

## OPINION NO. 95

The State Ethics Commission was asked whether a teacher who tutors one of her own students for compensation would be in a conflict of interest situation. The teacher is assigned to a public high school; the subject she tutors is in the same academic area as that in which she has been hired by the State to instruct. The teacher tutors a student, who is enrolled in one of her classes, after regular school hours.

There are three sections of chapter 84, Hawaii Revised Statutes, which are relevant to this situation. The first relates to gifts (HRS, §84-11). The teacher in this case is responsible for testing and grading this student's performance in a public school. Even though the teacher is performing extra services for the student, it may be inferred that the compensation is intended to influence and/or reward the teacher in regard to the student's grade and class standing.

Secondly, the fair treatment section of the ethics law (HRS, §84-13) requires the teacher to be scrupulously impartial. Her ability to remain objective in grading this student could become severely compromised. Also, the extra instruction the student receives, particularly in regard to preparation for a test which all the students must take, may be construed to be an unwarranted privilege or advantage. Furthermore, the teacher's very employment by the parents may be considered the use of official position to gain a contract or special treatment, such as extra income for oneself.

Finally, even though the amount of money earned by tutoring may be modest, HRS, §84-14, requires that "No employee shall acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him." The teacher's tutoring service will be affected by such official action as examinations and grading.

For these reasons the Commission finds that a teacher may not receive compensation for tutoring one of her own students without violating at least one of these sections of the State ethics law.

We recognize that all teachers are furthermore subject to the employee code of ethics of the Department of Education. *School Code* Policy #5513 advises:

No employee or official will accept compensation in any form other than that to which he is entitled from the State government when performing his duties *within the scope of the activities for which he is responsible*. (Emphasis added)

It is not the intention or responsibility of the State Ethics Commission to prescribe the duties of a teacher in the state education system. However, the job description listed in the *School Code*, Administration Series #2351 requires teachers to "Take part in club work, athletics, or any other outside activity that may be developed in connection with the life of the school." Liberally construed this could include extra instruction for students having

difficulty who show a willingness to apply themselves. Paragraph (7) of the same section charges that teachers shall "Assist with the supervision of pupils before school, during intermissions and after school." Should there be vagueness here, the Department of Education should take the necessary steps toward clarification.

The Ethics Commission is responsible for issuing advisory opinions which can serve as guidelines for state employees in interpreting the State ethics law. The opinion rendered in this case concerns a teacher's receiving compensation for tutoring one of her own students. When such is the case, it does not matter when or where such tutoring takes place. It is a violation of the State ethics law.

Dated: Honolulu, Hawaii, January 28, 1971.

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