

INFORMAL ADVISORY OPINION NO. 16

The State Ethics Commission charged several state employees with violations of HRS §84-11 (Supp. 1974) for allegedly accepting gifts, including travel, from a certain organization and others.

The employees were notified of this charge by certified letter. They were also informed that, pursuant to HRS §84-31(b), they could meet with the Commission to explain the conduct alleged to be in violation of the law. Informal hearings were held in connection with this matter.

We issued this informal advisory opinion pursuant to HRS §84-31(b) (Supp. 1974).

We made the following findings:

1. The state employees went on a trip outside of the State. No one extended the trip beyond the itinerary planned by the sponsoring organization, Association A.
2. All of the state employees took vacation time for the trip.
3. On the trip, the state employees attended seminars relating to the subject matter under study. The state employees attended a reception given by Association A. Business companies having an interest in the subject matter under study were at this reception. However, there were no separate meetings between the state employees and these business companies.
4. Association A was the official sponsor of the trip. Transportation (including airplane fare) and hotel costs were paid by the association. Individual members were responsible for their meals, taxi fares, and other miscellaneous personal expenses.
5. Although Association A was the official sponsor of the trip, the association received support from other organizations. One state employee stated that one business company having an interest in the subject matter which was studied by the state employees on the trip provided Association A with most of the funds for the trip taken by the state employees.
6. Before leaving on the trip, the state employees prepared congratulatory and acknowledgment statements for publication in a magazine published by the individual who coordinated the trip. The statements included endorsements of the subject matter to be studied by the state employees.
7. Several divisions of the state employees' agency have had an interest for several years in the subject matter which was studied by the state employees on the trip. These divisions have received gifts relating to the subject matter in question through or by Association A.
8. Additional divisions of the state employees' agency will become involved with the subject matter in question. Additional gifts relating to the subject matter were donated through or by Association A.

9. A decision on whether to participate in the subject matter which was studied by the state employees on the trip is made by individual divisions of the state agency.
10. One of the state employees who went on the trip presented a report on the subject matter which was studied by the state employees on the trip to the head of the employees' agency.
11. In this report, it was stated that the agency had been exploring the subject matter for several years.
12. In this report, it was stated that one of the employees who went on the trip arranged seminars on the subject matter in question for interested personnel of the state agency in question.
13. In this report, it was stated that divisions of the state agency in question would be provided future seminars.

We reached the following conclusions:

1. The individuals were state employees as defined in HRS §84-3(4).
2. HRS §84-11 was applicable to this case. This section 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.

3. There was probable cause to believe that the state employees accepted a trip under circumstances in which it could reasonably be inferred that the trip was intended to influence them in the performance of their official duties and intended as a reward for official action on their part.
4. Therefore, there was probable cause to believe that they violated HRS §84-11.

In reaching the above conclusions, we took into consideration the totality of the circumstances and facts surrounding the trip by the state employees; who the actual sponsor or sponsors of the trip were; what the business company which contributed funds for the trip to Association A might gain from giving this support to Association A; how and which of the employees were selected; the number of state employees who went on the trip; and the public statements in the magazine made by the state employees prior to the trip. We also considered that under the facts of this case, the gift was more personal in nature rather than one where the State is the ultimate recipient. We said that it was the entire set of circumstances that made the acceptance of the trip by the state employees a violation of the ethics law. We stated that acceptance of an educational or fact-finding trip sponsored by a private organization by a state employee was not a *per se* violation of HRS §84-11. We referred the state employees to Commission Opinion No. 121.

In considering the various facts of this case, we were particularly troubled by the size of the contingent of state employees who went on the trip and by the public statements made by them prior to the trip. We stated that as indicated *supra*, we were not opposed to all trips by state employees. We said in certain situations, a fact-finding trip by a small number of state employees might be in the public interest. However, we stated that the fact that so many state employees went on the trip in the instant case contributed, we believe, to an inference that the trip was intended as a reward for official action taken by the state employees involved or was intended to influence official action on their part in the future. Then, we said that the public statements thanking the business company which gave financial support to Association A for the trip and statements congratulating the magazine also strongly contributed to the commercialization of the trip. We stated that what was called for here was not the series of statements thanking and congratulating the sponsors of the trip and endorsing the subject matter which was to be studied but rather a public disclaimer indicating that the purpose of the trip was to gain facts on the subject matter, that the individuals were going on the trip with open minds, and that the trip would not obligate in any way the state employees to the sponsors of the trip.

Then, we believed that it could reasonably be assumed that the state employees who went on the trip would be required to take some official action relating to the subject matter in question in the future.

We were concerned that some of the individuals involved were in high positions in their state agency and would be establishing standards of ethical conduct for other employees to follow.

We recommended that to avoid future violations of HRS §84-11, the state employees should refuse a gift of travel from Association A and others under circumstances similar to these. We stated that they should request an advisory opinion from the Ethics Commission whenever they were unsure as to whether a gift may properly be accepted.

We stated that pursuant to HRS §84-31(b), the state employees might either (1) agree to comply with the findings, conclusions, and recommendation of this informal advisory opinion or (2) request a formal hearing and opinion. We requested that they inform us of their decision within ten days of their receipt of this informal advisory opinion.^{†††}

Dated: Honolulu, Hawaii, September 5, 1975.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Audrey P. Bliss, Commissioner
Paul C.T. Loo, Commissioner
I.B. Peterson, Commissioner

^{†††}The state employees indicated that they accepted the findings and conclusions of this informal advisory opinion and would comply with its recommendations.