

## OPINION NO. 100

An employee inquired whether his present outside employment constitutes a conflict of interest under chapter 84, HRS; and if so, under what circumstances such employment could be accepted without constituting a violation of law.

He has a supervisory capacity in his agency.

He has been asked by a private employer to perform surveys in a designated area and to do a literature research on the area in connection with a study which will be submitted to a state department. The surveys will be independent of department surveys and all outside work will be done on his own time. The survey research involves obtaining public information from his own department.

He has indicated that he does not have access to any confidential information and that because his private employment has complete flexibility of work hours, it will not interfere with his state duties which require that he adjust his working hours to meet the demands of his state assignments.

The head of his department has indicated that in most instances the responsibilities of this employee do not directly overlap with his private employment. He has further indicated that the duties are of a supervisory and administrative nature involving little field work as described in connection with his private employment and that the literature in the department is available to the public. It was his opinion that as a practical matter this employee's outside employment, because of its flexibility of work schedule, would not interfere with his public responsibilities. He has further indicated that the report which will be submitted to another department may very well be referred to this employee's branch for review as to some of the conclusions of the study.

This employee has indicated that when and if this happens, he can disqualify himself from this particular assignment, since there are other individuals in the department who would be qualified to review it.

Initially we note that he began work on this informal contract on December 12, and sought a written opinion from the Commission on December 16, 1970. In an interview with us he indicated that he had not done so earlier because he had been given the impression that the actual employer had obtained an advisory opinion from this Commission. The employer has had no communications with this Commission.

We view his present private employment to be a violation of HRS, §84-14(2), which prohibits an employee from acquiring financial interests in business enterprises which he has reason to believe may be directly involved in official action to be taken by him. In this instance his employment which will be in excess of \$2,000 includes both ministerial and recommendatory responsibilities. This effort will be reflected in a report for the State of Hawaii which will come to his branch for review and official action. Because he has specific responsibilities for the subject areas of the report, any disqualification by him from review of

the report would be a relinquishment of his public responsibility for private gain. This would be contrary to the purpose and spirit of HRS, §84-14(2). We advised that he should not in the future accept any private employment which puts restrictions on his work hours and/or which will be subject to his review in his state capacity. As to this particular job we recommended that he phase out his responsibilities as soon as possible. If he cannot completely disassociate himself at this time, we recommend that he limit his further participation to ministerial duties and that he refrain from participating in the recommendatory aspects of the report. We made this recommendation in recognition of his good faith in seeking a written opinion from the commission and in recognition of the fact that this advisory opinion had been delayed for nearly two months without fault to him.

Dated: Honolulu, Hawaii, February 26, 1971.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Chairman  
Vernon F.L. Char, Vice Chairman  
Gwendolyn B. Bailey, Commissioner

Note: Commissioners Walters K. Eli and S. Don Shimazu were excused from the meeting at which this opinion was considered.