

INFORMAL ADVISORY OPINION NO. 13[†]

On November 16, 1972, the State Ethics Commission initiated a charge against a state employee who is an assistant to the head of a state department, alleging that the state employee was in violation of §84-13 and/or §84-13(3), HRS. The state employee was afforded an opportunity under HRS, §84-31(b), to explain the conduct alleged to be in violation of the law and appeared before the staff of the Commission to do so. In addition, the staff interviewed other persons who may have had evidence to provide.

During the recent political campaign, the state employee and others decided that each would personally contact former associates in a government organization with a plea for campaign funds for a presidential candidate and his running mate.

In October of 1972 one member of the group called the state employee and asked him to contact persons known to him from a list of former members of the government organization. The state employee wrote his name and state office phone number on a solicitation letter and told his secretary to send copies of it to those he was to contact. His secretary duplicated the letter on state equipment and placed the letters in envelopes bearing the return address of the department head. Three letters were transmitted to the recipients by means of inter-departmental mail. One of the letters was stamped on the departmental mailroom's postal meter. The departmental mailroom is authorized to supply postage only to official business of the state department.

The state employee and his secretary had an understanding that she would take care of his personal business matters on her own time, utilizing envelopes and stamps personally provided by him.

The state employee has indicated that no one called him on his state phone with regard to the contents of the four letters. He also indicated that he would repay the State for the cost involved in the transmittal of the campaign plea and that he realized that he had failed to exercise his responsibility under the circumstances.

The Commission adopted the investigation report of the staff for the purpose of issuing an informal advisory opinion. The Commission found that the state employee was a state employee within the meaning of §84-3(4), HRS, and was so employed during the month of October 1972. The Commission also found that the state employee's secretary was a state employee within the meaning of §84-3(4), HRS, and was so employed during the month of October 1972. The Commission further found that the letter which had been received by the state employee to which the state employee had added his state phone number as a point of contact for recipients who wished to ask questions about the letter was not a matter involving official business of the State of Hawaii. The Commission finally found that the use of the state employee's state phone number as a point of contact for those wishing to ask questions, the copying of the letter on state equipment, the use of the inter-departmental mail system to transmit three letters, the use of the department envelopes, and the use of the State's postal meter all constituted a misuse of state time, equipment and facilities in probable violation of §84-13(3), HRS, which provides:

[†]As a consequence of a 1972 amendment to §84-31(f), HRS, the Commission is publishing an Informal Advisory Opinion for the first time. An informal advisory opinion may be rendered after a charge of alleged violation has been initiated against an employee or legislator. An advisory opinion, on the other hand, is rendered in response to a voluntary request for advice.

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

....

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

The Commission recommended that to avoid future probable and similar violations of chapter 84, the state employee assure that his secretary understands assignments which he gives her; that she has discerned accurately what is official business of the department and what is his personal business; and that the state employee supervise more closely her performance of those assignments. The Commission also recommended that the state employee carry out his intention to repay the State for the money lost in copying and transmitting the letter. The state employee was also informed that pursuant to HRS, §84-31(b), he could either agree to comply with the findings and recommendations of the informal advisory opinion or request a formal opinion.

The state employee by letter has indicated that he will comply with the findings and recommendations of the informal advisory opinion.

Dated: Honolulu, Hawaii, December 26, 1972.

STATE ETHICS COMMISSION
Walters K. Eli, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Audrey P. Bliss, Commissioner
Fred S. Ida, Commissioner

Note: Chairman Vernon F.L. Char was excused from the meeting at which this opinion was considered.