

OPINION NO. 56

May an employee for a state department apply for a patent?

We hold that he may.

Members of the public service are not generally prohibited, because of their positions, from patenting devices which they have invented. To the contrary, such individual initiative and creativity should be encouraged. However, when the device to be patented is one which has been developed (1) on public time, or (2) using public facilities, equipment, or materials, or (3) was developed as a part of the employee's public duties, then, unless there is a special contract or statute to the contrary, the benefit of that employee's labor should properly accrue to the public. In these instances, the wherewithal came from the public coffers, and the result belongs to the public. Appropriation of the device by an employee through patent, in such instances, would be use of official position to obtain unwarranted treatment in violation of section 13 of the ethics law, chapter 84, HRS.

On the other hand, an invention developed by a public employee on his own time, using his own equipment and his own materials, the development of which is not part of his duties, may properly be patented by an employee. This is true, even though the invention relates to his work.

Weighing the above factors in each instance should encourage the creation of new devices by public employees and, at the same time, protect the public property right in devices created by public employees in the exercise of their public duties.

In this instance, his public duties are related in purpose to this invention. However, while some of his duties do relate to the inspection and recommendation of equipment, his duties do not include the invention, manufacture or development of mechanical devices. Thus, though the idea may have come while he was pursuing his public duties, the invention of this device was not a part of these duties. He has further stated that it was developed on his own, and not state time. Thus, in applying for a patent, he will not violate the ethics law.

If this device is patented, produced, and installed in Hawaii, and he is still in a position in which his duties include inspection, advice on, and recommendation of equipment, the occasion may arise when he is called upon to pass judgment on a system containing his invention or suggest that such be used. Should he pass upon or suggest such a system, he would be taking official action in violation of section 84-14. Thus, he should disqualify himself in favor of another employee from inspection of systems containing his invention and from making recommendations in instances where he would recommend its installation. Nor should he discuss or suggest the use of such a system to the staff or members of the public with whom he may come into contact in his public capacity.

Dated: Honolulu, Hawaii, January 26, 1970.

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