

OPINION NO. 111

A real property appraiser in a state agency disclosed that he recently passed the real estate salesman's examination and intended to apply for a license. Although he did not intend to engage in the promotion or sale of real estate he inquired whether he could retain his salesman's license in an active status with a realty firm without violating the ethics law, chapter 84, Hawaii Revised Statutes.

It was our understanding that an active real estate license must be placed with a broker and displayed in the place of business.

It was also our understanding that the nature of this employee's state work involved a familiarity with real estate transactions and values which provide him with an earlier opportunity to note the trend in real estate transactions and to have greater and better insight and understanding of the trend than is normally available to persons not affiliated with the agency. Moreover, this employee's agency conducts appraisal of both private, state and federal lands on a regular basis.

Because this employee lived in a small island community, his relationship with the state agency was most probably generally known. The display of a license held by him in a realty office, in our opinion, would convey the idea that information given by the firm may be more accurate and up to date because of his relationship with the state agency. Moreover, clients could infer that the realty firm has special information from the state agency and that perhaps preferred treatment might be given to clients of the realty company. In our opinion, the encouragement, even if unintentional, of such conclusions by the display of a license belonging to this employee would be a use of state position to obtain an advantage for his proposed outside employer and would be a violation of HRS, §84-13.

We further added that the information this employee may have regarding real estate transactions may, for a short period of time, be information which is generally not yet available to the public, and as such, would be confidential information within the definition of HRS, §84-12. Any business relationship which he might establish with the realty firm by virtue of placement of his license with the company, would greatly increase the opportunity for disclosure of such information.

In addition, his allegiance to his private employer would be in conflict with his basic responsibilities within his agency. He may, at various times or another, be required to take official action involving real estate in which the realty firm may have an ownership interest, or which the corporation may have recently sold, or may be requested to sell. Even though he did not contemplate active engagement in the sale of real estate, he nevertheless would have an employment relationship with a business enterprise. Such an employment relationship was, in our opinion, a financial interest within the meaning of the ethics law; and because of the great possibility that he might take official action directly involving the company, we advised him that it was a financial interest which he was prohibited from acquiring by virtue of the prohibition contained in HRS, §84-14(2), which states 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." We further directed him to an administrative policy of his agency which stated that engaging in the sale or promotion of real estate is contrary to the best interests of the agency. This policy was, in our opinion, consistent with the ethics law in that it discouraged acquiring interests or privileges, whether exercised or not, which are closely related to one's public functions.

Inasmuch as an "inactive" real estate salesman's license need not be placed with an active broker, we held that at best this employee may place his license on official inactive status by so notifying the Real Estate Commission.

Our opinion was limited to the considerations under chapter 84, HRS. This law, in no way, precludes a government agency from adopting more restrictive prohibitions in order to effectively carry out its functions. We, therefore, suggested that the employee ascertain whether his agency, in fact, had more restrictive rules.

Dated: Honolulu, Hawaii, July 2, 1971.

STATE ETHICS COMMISSION
Vernon F.L. Char, Acting Chairman
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner

Note: The vacancies created by the resignation of S. Don Shimazu and James F. Morgan, Jr. have not been filled.