

OPINION NO. 90

A State employee involved with various programs and surveys of marine life indicated that his position involves much scuba diving and frequent fish census in all areas of the State. His duties do not include the sale or enforcement of commercial fishing licenses.

He owns a small boat which he uses on weekends, holidays, and vacations, and has inquired whether he may obtain a commercial fishing license in order to sell his fishing catch.

Under Hawaii Revised Statutes, chapter 189, part 1, commercial fishing licenses are issued upon application by the individual. The applicant need only supply information required on an application form and need only pay the required fee. After obtaining the license, the licensee must display his fishing badge and report his monthly catch. Retention of the license is dependent upon his compliance with these requirements.

Under the circumstances the Ethics Commission found that the employee may apply for the commercial fishing license, provided he follow the following caveats:

1. He should not utilize information obtained through his State position until such information becomes generally available to the public. For example, it was the Commission's opinion that the information obtained from fish surveys is confidential until the data have been compiled and published in some form for public use. To use such information for personal gain or the benefit of others before the public has had an opportunity to have such information would be a violation of §84-12, relating to confidential information.

2. He should not use or attempt to use his official position to either obtain the commercial fishing license or to avoid the penalties or regulations thereunder. As an employee of the department which issues such licenses he must be careful to avoid the appearance of using friendship or other intra-department contact in order to obtain favorable action on his application or in reviewing his compliance with the requirements of the law. This is required by HRS, §84-13, relating to fair treatment.

3. Moreover, he should not use government time or equipment to exercise the privileges of the commercial fishing license.

4. He should disqualify himself from any official action which may directly affect his commercial fishing license. This is required by HRS, §84-14, relating to conflicts of interests.

5. Finally, he was advised to inform his supervisor of this private interest and of the caveats contained herein.

Dated: Honolulu, Hawaii, December 14, 1970.

STATE ETHICS COMMISSION
S. Don Shimazu, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Vernon F.L. Char, Commissioner

Note: Commissioner Walters K. Eli and Chairman James F. Morgan, Jr. were excused from the meeting at which this opinion was considered.