

## OPINION NO. 535

A state employee requested an advisory opinion on the propriety of her sending a solicitation letter to state-regulated businesses asking them to consider becoming associate members of a private national association. The employee also asked the Commission for guidelines should other associations request her assistance in soliciting membership in the future. In her request, the employee had stated that she had reservations about such proposals and preferred not to solicit memberships for national organizations of businesses that she regulated. Nevertheless, the employee did not wish to be overly restrictive and thus sought the advice of the Commission.

After reviewing the employee's question, the Commission concluded that only the general provisions of HRS §84-13, the fair treatment section, were applicable. This section prohibits employees from using or attempting to use their official positions to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others. To assist the Commission in making a determination, the employee had submitted a draft solicitation letter provided by the national association. In the Commission's opinion, the draft solicitation letter created the impression that because the association subsidized attendance by governmental regulatory officials at its seminars with a portion of the membership fees it received, employees of the division might benefit from an increase in associate memberships by businesses located in Hawaii. The Commission also believed that the letter implied that increased associate memberships by Hawaii businesses would result in larger subsidies for state government employees. When the employee discussed the draft letter with our staff, she noted that this perceived benefit was not likely to be a direct benefit to the division and was, at best, speculative. In her view, even if all of the eligible Hawaii businesses joined the national association, the subsidy money set aside by that organization would not necessarily have been allocated to an individual from Hawaii who might attend an association seminar. The employee noted that while she believed that subsidy funds were fairly allocated in some fashion to individual attendees at particular seminars, she was not certain about the actual breakdown and did not believe that a state employee who chose to attend a seminar would necessarily receive a subsidy.

The Commission observed that even if the solicitation letter had been amended to state that increased membership in the national association on the part of eligible businesses would not have a direct effect on the division, other ethical considerations were still present. The Commission noted that because of the regulatory relationship that existed between the division and the businesses, a solicitation of membership on the part of the employee was likely to introduce an element of pressure that would be impermissible under the State Ethics Code. Furthermore, the Commission believed that a solicitation on the part of a state official might also be perceived as an endorsement of the private organization. The Commission was cognizant that past Commission opinions have commented that an endorsement by an official of a governmental agency, even a non-regulatory one, provides a competitive advantage to the association endorsed. Accordingly, the Commission found that it was not possible for the employee to ask businesses to join the national association without giving the association an unfair advantage prohibited by the ethics code.

Because of the regulatory relationship of the employee's division to private industry, the Commission concluded that the employee should avoid participating in solicitations of this nature. Otherwise, in the Commission's experience, given the regulatory relationship, an appearance of impropriety would almost inevitably arise. In advising the employee to refrain from participation in these promotions, the Commission believed that the employee would preserve the credibility of the division and also not taint its regulatory relationship with private industry.

The Commission commended the employee for her sensitivity to the ethical considerations of this matter and appreciated her seeking the advice of the Commission at an early time.

Dated: Honolulu, Hawaii, July 9, 1984.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Mildred D. Kosaki, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Edith K. Kleinjans was excused from the meeting at which this opinion was considered. Commissioner Tim S. Farr disqualified himself from discussion and consideration of this opinion.