

OPINION NO. 60

The Commission has been asked whether employees who have participated in preparing materials for possible use by the State may thereafter bid in their private capacity on parts of these materials. These employees may have worked on the production or may have developed some of the materials in the package.

The problem of moonlighting by public employees is not a simple one. We must find a reasonable balance between an employee's public duties and his private interests.

The sections of the state ethics law which are most likely to be involved here are §84-12, relating to confidential information, §84-13, relating to fair treatment, and §84-14, relating to conflicts of interests of employees. Section 84-16, which governs a contract between a state agency and a business in which a state employee has a controlling interest, is applicable, but no problem exists here because these are bid contracts.

Section 84-12 prohibits use or disclosure by an employee of information acquired in the course of his official duties, which, by law or practice, is not generally available to the public. Were an employee to use such information in preparing his bid, he would violate this section.

The information the employees obtain in their work is not by law confidential, even though members of the public are unaware of its existence, because any person requesting this information would be able to obtain it. In this case, therefore, the information is not that which "by law or practice" is not available to the public.

No employee, furthermore, may use his official position to secure or grant unwarranted privileges or contracts. [§84-13.] For example, an employee may not use his position on the staff to tailor specifications to his ability to perform, to obtain favorable action on the bids, or to otherwise influence the bid.

Section 84-14, in addition, prohibits an employee from taking any official action directly affecting a matter in which he has a substantial financial interest. The bidding employee thus should take no action relating to the award of these bids and related action. If he should be called upon to take such action, he must disqualify himself from all such action and declare his disqualification to his superiors.

Finally, any employee who submits a bid would be required to file a disclosure of his private interest to the State Ethics Commission as provided by §84-18 of the law. Disclosure of an interest which may be affected by an employee's agency is a condition of remaining in public employment.

These are the general guidelines for the situation described here. We note also Opinions Nos. 29 and 39, which illustrate the application of these general guidelines to similar situations. Because of the risk to an individual of applying such general guidelines to his

particular situation, we recommend that when any employee is contemplating bidding, he should request an opinion from the Commission prior to taking any action.

Dated: Honolulu, Hawaii, February 5, 1970.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
Vernon F.L. Char, Commissioner
Margaret W. Smalley, Commissioner

Note: Vice Chairman S. Don Shimazu and Commissioner July Simeona were excused from the meeting at which this opinion was considered and adopted.