

OPINION NO. 143

A member of a commission requested an advisory opinion. His commission is charged with responsibilities for licensing certain individuals; promulgating rules and regulations; enforcing the statute and rules and regulations; and, suspending or revoking such licenses. He had recently completed an instructor's course conducted by the University of Hawaii, and inquired whether he would be in violation of the State ethics law if he should accept a part-time position with the University to teach subjects on which applicants for licenses issued by his commission were examined. The University of Hawaii course was intended to satisfy an educational requirement set forth in the statute.

In order to determine if his occupying or holding two state positions would place him in a conflict situation, we examined the two state functions to ascertain if they competed or conflicted with each other. (See Opinion No. 81.) The mere occupying of two positions will not constitute a violation of the ethics law. (See Opinion No. 33.)

The primary purpose of the commission is the protection of the general public in specified transactions. It accomplishes its purpose by licensing only qualified applicants. The primary purpose of the University of Hawaii, in their offering of the course of instruction, is to qualify prospective applicants by providing the required number of class hours on the subject. It thus appeared that the two state agencies had complementary purposes.

In this instance, however, there was also an element of conflict. The commission was involved in establishing the curriculum, accrediting institutions and evaluating the instruction given. The commission would continually be in a position to review, recommend, or in some way act upon matters involving the course of instruction to be offered by the University of Hawaii or any other accredited school. If he were to teach such a course, it is probable that such actions would affect him and his employment interest in the University of Hawaii.

HRS, §84-14(2) provides 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 interpret this section to mean that an employee should not, while in public employment, establish new business relationships which are likely to be involved in official action to be taken by him. (See Opinions Nos. 108 and 135.)

The prohibition of HRS, §84-14(2), applies regardless of his ability to disqualify himself from participation in such official action. It is our opinion that a public employee should not voluntarily place himself in a position in which disqualification becomes necessary. (See Opinions Nos. 100, 108, 115, and 135.) We, therefore, found that his acceptance of the part-time position would result in a probable violation of HRS, §84-14(2).

We also directed his attention to possible violations of HRS, §84-12, relating to confidential information, and §84-13, concerning fair treatment.

Section 84-12 provides that, "No employee shall disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use the information for his own personal gain or for the benefit of anyone." We understand that he presently does not have access to the questions and/or answers on the examinations conducted by his commission. If, as anticipated, he did have access to such information, it would be most

difficult, if not impossible, for him to teach his classes without using it in some way. We noted his recognition of the problem in his answer to one of our questions. He stated, "I believe it would be impossible to stay clear away from such questions, as students will probe such questions." (The word "questions" refers to the commission examination questions.)

Section 84-13 also 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 noted his outstanding qualifications for the teaching position and the shortage of qualified instructors. We felt, however, that there would be a possible violation of this section of the ethics law. He is required to be scrupulously impartial, both as a commissioner and as a teacher. His ability to remain objective in commission actions involving the University of Hawaii vis-a-vis other instructors (public and private) offering the course of instruction could become severely compromised. In a like manner, his ability to remain objective in commission actions involving his former students could become seriously impaired. The latter point becomes more critical since his effectiveness as an instructor may well depend upon the success of his former students in passing the commission examination.

For these reasons, we found that his occupying or holding the position of an instructor with the University of Hawaii in the same subjects covered in the commission licensing examination while serving on the commission would constitute a violation of the State ethics law.

We expressed our appreciation for his concern on matters of ethics.

Dated: Honolulu, Hawaii, May 30, 1972.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting in which this opinion was considered. Commissioner Fred S. Ida disqualified himself from participation in this opinion.