

## OPINION NO. 141

An employee's state duties included repair of a certain type of equipment. He indicated that prior to his employment by the State, he had organized a sole proprietorship for servicing and selling the same type of equipment, but that his business activity had been minimal. Since becoming a public employee, he was considering increasing his private business to include repairing the equipment of divisions other than his own and possibly, to other state agencies. He inquired whether such outside employment constituted a violation of the State ethics law.

At a personal interview, he indicated to the Commission staff that he had previously recommended to his division that the repair of the equipment be handled on an agency-wide basis. Notwithstanding his recommendation, he was of the opinion that the present system, whereby each division of his agency is responsible for the maintenance of its own equipment, would be continued for the foreseeable future. He indicated that although he was responsible only for his division's equipment, he had occasionally repaired the equipment of other divisions at their request. Such services were performed on his own time as a favor to the other divisions.

This technician had no technical supervisor; thus, he possessed broad discretionary authority within his division, but none outside it. He stated that the proposed outside services would be performed on his own time, using his own tools, at either the customer's laboratory or at his place of business, which was a part of his home. He indicated that the supply of specialists qualified to perform these services in Hawaii was extremely limited and that they are usually brought in from the mainland, resulting in a higher service cost.

He further indicated that even though one of the purposes for which he had organized his business originally was to sell the equipment, he no longer intended to do so, but planned to devote his business entirely to servicing such equipment. He also indicated that procurement of such services did not lend itself to competition; therefore, formal bidding procedures were not used.

We noted his decision to refrain from engaging in sales of the equipment to the State and performing outside services on his division's equipment. Our consideration was thus limited to the question of whether he could perform the services on other state equipment including those of other divisions of his agency.

Our analysis of the facts and circumstances of the case led us to conclude that he could perform the services on other state equipment in his private capacity and not violate HRS, §84-14. Since he was not involved in the issuance of contracts for performance of the services in other divisions and the services he performed were technical in nature, we concluded that he did not exercise discretion; therefore, in connection with the other state instruments, he did not take official action as defined in HRS, §84-3(7).

HRS, §84-13, provides that "No ... employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for himself or others." We accepted his statement that he would not use state time, equipment, or facilities in his outside business; therefore, we did not find a violation of that section. Because of his close relationship with the other divisions, we advised, however, that he should exercise great care to avoid obtaining treatment not generally available to other individuals or firms qualified to perform the services.

From the facts presented to us, it appeared that any contract for repair services into which he would enter with the State would be a personal contract of employment; therefore, the prohibitions in §84-16 were not applicable.

Our advisory opinion was restricted to considerations under the ethics law, HRS, chapter 84. We did not presume to make any administrative judgment with regard to the time involved nor did we presume to determine whether the part-time job was incompatible with, or interfered with, the proper discharge of his state duties. We noted that he had advised his superiors of the situation and they did not object as long as his outside employment did not interfere with his normal duties.

Our opinion was also restricted to the existing facts and circumstances disclosed to the Commission. If, for example, action were taken to implement his recommendation with regard to equipment repair on an agency-wide basis, and his job responsibilities were expanded to include equipment of all divisions within his agency, we advised him to request a supplemental opinion.

We expressed our appreciation for his concern on matters of ethics and thanked him for filing his disclosure with us.

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.