

OPINION NO. 61

May a specialist for a state department work for a firm, compiling figures and preparing financial statements and income tax returns without violating the ethics law, chapter 84, HRS?

We hold that he may.

This specialist investigates businesses to detect violation of the state laws and regulations in an area unrelated to his private employment. He may well be assigned to conduct investigations of firms for which he may have done work in his private capacity.

The ethics law does not generally prohibit moonlighting on the part of state employees. It does, however, limit such outside employment.

Section 84-14 prohibits employee participation in official action directly affecting a business or matter in which the employee has a substantial financial interest. An outside employment is generally considered a substantial financial interest by the Commission. It is usually sufficiently important to an employee to be reasonably likely to influence him in the exercise of his official action directly affecting the employment. In this instance, the employee will be receiving close to \$4 an hour, the number of hours depending on the workload. This type of employment is a substantial financial interest.

The question arises because his state duties may well involve some of the clients of his part-time employer. We are not here discussing official action concerning the part-time employer; any such action on this employee's part would clearly be in violation of section 84-14.

The fact that the employee may have performed services for clients of his part-time employer, does not give him an interest in the business of those clients. Thus, official action involving such firms is not action directly affecting a business in which he has a substantial financial interest.

In assuming these dual roles, however, he must take care not to use his position, that of a specialist, to obtain unwarranted treatment; i.e., using his position to influence persons whom he regulates to become clients for his part-time employer. And, because appearance is so important a part of maintaining public confidence in government, he must exercise great care not to appear to so misuse his position.

Furthermore, it should be noted that while doing the private work, a matter may come up which would require action in his public capacity. For instance, he might have reason to review information indicating a violation of one of the state laws, which law it is his official duty to enforce. In such a circumstance, he must proceed with the regular enforcement procedures of his department. To permit such a violation to exist without action would be a use of position to obtain unwarranted treatment under section 84-13.

If these precautions are followed, and if he files the disclosure required by section 84-18 of the law, this part-time work will not violate the ethics law.

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.