

## OPINION NO. 123

A department head inquired whether the following facts would constitute a violation of chapter 84, Hawaii Revised Statutes.

1. An out-of-state group has purchased rights to use copyrighted materials developed by this state agency. In order to adapt the materials for use out of state, it was necessary that certain personnel affiliated with the Hawaii program work with out-of-state personnel to modify the materials and train personnel on the use of the materials.

2. The state employees rendered their services on their vacation time and their absence was not disruptive to the work of the Hawaii program. Their responsibilities to the State of Hawaii, to our knowledge, did not include the rendering of services as described.

3. The Hawaii personnel were paid per diem and honoraria for their services by the out-of-state agency.

4. Other out-of-state agencies have indicated an interest in the program and at least one state employee has indicated an interest in providing similar services on his retirement from state service.

In our Opinions Nos. 74 and 75, we held that it was not improper for a state employee to accept compensation and receive reimbursement of expenses when rendering consultant work involving expertise and specialized information gained from state employment, provided that: (1) the private employment did not interfere with state duties; (2) the employee did not take official action directly affecting the private employer or employment; and (3) the employee did not have any specialized information which was deemed confidential. These conditions seem to have been met in this case.

However, we directed attention to Opinion No. 85, in which we ruled that an employee should not accept honoraria for services which are a part of their normal state duties or included within the scope of their employment contract. Moreover, the employee contemplating working for another when he leaves the Hawaii program is free to do so as long as he does not disclose confidential information obtained while in state employment or use his present official position to obtain unwarranted advantages in obtaining such employment.

Finally, Hawaii employees in this project may obtain related part-time employment elsewhere unless their employment contracts otherwise provide. They should not disclose confidential information, if any, obtained while in state employment; nor should they use their official position to obtain unwarranted treatment in the obtaining of such employment. In this regard, we advised the department to make certain that the employment did not interfere with the local program or the objectives of this State. In view of the interest in these consultant jobs, we further recommended that the department formulate some policy to achieve a fair system by which all employees of the project who may be interested in rendering such outside consultant services may have an equal opportunity to be considered for these jobs.

Dated: Honolulu, Hawaii, October 22, 1971.

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

Note: The vacancy created by the resignation of James F. Morgan, Jr. has not been filled.