

OPINION NO. 51

An engineer in a state department asks whether he may sell real estate on a part-time basis as an employee of a real estate brokerage firm. If he may, he also wishes to know whether the firm may advertise the fact that he has joined it in the local paper, along with his photograph.

The branch for which he is an engineer inspects to insure that contractors fulfill their contracts with the State and that the construction conforms to government and engineering standards and practices. He performs such duties as reviewing and transmitting to architects and engineers drawings and schedules for comment and recommendation. He reviews and makes recommendations on shop drawings, equipment lists, monthly estimates, etc., and provides office engineering services. He also transmits post-contract drawings to the contractor and requests and helps review cost breakdowns; assists in reviewing changes or additions to plans; compiles data, such as final estimates, and other statements regarding contracts; makes recommendations to his superior based thereupon; and assists his supervisor in other defined areas, such as preparing reports.

Because his official duties are of a technical, engineering nature, and are in no way directly concerned with real estate or persons who regulate or deal in real estate, he will not violate the conflict of interests section of the ethics law, section 84-14, HRS, by engaging in the sale of real estate. His official action will not generally directly affect his real estate practice.

If, at any time, however, a contractor or architect with whom he was dealing in his official capacity became or was considering becoming a private client, he would have to disqualify himself from all action on that particular state project to avoid violation of section 14.

He must also conduct himself carefully to avoid violating, or the appearance of violating, section 13. That section prohibits an employee from using his official position to obtain unwarranted treatment. Should any of the contractors or architects with whom he deals as a state engineer thereafter become his private real estate client, the inference could well arise that he had used his position to obtain the business.

However, if he takes no official action directly affecting his private clients, and if he carefully avoids taking as clients persons over whom he has had jurisdiction in his state capacity, he will not violate these sections.

If a state employee's employment with a private firm in off-hours does not violate the ethics law as in this case, the use of an advertisement by the firm, accompanied by a photograph, of the fact that the employee has joined it does not violate the ethics law. However, the fact that he is a state employee should not be mentioned in the advertisement. Such mention implies that the employee should be chosen to do work because of the additional benefit to the client his state position carried. Even if this is not the intent of the

mention of his state position, the public which reads the advertisement infers this meaning and, as a result, loses confidence in the employee and state government.

Dated: Honolulu, Hawaii, December 9, 1969.

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