

OPINION NO. 125

An employee inquired whether there will be a possible conflict of interest under the State ethics law if he should accept a part-time position under the following circumstances:

1. He is the administrator of a state agency and as such, is responsible for all of the activities and auxiliary services, except those of a specialized area.
2. The proposed part-time position, which he has indicated could continue for as long as a year and would take four to five hours per week, would be that of an administrative consultant to a private firm. His consultant services would relate to the matter of administration of the firm which is presently comprised of several professionals. He has indicated that these professionals use the facilities of his agency, but none of them are under contract to the State of Hawaii. In order to use the facilities of this agency, the professionals must apply for and receive such permission from this administrator's superior. He participates in the transmittal of applications.

We interviewed his immediate supervisor and the head of his department. It was our understanding that as the chief executive officer of the agency, he may recommend policies affecting the professional staff, recommend disciplinary action relating to policies and rules; investigate and take administrative action with respect to professional and employee disputes, especially when the dispute involves unprofessional conduct on the part of the agency employee; review professional applications for compliance with rules and regulations and recommend them for approval, denial, renewal or continuance by the department head. Moreover, he has discretion to make recommendations with respect to staffing and planning facilities and capabilities which discretion may be used to the economic advantage of the private firm; also he has the responsibility to determine policies, objectives and programs, which may very well conflict with the objectives of the private firm. Finally, his high administrative position gives him access to confidential planning information relating to state capital developments and requires him to make various day-to-day decisions and recommendations with respect to all the agency uses, including the particular professionals by whom he may be privately employed.

Based upon the above facts, we found that as administrator, he was required to take official action regularly on matters directly affecting the private firm. While much of his responsibility was recommendatory in nature and must be finally approved by others, such responsibility was highly discretionary and was therefore "official action" within the definition of the ethics law, HRS, §84-3(7). Such discretionary action, moreover, must be exercised in an atmosphere free of conflict, so that all persons affected will be confident that the recommendation or decision is not based upon a conflict of interest in a private employer relationship. We therefore advised that pursuant to HRS, §84-14(1)(A) and §84-14(1)(B), he should not undertake the proposed part-time consultant work.

This opinion was based upon the conflict situation which should be avoided. In so doing, we made no finding of any violation or use of unwarranted treatment as provided in HRS, §84-13.

Dated: Honolulu, Hawaii, December 27, 1971.

STATE ETHICS COMMISSION
Vernon F.L. Char, Acting Chairman
Audrey P. Bliss, Commissioner
Walters K. Eli, Commissioner
Fred S. Ida, Commissioner

Note: Commissioner Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered.