

OPINION NO. 85

A director of a State agency inquired whether the acceptance of honorariums by staff members for educational lectures constitutes a violation of chapter 84, Hawaii Revised Statutes.

He indicated that money has been and may be offered to employees who speak on the subject with which his office is specifically concerned during working hours, after working hours, and when the employee takes compensatory time off for the period of time required to deliver the speech.

The content of the speeches of these employees consist moreover of information gained primarily in the course of their public duties.

The terms of employment of the staff members specify that one of their major duties is to give lectures about the State policy and programs in this area. In fact, the employee's job description in this case specifies that "working hours must be adjusted because many of these talks and lectures must of necessity be given after normal office hours and weekends to reach those who work 40 or more hours per week."

Although there is no position description for some of the other staff members in this office, they are verbally informed at the time of their interview for employment that their duties include giving lectures on related topics at any time of day, evenings, and weekends.

Under the circumstances the Commission found that the acceptance of money by members of this agency for speaking on these matters would be a violation of HRS, §84-13. The staff members were in a peculiar position to know and understand all of the laws involving this area of public concern. It was specifically their responsibility to initiate and execute education programs in this area. They were employed with the understanding that their work schedule should be flexible in carrying out a full education program. Therefore, to accept compensation or to take compensatory time off to accept compensation for performing duties required by the conditions of their employment would be a use of official position to secure unwarranted advantages or treatment for themselves.

This holding was premised upon the belief that a public employee should not be twice compensated for performing a service for which he has been hired to perform; nor should he be permitted to take compensatory time or vacation time in order to accept an attractive honorarium or speaker's fee. In either situation a public employee is receiving additional or greater financial benefit not intended by the employer, and is, therefore, unwarranted. The acceptance of such compensation gives the appearance of use of position to obtain unwarranted treatment. We think this is a type of conduct the State ethics laws were intended to prohibit.

We recognized that in at least one case the fees were not aggressively sought by the employee. We had been informed by the source of additional compensation that the employee was unaware that he would receive any compensation. These considerations, however, do not, in our opinion, mitigate our finding of a violation of the State ethics law. We, therefore, recommended that the employee be requested to return the fees received, and in the event he was unable to return the fees to the original source we recommended that the amount be donated to a fund of an appropriate State institution.

This opinion was limited to the facts of this case. We emphasized that the terms of employment of the employee in this office were of a nature which is not common to other State positions, although consistent with the purpose and objective of this particular office.

Dated: Honolulu, Hawaii, October 19, 1970.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
S. Don Shimazu, Vice Chairman
Vernon F.L. Char, Commissioner

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. The vacancy left by the resignation of The Very Reverend John J. Morrett has not been filled.