

## ADVISORY OPINION NO. 561

A department head requested the Commission's advice on formulating a departmental policy with respect to political campaign solicitations mailed to state employees or board and commission members at their state addresses. The department head noted that the department had received a number of envelopes addressed to specific individuals who sat on several boards and commissions within the department. Additionally, a number of employees within the department also had received the same solicitation. The department head had commented that the envelopes did not conspicuously display political campaign notations and had noted that it was only after an envelope addressed to a former board member had been opened that the department discovered that the envelope contained a solicitation to purchase fund-raiser tickets. Because there were no distinct political markings on the envelopes, the department head determined that the envelopes should be distributed in accord with the department's general policy on mail distribution. Thereafter, the department head solicited the Commission's comments on the department's general policy and also sought the Commission's advice regarding the future distribution of mail that may arrive at the department in envelopes that bear conspicuous campaign notations.

The 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.

The Commission stated that, generally, this section prohibited employees from using their government positions to secure or grant unfair treatment for themselves or others. More specifically, the Commission noted that this section disallowed the use of state time, equipment, or facilities for private business purposes, including political campaign activities. The department head had stated that the department's general policy was to hold mail for distribution at the next board or commission meeting. Otherwise, if the respective board or commission meeting was more than one or two weeks away, the department forwarded the envelopes to the board members' residence addresses. Envelopes were either marked, "Forward to addressee," with residence addresses listed or inserted into a new departmental envelope and mailed. The department head had emphasized that envelopes were not opened by departmental personnel unless the individual had discontinued service as a board or commission member or if there were markings that would indicate to the staff that the contents should be reviewed to determine the urgency of the correspondence. Finally, the department head stated that if the envelopes were addressed only to the board or to the board's chairman, they were opened and read by the staff. In the Commission's opinion, because the campaign solicitations had been treated no differently from other private sales solicitations or information received from the private sector, the distribution was not a violation of the state ethics law.

The department head also sought the Commission's advice on an appropriate way to handle mail addressed to board and commission members or employees in envelopes that obviously have been sent by a political campaign organization that might be sent to the department in the future. The Commission noted that "campaign ethics principle number 2," in its campaign ethics guidelines brochure states as follows:

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 also stated that the state messenger service could not be used for campaign purposes nor could legislators or employees distribute political campaign material on state time or with the assistance of state staff members.

The Commission stated that it believed that the ethics law requires that private business matters, including political campaign activities, must be separated to the greatest extent possible from state affairs. For example, in the Commission's view, state addresses could not be used by state officials and employees for their private business purposes. Thus, if employees, and board and commission members were included in the definition of "employee," received unsolicited, personal, private mail at their state offices, the Commission determined that, while this kind of mail could be held for pickup, state resources could not be used to distribute it. The Commission noted that there was no obligation to forward unsolicited, third-class mail to individual addressees. The Commission believed, however, that because only a limited amount of staff time would be required, it would be permissible under the ethics law, as determined by departmental policy, for an employee to write "return to sender" on the envelope and return the mail to the post office. Nevertheless, the Commission concluded that it would be impermissible for a department to expend additional state time or any state funds for stamps or envelopes to deliver private business mail to state employees.

The Commission stated that it wished to emphasize that it was not its intention to place state departments in the uncomfortable position of censoring or passing judgment on the mail received by employees at state addresses. Nevertheless, the Commission affirmed that state resources could not be used to forward or deliver a letter if it appeared that the letter did not relate to a state business purpose and was in fact private business mail. Finally, the Commission noted that the purpose of these guidelines was not to penalize the intended receivers of the mail but to serve as a restraint on inappropriate solicitations of state officials and employees that might lead to an undermining of public confidence in state government. Consequently, if state resources would be required for distribution, the Commission advised the department to return the mail to the sender by either directly contacting the sender or writing "return to sender" on the envelope and returning it to the post office.

The Commission appreciated the department head's concern for the ethics questions involved in this situation and commended him for his willingness to conduct the business of the department in accord with high ethical standards.

Dated: Honolulu, Hawaii, July 2, 1985.

STATE ETHICS COMMISSION  
Allen K. Hoe, Chairperson  
Tim S. Farr, Vice Chairperson  
Laurie A. Loomis, Commissioner

Note: Commissioners Edith K. Kleinjans and Arnold J. Magid were excused from the meeting at which this opinion was considered.