

## OPINION NO. 54

An employee asks whether he may take private consultant jobs, and, if he may, what areas of conflict must be avoided.

The question of the ethics of private consultation by state employees is dependent upon the public duties of the state employee. The possible overlap in the private and public duties arises where the employee is employed by the State in the same area in which he will be consulting privately. If in his state position he regulates, inspects or takes any discretionary action which affects the individual with whom he has a private employment interest, he may well violate section 84-14, chapter 84, HRS.

The specific question here is whether he could plant, care for, harvest and market trees for an absentee owner and provide management services for his project, all on other than state time. We assume, of course, that no state equipment will be involved in the work.

Approximately 10 per cent of his public duties includes providing persons with professional consulting services, research information, and training. He states that this is the only area where there is any overlap. His work in no way involves the regulation of private land, and he has stated that there is no other way that he will have any occasion to work with his private employer.

His state duties are clearly of a non-regulatory nature, and they do not include official action, that is, action requiring discretionary decision-making. There would be no violation of section 84-14 of the law if he were to engage in the private activities described above. His private employment would be of a plan-implementing nature, complementing his state functions.

While, given the nature of the private employment and of his official duties, we hold that there will be no violation of section 84-14 in this limited private activity, he must conduct himself carefully so as to avoid a violation of other sections of the ethics law. We note that there are competitors of his employer, to whom he would also be obligated to provide state services, should they request them. In view of this competitive situation, he must take care not to use his official position to obtain unwarranted treatment for his employer. For instance, he should not make his services more readily available to his employer than to his competitors. Any such action on his part would be a violation of section 13, the fair treatment section of the law.

He should also keep his immediate superior fully informed of this private employment. If he does exercise the care outlined above and does apprise his superior of his work-related private employment, he will not violate the ethics law in occupying these two positions.

Because his duties vary in the different categories of his job description, we cannot state generally what outside employment is or is not permissible under the ethics law. An

additional opinion should be sought if a different type of private employment interest is contemplated.

Dated: Honolulu, Hawaii, January 26, 1970.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Chairman  
S. Don Shimazu, Vice Chairman  
Vernon F.L. Char, Commissioner  
July Simeona, Commissioner  
Margaret W. Smalley, Commissioner