INFORMAL ADVISORY OPINION NO. 2004-19

An individual ("complainant") filed a formal Charge with the Hawaii State Ethics Commission ("Commission") against a state official, alleging violations of the "Fair treatment" section of the State Ethics Code, Hawaii Revised Statutes ("HRS"). The State Ethics Code is set forth in chapter 84, HRS. The "Fair treatment" section of the State Ethics Code is set forth in HRS section 84-13. The complainant stated that he had been selected by an organization as the moderator for upcoming campaign debates. The complainant alleged in his Charge that the state official had misused his official position in an attempt to remove the complainant as the moderator for the debates. The complainant alleged that the state official had called the head of the organization to request that another moderator be selected. The complainant also alleged that the state official had misused a state room reserved for official state business and his state telephone in his alleged effort to remove the complainant as the moderator for the campaign debates.

The complainant alleged that the state official had raised the issue of the inappropriateness of the complainant as the moderator for the campaign debates during an official meeting with other state officials of the state official's own party while the officials were in a state room discussing official state business. After this meeting, the state official made a telephone call from his state telephone to the head of the organization that would be holding the debates to ask for a reconsideration of the selection of the moderator, according to the complainant.

In accordance with HRS section 84-31(b), a copy of the Charge was sent to the state official for his response. Soon thereafter, the state official filed an Answer to the Charge against him with the Commission.

In his Answer to the Charge, the state official denied the allegations in the Charge. The state official attached to his Answer the agenda for the meeting held in the state room. The agenda did not have any agenda item referencing the moderator. In his Answer, the state official denied that he raised the issue of the moderator for candidate debates. The state official stated that during an informal conversation among his colleagues, outside the confines of the formal meeting but while the group was together, one of his colleagues stated that she was "frightened" to appear before the moderator because he was "so prejudiced, against persons who held views similar to her." In his Answer, the state official stated that other state officials present agreed that the moderator's bias made him a curious choice to moderate debates between persons of opposing parties. In his Answer, the state official also stated that other state officials present said that they "had enjoyed past appearances" on the moderator's shows. In his Answer, the state official stated that the informal discussion developed no consensus, except that the state official should share the results of the discussion with the organization hosting the debates, which the state official stated that he would do.

The state official stated that approximately a week later he called the head of the organization. The state official informed the Commission's staff that he told the head of the organization that some members of his party had concerns about the moderator because of the moderator's apparent bias. At the same time, the state official also informed the head of the organization that other colleagues had no problem with the moderator. The

state official informed the Commission's staff that his conversation with the head of the organization was matter-of-fact, and that he presented the views of his colleagues as he stated that he would do. In his Answer to the Charge, the state official stated that his colleagues at the meeting developed no consensus, other than the fact that the state official should share the results of the discussion held among the group with the organization hosting the debates.

The Commission's staff contacted the head of the organization about this matter, and conveyed to her the allegations made by the moderator in his Charge against the state official. The head of the organization responded by saying, "I don't concur." The head of the organization went on to state that she did not feel that the state official was trying to influence the selection of a moderator, but that he was making an "inquiry" and passing along information, according to the head of the organization. The head of the organization stated that the state official did not ask that the organization replace the moderator, and stated that the official's telephone call to her was more in the form of an "inquiry."

Based upon the comments made by the head of the organization to the Commission's staff, the Hawaii State Ethics Commission believed that the state official did not misuse his official position in regard to the moderator.

The Commission noted that the state official and his colleagues were all candidates for re-election. As candidates, they were not obligated to appear in any debates. Further, candidates certainly have the right to make their opinions known about the format of debates, and can raise concerns about the moderator or moderators of such debates. Their status as incumbent state officials does not deprive them of this right as candidates.

While the Commission believed that the state official did not misuse his position in regard to this case, the Commission believed that discussions about campaigning should not have taken place in the state room, nor should the state official have used his state telephone for the call to the head of the organization, since the call was for a campaign purpose.

The state official stated in his Answer that the state room used had in the past been utilized by public groups, to his knowledge, and therefore he believed that his conversation with his colleagues regarding the moderator was not an improper use of a state facility. The Hawaii State Ethics Commission believed, however, that the room used was generally meant to be used only for official purposes, and therefore discussions about campaigning should not take place in the room. In this particular instance, the room was being used for official business. It was the Commission's understanding that such rooms were not available for general public use.

The Commission believed that the conversation regarding the moderator during the meeting appeared to have been spontaneous and informal and not initiated by the state official, and for this reason the Commission saw no reason to consider further proceedings other than to advise that the State Ethics Code prohibits the use of state facilities for campaign purposes. Similarly, state telephones should not be used for campaign purposes. In this

case, it appeared that the use of state resources for campaign purposes was not of a sufficient enough magnitude to warrant further proceedings. The Commission believed that under the circumstances, cautionary advice was more appropriate.

Further, the Commission noted that the moderator himself did not file charges against other officials present during the meeting who participated in the conversation about the moderator. These state officials asked the state official charged to convey their views in an informational manner to the organization hosting the debates, which were both in favor of and against the moderator. In theory, all of these state officials could have been considered in violation of the State Ethics Code, even those who wished their favorable comments about the moderator to be conveyed to the organization hosting the debates.

Finally, the Commission noted that the moderator appeared before the Commission to elaborate upon his Charge against the state official. The moderator indicated that his information about the meeting came from sources that he did not wish to name. The Commission, however, felt confident in the accuracy of the facts set forth above in this opinion.

Dated: Honolulu, Hawaii, December 30, 2004.

HAWAII STATE ETHICS COMMISSION

Dawn Suyenaga, Vice Chairperson
Nadine Y. Ando, Commissioner
Robert R. Bean, Commissioner
Carl Morton, M.D., Commissioner

Note: Chairperson Ronald R. Yoshida participated in the Commission's decision, but was not available for signature.