

## OPINION NO. 140

A department head requested an advisory opinion as to whether one of his inspectors, who was engaged in outside employment as a licensed real estate salesman, had violated the State ethics law.

The State ethics law, HRS, chapter 84, does not generally preclude outside employment; however, such activity is limited by:

- (1) §84-12, which prohibits use of confidential information acquired in the course of official duties for personal gain or for the benefit of anyone;
- (2) §84-13, which prohibits the use or attempted use of one's official position to secure unwarranted advantages, contracts, or treatment for himself or others; and
- (3) §84-14, which prohibits participation in official action directly affecting one's financial interest.

We noted that the inspector's duties were technical in nature and included inspections, investigations, preparation of reports, etc. The position required extensive public contact and the employee acquired confidential information in the course of his official duties.

Since the employee's official duties were of a technical nature and in no way directly concerned with real estate or persons who regulate or deal in real estate, we concluded that he was not in a conflict situation prohibited by HRS, §84-14, by engaging in the sale of real estate. We cautioned, however, that should he encounter a situation wherein he would be required to take official action affecting his outside employer or client, he must disqualify himself.

Since he acquired confidential information in the course of his official duties, we indicated that he must refrain from using such information for himself, his private employer or his clients. The broad coverage of firms he inspected may provide him with information regarding real estate which is generally not yet available to the public and thus, greatly increased the opportunity for use of such information in his outside employment. We advised that in order to avoid a violation of §84-12, he must be sensitive to this situation and act accordingly.

We also advised that he must conduct himself carefully to avoid violating §84-13. He should not use state time, office, telephone, or other facilities to sell real estate. He should not attempt to sell to subordinates or to individuals connected with businesses with which he comes in contact during inspections, etc. (See Opinions Nos. 49 and 119.) Should any of the persons with whom he deals in his official capacity thereafter become his private real estate clients, the inference could well arise that he had used his official position to obtain the business.

Although we attempted to present as much general guidance as we could, we indicated that the opinion did not cover all possible situations which might arise in connection with the employee's outside employment. We requested that he be cautioned in this regard. We further requested that he be advised to request an advisory opinion if he encountered a situation not covered by the opinion.

Our opinion was limited to an application of HRS, chapter 84, to the facts and circumstances presented to us. We did not presume to make any administrative judgment with regard to the time involved, nor did we presume to determine whether the outside employment was, under HRS, §76-106, incompatible with or interfered with the proper discharge of the employee's duties to the State.

We expressed our appreciation to this department head for his concern on matters of ethics and the hope that we had set forth sufficient guidelines not only for the particular individual involved, but also for the department's other employees in similar situations.

Dated: Honolulu, Hawaii, May 12, 1972.

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

Note: Commissioners Walters K. Eli and Gwendolyn B. Bailey were excused from the meeting in which this opinion was considered.