he was the only person responsible for answering the telephone or watching the office. Finally, the employee stated that out of the twenty employees at the station, only three lived near the business district or the airport and that it would not be fair or reasonable to request these employees to pick up tickets before or after work since this task was not a part of their job responsibilities.

The Commission recognized that the employee wished to promote efficiency and diminish the inconvenience of the station's staff members when they were traveled, nevertheless, in the Commission's opinion, the employee's writing stock tickets for one or two

airlines could be construed as giving an unfair advantage to those airlines. The Commission noted that even if the employee did not recommend the airline whose stock tickets he had, it was reasonable to assume that staff members would begin to choose that airline over the others as a matter of personal convenience. To preserve an open policy, all airlines would have had to be given a chance to compete on the same level. The Commission determined, however, that it would not be appropriate for the other carriers to be approached for stock tickets. The Commission understood that issuing stock tickets to unbonded individuals who were not travel agents was not a usual practice in the airline industry. In the Commission's opinion, a request from the employee's office might put a carrier in an uncomfortable position, particularly if it were aware that other carriers had already acquiesced. Accordingly, the Commission concluded that it was not permissible under the ethics code for the employee to continue to handle stock airline tickets as a convenience and service to the staff members of the station. In coming to this conclusion, the Commission considered at length the inconvenience caused to researchers and others who traveled from the office but ultimately determined that the appearance of impropriety that would arise outweighed any discomfort to the staff members. In its discussion, the Commission attempted to fashion a solution to this administrative problem but, unfortunately, could not conceive a solution that would not contravene the ethics code.

In his request for an advisory opinion, the employee also stated that one airline had invited him to participate in its familiarization tours program; the employee had already accepted neighbor island tours during which he was briefed on the services offered by the airline. In addition, another airline had presented the employee with small, personal gifts as expressions of appreciation. In both cases, the employee emphasized that he had not been influenced to give either airline an unfair advantage by channeling business in its direction.

The gifts section of the ethics code, HRS §84-11, prohibits employees from accepting any gift under circumstances where it can reasonably be inferred that the gift is intended to influence them in the performance of their duties or is intended as a reward for any official action on their part. The statute does not establish a broad prohibition against the receipt of gifts; rather, acceptability is determined on the basis of whether the circumstances indicate that the gift was intended to influence or reward employees in the performance of their duties. As a general rule, however, the Commission advises employees not to accept any gift that is more than a small token of aloha. For example, the Commission agreed that employees may accept small items, such as inexpensive candy or fruit, if the items can be shared by the entire office. In the Commission's opinion, however, the familiarization tours did not fall in this category and were gifts that should not have been accepted under the statute. Accordingly, the employee was advised to refrain from accepting similar invitations in the future. Finally, the Commission noted that if an airline wished to express its appreciation, the employee would not be prohibited from accepting an occasional, small box of candy that could be shared with his fellow employees.

The Commission commended the employee for bringing his question to the Commission, and appreciated his candid discussions with its staff.

Dated: Honolulu, Hawaii, May 3, 1983.

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