

## INFORMAL ADVISORY OPINION NO. 96-7

A charge against a state employee was filed with the State Ethics Commission. The charge alleged that the employee had violated Hawaii Revised Statutes (HRS) section 84-13 by allowing a state residence to be used for a political fundraiser to benefit a political action committee. The state employee was the occupant of the residence. The state seal appeared on the invitation to the fundraiser. The office address of a second state employee appeared as the return address on the envelope containing the invitation. Tickets to the event were provided for a fee. Payment of the fee would entitle one to membership in the political action committee. The invitation also included a request for contributions in greater amounts. The invitation noted that the event was to be held at the state residence and that the second state employee would be present at the event. In addition to questioning the use of the state residence, the charge also alleged that it was a violation of HRS section 84-13 for the invitations to carry the state seal and the state office address. In accordance with HRS section 84-31(b), a copy of the charge was sent to the employee in order to afford him an opportunity to explain the conduct alleged to be in violation of the state ethics code. The employee did not respond to the charge.

The charge alleged that the employee had violated HRS section 84-13, the Fair Treatment law. In relevant part, HRS section 84-13 reads:

§84-13 **Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

....

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

In general, the Fair Treatment law forbids the use of one's state position in order to grant anyone an unwarranted benefit. Subsection 84-13(3) refers to specific activities that violate the Fair Treatment law. In Advisory Opinion No. 258, issued in 1976, the State Ethics Commission determined that the activities of a political party, such as fundraisers, constitute a private business purpose. Thus, section 84-13(3) forbids the use of state time, equipment, and facilities for political campaigning and fundraising.

The charge contained two allegations. One of the allegations was that the state employee had violated HRS section 84-13 by allowing the use of the state residence for the political fundraiser. The state residence was owned by the State of Hawaii. It was acquired to serve as the official residence of the state employee.

In Advisory Opinion No. 349, issued in 1978, the Ethics Commission considered the issue of whether the state residence was a state facility for purposes of section 84-13(3). The Commission stated:

It is our conclusion that this residence, while belonging to the State, has the character of being the personal residence of the occupant and was, therefore, not to be treated as a state facility in the sense that the term is used in HRS §84-13(3). The resident and his family would make use of that facility in the same way that other individuals would make use of their homes. Clearly, there are questions of

propriety that the occupant had to consider in the use of these premises but it was our view that these were questions that were left to his judgment. We did not believe it was reasonable for this Commission to monitor the private business activities of the occupant and his family that might take place in this residence. And, we pointed out that, under the code, campaign activities would be no more subject to regulation than other business activities of the occupant and his family.

This opinion had never been overturned or amended. Thus, the Commission's position was that the state residence was not a state facility for purposes of section 84-13(3) and that campaign fundraisers and other similar events could be held there. For purposes of this Informal Advisory Opinion, the Ethics Commission was guided by Advisory Opinion No. 349. The Ethics Commission believed that it could not find the employee in violation of HRS section 84-13 for allowing the residence to be used for a political fundraiser while one of the Commission's advisory opinions allowed the use of a state residence for such events.

The other allegation of the charge was that it was improper to use the state seal and the state office address on the invitations to the event. The staff of the Ethics Commission interviewed a staff member of the employee's office about this matter. The staff person was in charge of coordinating all events at the residence. He coordinated the event the was described in the charge.

The staff member explained that he worked with the political action committee to ensure that they met all the protocol requirements for holding an event at the state residence. There were a number of rules that had to be followed by those who wished to use the residence. The staff member said that every formal event at the residence had to have invitations. Private organizations were sent to a local printing company to get their invitations printed. The company had ready-made blank invitations for the state residence. These all had the state seal and either the occupant's return address or the return address of a second state employee, depending on who was hosting the event. Protocol dictated that whenever an event was held at the state residence, either the occupant or this second employee had to serve as the host. When an organization was sent to the printer for invitations, the printer automatically printed the invitations on these ready-made shells. The political action committee's invitations were automatically printed on the ready-made invitations that had the second employee's return address.

The staff member said that he reviewed the invitations prior to their being mailed out. He reviewed them only to see that they complied with proper protocol. He said that he checked items such as the spelling of the second employee's name. The staff member said that he was the only one who reviewed the invitations. He said that this is standard procedure. Neither the occupant of the residence nor the second state employee had the time to review invitations. The staff member said that the format of the invitations was essentially standardized. Either the occupant's name or the second employee's name had to appear as a host of the event. The state seal appeared on all formal invitations. Again, this was standard protocol.

The staff member said that, as a result of this investigation, his office had changed some of their procedures. If his office were to receive a request to use the residence from a group that looked like a political organization he would first consult with a higher ranking employee in the office. If the request were approved, a different type of invitation would issue. This invitation would feature the occupant's signature, but would not contain the state seal. The return address used would be the address of the organization that was sponsoring the event.

The staff of the Ethics Commission also spoke to the organizer of the event for the political action committee about the invitations. She confirmed that, to her knowledge, the employee who was the occupant of the residence was not involved in the development and issuance of the invitations. The invitations were printed by the printing company and reviewed for protocol purposes by the staff member of the occupant's office.

It appears that the employee against whom the charge was filed was not involved in the development and issuance of the invitations to the event. The employee's staff treated the political action committee in the same manner that it treated every other organization that used the state residence. The staff followed the standard protocol rules. This resulted in invitations being issued with the state seal and the address of a state office. After this event, new procedures were adopted to ensure that this situation did not recur.

Based on the foregoing information, the Ethics Commission dismissed the charge against the employee by issuance of an Informal Advisory Opinion. The Commission noted that one of the key concerns of the complainant in this matter was the use of the state residence for a political fundraiser. As previously mentioned, Advisory Opinion No. 349 held that the residence was not a state facility for purposes of the Fair Treatment law. For this reason, political fundraisers could be held there. This opinion was issued in 1978. The current Ethics Commission believed that, because this opinion was almost twenty years old, it should be reviewed in order to determine if its holding was still appropriate. The Commission stated that it would be reviewing Advisory Opinion No. 349 in the near future.

The Commission appreciated the cooperation of the employee's staff in discussing the above concerns and appreciated the fact that measures had been taken to ensure that these matters would not arise again.

Dated: Honolulu, Hawaii, October 30, 1996.

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