

OPINION NO. 546

The Commission received a request for an advisory opinion from the director of a state agency who intended to retire from government service at the end of the year. The director's successor was to be chosen and appointed by another agency, and the director wished to know if she might recommend her assistant for the position. The director noted that she had already recommended her assistant to two individuals and that she wished to send recommendations to the other members of the appointing agency using office stationery, time, labor, and postage.

The most applicable section of the ethics law was HRS §84-13(3), 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; including but not limited to the following:

....

- (3) Using state time, equipment or other facilities for private business purposes.

In the Commission's opinion, the State Ethics Code would not prohibit the director from carrying out her plan. The Commission noted that the fair treatment section prohibits state officials and employees from using state materials or personnel for their private purposes. The Commission recognized, however, that the director's recommendation of her assistant was not a private activity but one of her responsibilities as the head of the agency. Although the director's recommendation was her personal opinion of the assistant's abilities, it arose out of the supervisory work relationship that she had had with him over time. Furthermore, irrespective of the director's decision to make a specific recommendation, the Commission believed that it was not inappropriate for the head of an agency to participate in the search for a successor. The Commission noted that the appointing authority would have the final word. Nevertheless, it was the Commission's view that the director's participation in this process fell within the scope of her responsibilities and could not be considered action that she took as a private individual. Accordingly, the Commission concluded that HRS §84-13(3) did not apply.

The Commission commended the director for her active interest in preserving ethics in government and wished her well in her future endeavors.

Dated: Honolulu, Hawaii, November 28, 1984.

STATE ETHICS COMMISSION
Allen K. Hoe, Chairperson
Edith K. Kleinjans, Vice Chairperson
Tim S. Farr, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Mildred D. Kosaki disqualified herself from consideration of this opinion.