

ADVISORY OPINION NO. 566

A legislator requested an advisory opinion on whether the Commission's prohibition on mailing political campaign solicitations to state employees and board and commission members at state addresses applies to the mailing of complimentary fund-raiser tickets. The legislator requested clarification on this matter as a follow-up to two advisory opinions recently issued by the Commission.

In Advisory Opinion No. 559, the Commission found that a legislator had transgressed the ethics law by mailing political campaign solicitations to state board and commission members at their state addresses. The Commission stated that although the cost of the mailing had been paid with the legislator's private campaign funds, the mailing violated "campaign ethics principle no. 2," which 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 commented that, in its view, soliciting funds or time from individuals at their state offices blurred the line between state and private business and almost unavoidably created an atmosphere of intimidation. The Commission also noted that the ethics law requires that political activities and business matters be separated to the greatest extent possible from state affairs and concluded that legislators could send political information and solicitations only to the home or private business addresses of their friends, relatives, and supporters who might also be "employees" as defined in HRS §84-3(4).

In the second opinion, Advisory Opinion No. 561, the Commission told a department head that unsolicited personal or private mail could be held for pickup at state offices. However, the Commission also noted that state resources could not be used to distribute private *business* mail. Consequently, the Commission advised that if state resources would be required, all mail unrelated to the State's business, including political campaign solicitations, should be returned to the sender.

The question the legislator presented to the Commission was whether, under the State Ethics Code, an invitation to attend a fund-raiser as a guest, not as a contributor, would be considered unsolicited personal or private mail, government business, or private business. The legislator noted that complimentary tickets are often extended as a gesture of goodwill and legislative public relations to fellow legislators and other state officials, such as the governor and lieutenant governor, and sometimes department heads and heads of state agencies. The legislator also stated that an invitation might be issued in a variety of ways. For example, there might be an invitation to the legislator and the legislator's family directly from the candidate. Or a general invitation might be extended by the candidate to fellow legislators, families, and staff members. Sometimes an invitation would be issued on behalf of the candidate by the candidate's campaign committee. Additionally, the legislator commented that it was easier to send complimentary tickets to invited guests than it was to put their names on a guest list at the door.

In the legislator's view, invitations to fund-raisers sent to fellow legislators or other state officials were a part of the governmental social scene. In fact, the legislator commented that he believed that these invitations were similar to requests to special guests to attend a testimonial dinner given by a private corporation for its chief executive officer. While most individuals attending a testimonial dinner would assume the cost of the dinner and perhaps contribute a sum toward a gift, the special guests and other dignitaries would not be asked to pay but would simply be invited to attend in honor of the chief executive officer. In a sense, the legislator believed that a fund-raiser was a private function which had a somewhat public status in the community.

It was clear to the Commission that political campaign activities were not state business. Consequently, the Commission affirmed that the mailing of complimentary fund-raiser tickets was a legislator's private business, and neither a legislator's staff nor the state messenger service could be used to distribute complimentary fund-raiser tickets. The Commission believed, however, that because they were not solicitations, complimentary tickets and invitations to fund-raisers could be mailed to the state offices of legislators and other state officials who might attend in their official capacity to demonstrate goodwill.

The Commission appreciated the legislator's candid discussion of this matter and commended him for seeking early clarification of this matter.

Dated: Honolulu, Hawaii, October 25, 1985.

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

Note: Commissioner Laurie A. Loomis was excused from the meeting at which this opinion was considered.