

ADVISORY OPINION NO. 569

A state employee asked the Commission if it would be permissible for her to extend a trip for personal reasons. During the initial portion of the employee's trip, she was to be the guest of another government and, among other things, she had planned to meet with government officials and to visit the sites of several corporations. Thereafter, the employee intended to travel elsewhere on state business, with the expenses for this part of the trip paid for by the State. The employee wished to know if she could then spend a few days vacationing before returning to the state.

The applicable section of the ethics law, the gifts section, was HRS §84-11, which states:

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.

Before reviewing the question of whether the employee's trip could be extended for personal reasons, the Commission first considered whether she could accept the invitation extended by the other government. Because strengthening and promoting friendly relations between that government and Hawaii's state government was related to the employee's public functions and was of benefit to the State, the Commission concluded that the employee would be permitted under HRS §84-11 to accept the invitation to travel as a guest of the other government. The Commission also noted that the ethics law would allow the employee to extend the trip to travel elsewhere to conduct the State's business.

In the Commission's opinion, the employee also would not be precluded by the gifts section of the ethics law from extending her trip for a personal vacation. First of all, although the initial portion of the trip would not be paid for by the State, it was another government, not a private individual, business, or association, that would be assuming the costs. The Commission noted that past advisory opinions issued by the Commission on complimentary travel had been concerned with offers of complimentary travel from the private sector and had not discussed trips paid by other government sources. The Commission commented that the ethics code governs the relationship between governmental and private interests; and, generally, a gift problem occurred when state officials or employees accepted gifts from a person or business with whom they had state relationships that called for significant state action. In the Commission's view, there was a presumption that travel paid by governmental sources entailed the public's business and this kind of travel by state officials or employees was unlikely to give rise to an inference of possible influence or reward. The Commission believed, however, that acceptance of travel expenses from governmental sources might be prohibited if contractual relationships between the State and other governmental entities were involved. The Commission had been informed that the nature of this trip was one of goodwill

and did not involve any contractual agreements; thus, the Commission concluded that the employee could extend her trip.

An additional question the Commission considered was whether the employee's spouse would be permitted to accept an invitation by the other government to travel with the employee. The Commission stated that while the Commission did not have jurisdiction over spouses of state officials or employees, the Commission had commented in the past on offers of complimentary travel and lodging made to family members. The Commission noted that in Advisory Opinion No. 311, the Commission had stated that the ethics law did not prohibit family members of employees from accepting a gift unless the gift actually was made to an employee under the guise of a gift to a family member. The opinion also had noted that a gift to a family member based solely on the family member's relationship to an employee probably should not be accepted. In this case, while the invitation had been extended to the employee's spouse because of the marital relationship, the Commission believed that it would be appropriate for him to be present with the employee at the various social functions scheduled and, accordingly, determined that the employee's spouse could also accept the invitation by the other government to travel with the employee.

The Commission commended the employee for demonstrating her sensitivity to the ethical considerations involved in this situation by seeking its advice at an early time.

Dated: Honolulu, Hawaii, November 27, 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 portion of the meeting at which this opinion was considered.