

OPINION NO. 53

The Commission has been asked whether an employee may ethically continue in his private employment, given the following facts:

The employee receives \$500 a month from a firm for services done at other than state working hours; the nature of the work does not require public contact.

The state ethics law, chapter 84, HRS, does not prohibit "moonlighting," generally. However, such activity is limited by a) §84-12, which prohibits the use in a private job of confidential information acquired in one's state capacity; b) §84-13, which prohibits the use of one's official position to obtain unwarranted treatment; and c) §84-14, which prohibits participation in official action directly affecting the employee's private job. In deciding whether the sections apply to a specific employee's private employment, the Commission must compare the employee's state duties and responsibilities with his private employment.

The state division of the employee concentrates on attracting investment capital to the industry of his private employer, but this employee's duties are normally outside this area. He spends considerable time in contact with various business enterprises, informing them of the department's loan programs, and providing small businesses with advice and other technical services.

From the facts presented to us, we find no violation of chapter 84, HRS, because the employee's state duties do not normally deal with the area of his private employment. However, in the event his duties should relate to his private employment, HRS, §84-14, would prohibit his taking any official action affecting it. He should disqualify himself in such instances.

Moreover, should the employee acquire confidential information not generally available to the public, he should refrain from disclosing or using such information for himself or his private employer. [§84-12.] He should also conduct himself so as to avoid use, or the appearance of use, of his position with the division to obtain unwarranted treatment. [§84-13] Such appearance would undermine public confidence in state government, the maintenance of which is one of the primary purposes of the state ethics law.

As long as the employee does not act so as to violate §84-12 and §84-13, HRS, and as long as he scrupulously disqualifies himself from all official action affecting his private employment, he will not violate the ethics law by this moonlighting activity.

Dated: Honolulu, Hawaii, December 30, 1969.

STATE ETHICS COMMISSION
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