

INFORMAL ADVISORY OPINION NO. 99-4

The executive director of a private organization filed a formal charge against a legislator on behalf of the private organization, alleging that the legislator had violated the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"), by using his official position, state office, and state office telephone number to improperly assist charities and for-profit companies.

The charge arose from advertisements placed in two local newspapers that promoted a charity event sponsored by two companies, Company "A" and Company "B." The proceeds from the event were to benefit local charities.

The advertisements also included a special purchase offer from Company A, which allowed free admission to the charity event upon presentation of a bill from Company B. Company A also solicited customers for its company in the advertisements, and offered a discount to new customers. Included in the advertisements was a statement directing readers to call the legislator via his state telephone at his state office for information regarding the charity event.

The private organization asserted in its formal charge that by the legislator's using his state position, state telephone number, and state office in the advertisements, he had violated sections 84-13 and 84-13(3) of the State Ethics Code. HRS section 84-13 reads, in its entirety, as follows:

§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:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

HRS section 84-13 prohibits legislators and other state officials and employees from using their official positions to give any person or business any unwarranted advantages or preferential

treatment. HRS section 84-13(3) specifically prohibits the use by legislators, state officials and employees of state time, equipment, or facilities for a “private” business purpose.

It was apparent that the private organization believed that the legislator used his state position, state telephone number, and state office in the advertisements to improperly assist charities and two private businesses, Company A and Company B.

The State Ethics Commission received from the legislator an Answer to the charge filed against him by the private organization. In his Answer, the legislator stated that there was a last-minute change of venue for the charity event, and that he gave his permission to Company A to use his name and home telephone number. The legislator attached two memoranda to his Answer showing the use of his home telephone number. In his Answer, the legislator stated that his state telephone number appeared in the advertisements by accident, and that this was an oversight on his part, apparently because he did not review the advertisements before they were printed. In his Answer, the legislator stated that he accepted full responsibility for the error.

The State Ethics Commission did not believe that the legislator had violated the State Ethics Code in this case. The legislator’s use of his state office and state telephone number in this case was to assist local charities. These charities were part of his constituency. Further, the State Ethics Commission believed that the support of charities in this case was for a public, as opposed to a private, purpose. The State Ethics Commission believes that HRS section 84-13 is not violated when a legislator uses his or her position for a legitimate state purpose, such as to assist charities that benefit one’s constituency or the State as a whole.

The problem in this case arose from the legislator’s state title and state telephone number appearing in advertisements that combined not only private companies supporting charities, but also soliciting business at the same time. However, the State Ethics Commission saw nothing in the advertisements that indicated any assistance on the legislator’s part with respect to the private business dealings of the companies. The legislator’s name and state telephone number appeared in the advertisements solely to provide information about the charity event.

Although it could be argued that the mere appearance of the legislator’s state title and state telephone number in the advertisements constituted a per se violation of the State Ethics Code, the State Ethics Commission believed that this would be an overzealous interpretation of HRS section 84-13. State officials frequently appear together with businesses for legitimate state purposes. In many such instances, a business’s primary interest may be profit-oriented. Yet, the appearance of a state official may be for a legitimate state purpose. State officials often attend grand openings, welcome businesses to the State, and involve themselves in joint enterprises in which there are both state and private benefits.

Although the State Ethics Commission saw no violation of the State Ethics Code in this case because there was no evidence of the legislator’s endorsing the companies or soliciting business for the companies, the Commission believed that legislators and other state officials and employees must be vigilant with regard to the use by others of their state titles or state telephone numbers. The use of a state telephone number and similar information in private business solicitations can give rise to ethics complaints and the appearance of unethical activity. State officials and employees must take reasonable steps to ensure that their state offices, state equipment, and state facilities are not inadvertently misused to accord any unwarranted advantages or preferential treatment.

DATED: Honolulu, Hawaii, August 27, 1999.

HAWAII STATE ETHICS COMMISSION
Cassandra J.L. Abdul, Chairperson
Ronald R. Yoshida, Vice Chairperson
Carl Morton, M.D., Commissioner
Dawn Suyenaga, Commissioner

Note: Commissioner Bernice Pantell was not present at the meeting at which this opinion was discussed and considered.