

INFORMAL ADVISORY OPINION NO. 22

On May 13, 1980, the Commission received a charge against a member of the legislature. The charge was filed pursuant to Rule 5.1 of the Commission Rules and Regulations. Pursuant to HRS §84-31(b), the legislator was afforded an opportunity to present an explanation of the conduct alleged to be in violation of the law. The legislator took advantage of this opportunity and appeared at a Commission hearing.

The substance of the charge was that the legislator had violated the State Ethics Code, particularly HRS §84-13, by using his position in an unwarranted manner to influence members of a private organization to support an individual in his attempt to win election to the presidency of the organization. The election was held in May of 1980 at which time the incumbent, the complainant in this case, was re-elected as president.

It was agreed that the legislator had written a letter to the supporters of the challenger on state stationery and had identified his position in the legislature. The letter was an endorsement of the challenger's candidacy for the office of president of the organization. The letter was duplicated by the challenger and distributed to an undetermined number of members. As indicated, the result of the election was that the incumbent was re-elected to the post of president over the challenger.

The pertinent language in the State Ethics Code was contained in HRS §84-13 and provided as follows:

No legislator ... 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.

It was the complainant's contention that the use of legislative stationery, bearing the seal of the State of Hawaii, the names of the members of the particular branch, and the legislator's signature and the citation of his particular position in the legislature gave the impression that the state legislature approved of his endorsement. The legislator contended that he had a right to endorse qualified people for election to offices and that the use of the legislative stationery was of no significance. He noted that his identity as a legislator was well-known and could not be disguised by his avoiding the use of the stationery. He commented further that, in his view, the use of the stationery containing the state seal and his signature could not reasonably be expected to influence members of the organization in the way they voted.

Certain past opinions of this Commission were relevant to our decision in this case. In Informal Advisory Opinion No. 13, the Commission had found that an employee had violated HRS §84-13 when he asked a secretary to type political solicitation letters and used the state mailing system to forward those letters to persons who, it was hoped, would provide financial support for a particular candidate. While the individual was cited as violating the statute, no sanction was imposed upon the employee other than to require that he reimburse the State for the cost of his activities.

In Advisory Opinion No. 350, the Commission advised the chairman of a powerful state board that, in endorsing a figure for political office, he not identify his board or his position and that he consider voluntarily refraining from endorsing candidates because of the sensitive nature of his position. However, the Commission did not rule that the official could not endorse candidates for political office.

In a number of other Commission opinions, the Commission has recommended that influential employees and public officials, including legislators, take steps to isolate the power of their offices from private negotiations with state officials. For example, in one such case (Advisory Opinion No. 363), a state legislator sought funding from a state agency for a private enterprise. A statement was made to the agency that he was seeking the funds as a private citizen and that his application should be given no deference by the state agency. All negotiations and all meetings were conducted on the legislator's own time, using all his own equipment and materials. And, of course, the Commission was advised of his activity and was thus able to monitor the matter. The Commission found that these activities would not violate the ethics code and approved of the steps taken to mitigate the influence of legislators.

A review of these decisions indicates a Commission view that political activities and the private affairs of government officials should be separated, to the extent possible, from their state offices. The language of HRS §84-13(3) is unambiguous on this point.

We recognize that a philosophical argument lies at the heart of cases such as this one. There can be no doubt but that state officials have a right to endorse persons for political as well as private office. The opinions cited recognize this right. It is also clear that public officials cannot completely divorce themselves from the powers of their offices when they conduct their private affairs. Nevertheless, it has been the consistent position of this Commission that certain symbolic steps should be taken to isolate a public official's office from his or her private endeavors and that the taking of such steps is meaningful and effective. It is meaningful because it is a statement that the official's office should have no bearing on the particular interest that is being pursued in a private capacity and that no advantage is being sought or should be given. While we recognize that an awareness of the official's power and position cannot be erased from the minds of the people the official is dealing with, the sensitivity shown does nevertheless promote a positive image of both the official and the agency he or she represents. It is our experience as commissioners that people are intimidated and influenced by persons occupying powerful governmental positions. Steps taken in recognition of this reality may and do help to neutralize the influence of the official as he carries out his private endeavors.

In this case, the legislator indicated that he was unaware of the uses that the challenger would make of the letter sent to him. It had been his understanding that the letter would be read to his supporters but would not be duplicated and distributed. The reading of the letter alone would not have brought before the supporters the image of the seal and the names of the other members of the legislature or, necessarily, the signature of the legislator and the citation of his particular position. The possibility of the legislator's action constituting a violation of HRS §84-13 would have been mitigated if the letter had been used according to his expressed intent. Accordingly, the Commission was of the opinion that, while the action was in violation of HRS §84-13, the violation was an inadvertent one that did not justify further action by this Commission. We also noted that this issue had not, heretofore, been so explicitly raised as it was here.

We did, however, hold that legislators and other public officials should avoid the use of state stationery, facilities, and personnel for the carrying on of private business or political activities whether on their own or others' behalf. The best practice, one that had been increasingly adopted by officials in both the private and public sectors, was for employees and elected officials to maintain a private stock of stationery for use in personal matters. While we recognized that public officials could not completely hide their identities when they carried on their private activities, the use of the state seal and the specific identification of the individual's official public position carried with them a weight that did have influence. In addition, officials and employees were elected and appointed solely to carry out the business of the public. The use of the state seal, state stationery, and the designation of the official's actual position in government in private matters was not consistent with that purpose. The use of private stationery was a statement that the official was separating him or herself as much as possible from his public position. We believed, as we had stated in past opinions, that this symbolic gesture was significant and promoted the standing of government in the eyes of the public.

We emphasized that the Commission did not question the right of an elected official or of any employee, under the ethics code, to endorse persons seeking public or private offices, references for employment, acceptance to educational institutions, or other similar purposes.⁺⁺⁺⁺⁺ But it was our interpretation of the ethics code that state stationery and the state seal should not be used for such purposes. We recognized that some incidental use of state equipment for private purposes was unavoidable; such use, to the extent that it was a limited use, would not constitute a violation of the ethics code. We noted, however, that questions concerning the use of such equipment should be raised with the Commission in advance.

Our experience told us that there was in the community a concern that some public officials overused the resources of their offices in carrying on campaign activities and private business. While the public's perception of such practices might be an exaggeration of the reality, it was a view that, in our opinion, was reinforced by the use of state materials and personnel in non-state matters. For this reason, we were of the opinion that the letter of the law should be adhered to in this area and would so advise appropriate officials.

We appreciated the candor of the legislator's presentation to the Commission. We also commended the complainant for his initiative in bringing this matter to the Commission's attention.

Dated: Honolulu, Hawaii, August 8, 1980.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Chairman
Paul C.T. Loo, Vice Chairman
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner

Note: Commissioner Robert N. Mitcham was absent from the meeting at which this opinion was considered.

⁺⁺⁺⁺⁺We noted, however, that other statutes, rules and regulations, including those affecting civil service employees, might impose restrictions on such activities.