

## INFORMAL ADVISORY OPINION NO. 96-8

A charge against a state employee was filed with the State Ethics Commission. The charge concerned a fundraiser held by a political action committee. The charge attached a copy of an invitation to the fundraiser. The state seal appeared on the invitation. The employee's office address appeared as the return address on the envelope. Tickets to the event were available 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 a state residence. The employee would be present at the event. The charge alleged that the employee had violated Hawaii Revised Statutes (HRS) section 84-13 by allowing the state residence to be used for a political fundraiser. The charge also alleged that the employee had violated HRS section 84-13 by allowing the invitations to carry the state seal and the state employee's office's address.

In accordance with HRS section 84-31(b), the employee was sent a copy of the charge in order to afford the employee an opportunity to explain the conduct alleged to be in violation of the state ethics code. The employee responded to the charge by letter. The employee's response indicated that the employee was unaware that the invitations were sent out with the state seal and with the employee's office's return address. The employee stated that the employee's office was not involved in the printing or sending of the invitations. The employee's response also noted that it was the employee's understanding that the Ethics Commission's current position was that the state residence could be used for fundraising events.

The charge alleged that the employee 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. HRS section 84-13(3) forbids the use of state resources for private business purposes. In Advisory Opinion No. 258, issued in 1976, the State Ethics Commission determined that the activities of a political party, such as fundraisers, constituted a private business purpose. Thus, section 84-13(3) forbids the use of state time, equipment, and facilities for political campaigning and fundraising.

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

It did not appear that the allegation concerning the use of the residence could be sustained. The employee against whom the charge was filed did not have any control over the use of the residence. The residence was controlled by the occupant and the occupant's state office. The staff

of the Ethics Commission interviewed a staff member of the occupant's office. The staff member was in charge of coordinating all events held at the state residence. The staff member confirmed that the employee had no role in allowing the use of the residence for this event. Because the employee had no role in allowing the political action committee to use the residence, it appeared that the employee did not violate HRS section 84-13 in this respect.

It was worth noting that in Advisory Opinion No. 349, issued in 1978, the State 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 do not believe it is 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.

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 held there did not run afoul of HRS section 84-13(3).

The second allegation raised in the charge was that the employee had improperly allowed the use of the state seal and the employee's state office's address on the invitations to the fundraiser. Again, this raised issues under the Fair Treatment law. A state official's use of the state seal and a state office for political fundraising would generally be viewed as a violation of section 84-13. Use of a state office for mailing out political solicitations would also be viewed as a violation of section 84-13(3).

The staff of the Ethics Commission interviewed both the employee and the employee's staff about this matter. The employee did not know that the invitations contained the state seal and the employee's office's address. The employee said that the political action committee had printed up the invitations. The employee's office did not see the invitations before they were sent. The employee did not authorize the use of the seal or the use of the state office's address. The only thing the employee knew about the event was that the employee was scheduled to give a speech at the event. The employee did not realize it was a fundraiser.

Staff also discussed the invitations with the staff member of the occupant's office. The staff member said that the occupant designated the employee as the person who would host this event. The staff member said that protocol dictated that every event at the residence must be hosted either by the occupant or by the employee. This did not mean that either the occupant or the employee would have anything to do with organizing the event. The staff member explained that the employees lend their names to the invitation and show up to give a speech at the event. If the occupant could not attend an event, then the employee who was the subject of the charge would attend in the occupant's place.

The staff member worked with the political action committee to ensure that they met all the protocol requirements. 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. This company kept ready-made blank invitations for the state residence. These all had the state seal and either the occupant's return address or the employee's return address, depending on who was hosting the event. Consistent with its usual practice, the printing company automatically printed these invitations on the ready-made invitations that had the 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 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 nor the 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 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 matter, his office has changed some of its procedures. If his office were to receive a request to use the residence from a group that appeared to be 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 not contain the state seal. The return address used would be the address of the organization that was sponsoring the event.

After speaking with the staff member, the staff of the Ethics Commission also spoke to the person who coordinated the event for the political action committee. This person confirmed that the event was coordinated through the staff member and that the employee who was the subject of this charge was not involved in coordinating the event. She said that, to her knowledge, the employee was not involved in the wording or printing of the invitations. It was her understanding that the format of the invitations was dictated by protocol.

Based on the information received from the employee, from the staff member of the occupant's office, and from the private coordinator of the event, it appeared that the second allegation of the charge also could not be sustained. It appeared that the employee did not have a role in developing or issuing the invitations for the event. The invitations were developed by political action committee and the occupant's office according to protocol standards established by that office.

It appeared that the employee did not violate HRS section 84-13 in connection with the political fundraiser held at the state residence. It did not appear that the employee was involved either in allowing the use of the residence or in developing or issuing the invitations for the event. For this reason, the Ethics Commission dismissed the charge against the employee by issuance of an Informal Advisory Opinion.

The Ethics Commission noted that one of the key concerns of the complainant in this matter was the use of the state residence for political fundraisers. 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 20 years old, it should be reviewed in order to determine if it was still an appropriate opinion. The Commission stated that it would be reviewing Advisory Opinion No. 349 in the near future.

The Commission appreciated the candor and cooperation that the employee showed during its review of this matter.

Dated: Honolulu, Hawaii, October 30, 1996.

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