

ADVISORY OPINION NO. 559

A legislator requested the advice of the Commission on the application of the state ethics law to the mailing of political solicitations to either individuals or groups at state mailing addresses. It had come to the attention of the Commission that the solicitations had been mailed by the legislator's campaign committee to members of state boards and commissions at their state addresses. After a brief meeting with a Commission staff member, the legislator had requested an advisory opinion from the Commission, stating that it was not clear in the legislator's mind as to the imperatives of the present regulations in the area. Thereafter, the legislator met with the Commission and confirmed that the mailing had taken place and emphasized that he had had no intent whatsoever of ignoring any rule of the Commission regarding the mailing of the solicitations. The legislator specifically noted that all expenses of this mailing were paid out of campaign funds, including but not limited to the cost of the envelopes, stationery, and postage.

The Commission noted that two sections of the State Ethics Code applied to campaign activities: the gifts section, HRS §84-11, and a portion of the fair treatment section, HRS §84-13(3). The gifts section states as follows:

No legislator or employee shall solicit, accept, or receive, 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 him in the performance of his official duties or is intended as a reward for any official action on his part.

The Commission stated that under this section, legislators could not solicit or accept a gift if it could be reasonably inferred under the circumstances that the gift was intended to influence the performance of legislators' duties or reward them in their state capacities. The Commission noted that this section did not require evidence that the solicitor intended to be rewarded or that the donor intended to influence the recipient but prohibited those transactions where the circumstances indicated that these inferences would be raised.

Furthermore, the Commission noted that HRS §84-13(3) 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.

The Commission commented that generally this section prohibited legislators and employees from using their government positions to secure or grant unfair treatment for themselves or others. The Commission noted that it had concluded in numerous advisory opinions that legislators and other public officials must avoid the use of state stationery, facilities, and personnel to carry on private business or political activities whether on their own or others' behalf. The Commission recognized that the legislator had to an extent complied with the law

by paying for the envelopes, stationery, and postage out of his private campaign funds. The Commission pointed out, however, that "campaign ethics principle number two" in the Commission's campaign ethics guidelines brochure states that "Solicitations by legislators or employees should not be combined with the conduct of official business. Please note that this includes solicitations through the mail addressed to state employees or officials at their state offices." The Commission, therefore, concluded that the legislator had transgressed the ethics law by mailing solicitations to state addresses. The Commission affirmed its opinion that solicitations for funds or voluntary time on campaign activities at state offices blurred the line between state and private business. Furthermore, the Commission emphasized that it believed that solicitations at the office almost unavoidably created an atmosphere of intimidation.

The legislator stated that he did not believe that employment or appointments to state positions by individuals or members of groups that might support him in his political campaign should preclude him from contacting those individuals or groups. The Commission agreed that the ethics law does not contain this wide a prohibition on contact between political candidates and state officials and employees. The Commission believed, however, that the ethics law does require that political activities and business matters be separated to the greatest extent possible from state affairs. Accordingly, the Commission advised the legislator that he could send political information and solicitations only to the home addresses or private business addresses of friends, relatives, or other individuals included as "employees" in HRS §84-3(4) who might support him.

The Commission recognized that the legislator had expressed a concern that its ethics guidelines were not specific enough. The Commission stated that it had been the Commission's past experience that legislators, for the most part, had been able to distinguish between permissible and impermissible uses of state time, equipment, or facilities. Accordingly, the Commission had not considered it necessary to issue more specific guidelines with respect to campaign activities. The Commission had believed that if public officials adopted a general guideline of clearly separating their private or political business from their state activities, the likelihood of inadvertently running afoul of the ethics code provisions would be minimal. The Commission noted, however, that it would consider the matter prior to the beginning of the next campaign period. In the meantime, the Commission affirmed that legislators who were not certain about the application of the ethics law could always consult in advance with this Commission.

The Commission recognized that the legislator had expressed an intent to seek the advice of the Commission in advance with respect to the application of the ethics law in the future and appreciated the legislator's cooperation in this matter.

Dated: Honolulu, Hawaii, June 7, 1985.

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

Note: Vice Chairperson Tim S. Farr was excused from the meeting at which this opinion was considered. There was a vacancy on the Commission.