

OPINION NO. 92

An employee inquired whether he will be in violation of the ethics law, chapter 84, HRS, in accepting compensation from a private consulting firm doing business with the State while he is on sabbatical leave. The circumstances surrounding this situation are as follows.

About a year ago, the department in which he has a supervisory capacity drew up specifications for a master plan study of the operation and employment of the resources and facilities of that department. These specifications were submitted for consideration to a number of consulting firms. All the proposals submitted were considered unsatisfactory by the department; only one of the consulting firms resubmitted proposals incorporating department criticisms and suggestions. This employee was instrumental in clarifying and amplifying the department's objectives for this project.

The proposal submitted to the department was rejected by the Governor on the ground that the State did not have an adequate staff to effectively develop the project. Discussion of the personnel problem by this employee's superiors and others led to the suggestion that he devote his sabbatical leave to working full time with the consultants. The facts submitted to this Commission did not indicate a use of his official position to get an unwarranted contract of employment or other privilege. The exhibits submitted to the Commission indicated that this employee's work with the consulting firm would be beneficial to the department, since the employee will be gaining the skill necessary to implement the program upon his return.

During the year of employment with the consultants, he will act as liaison between the consultants and the department, gaining the necessary overall knowledge of the proposed system in order to assist in its implementation upon his return to the department. While on sabbatical leave, he will receive a salary from the consultants and his sabbatical pay.

We made no judgment on the sabbatical leave requirements, as they were appropriate matters for the department concerned.

The sections of the State ethics law which were considered in this case were HRS, §84-13, relating to fair treatment; HRS, §84-14, relating to conflicts of interest; and HRS, §84-15, relating to transactions involving the State.

When this employee returns to state employment he must refrain from using or attempting to use his official position to secure or grant unwarranted privileges or treatment for himself or others (HRS, §84-13). He will be in the position of making recommendations on the implementation of the program which may require the purchase and/or rental of undetermined amounts of equipment. He must be sure that his recommendations are prompted by an objective assessment of the needs of the department.

Similarly, while he is acting as a liaison, the salary paid by the consultants constitutes a substantial financial interest and his "sabbatical" status means he is still a state employee. Therefore, in coordinating and researching the project, he must avoid taking official action

directly affecting the consulting firm in which he has a substantial financial interest by virtue of his employment.

Finally, he must not appear before the subdivisions of the department of which he is a member or any other state agency on behalf of the consultants or any of their affiliated companies, since it could easily give the appearance that his compensation from them is dependent upon favorable state action. Furthermore, he was advised that any "bonus" or other extra consideration offered him by the consultants or any of its affiliates before, during, or after his employment with them would probably constitute a violation of §84-11, relating to gifts.

His situation involved a number of possible violations. It was the desire of the Commission to be essentially instructive rather than restrictive. This employee's continued concern and discretion in the light of the parameters outlined above should enable him to participate in this type of research without violating the State ethics law.

Dated: Honolulu, Hawaii, January 26, 1971.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
Vernon F.L. Char, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner
S. Don Shimazu, Commissioner