

## OPINION NO. 151

A state employee from the same department involved in Opinion No. 32 requested an advisory opinion from the State Ethics Commission as to whether he could accept employment with a large business whose activities he regulated within his responsibilities as a state employee. The prospective compensation would amount to no more than \$9,000 a year.

1. He indicated that with regard to his prospective employer within the last year and a half, he had on twelve occasions inspected facilities of the business subject to inspection and regulation by him in his state capacity. He also indicated that on ten or twelve occasions he exercised approval or disapproval discretion with regard to movement of the property of the business and that on ten or twelve occasions he had taken samples of the property of the business in compliance with regulations of the state department by which he was employed. He indicated that he had made no decision regarding the destruction of property of the business, nor a decision relating to the enforcement of other regulations of his department. However, he indicated that his prospective employer is subject to action by him in his state capacity and he specifically mentioned certain regulations he would have to enforce should the occasion arise.

2. He also indicated that he had on occasion rendered services in his private capacity to other persons subject to inspection and regulation in his state capacity. When asked to provide the name and address of clients regulated by him in his state capacity, he stated that it could be almost anyone in his area who conducted business regulated by his department, and that it would take about 20 pages to answer the question. He stated that the total amount of fees paid by these private clients to him in the calendar year 1971 and the year 1972 to date was approximately \$2,500.

3. His position description indicated that his regulatory responsibilities involved making recommendations, approving, disapproving or taking other discretionary action with regard to rules and regulations of his department.

### I. HIS PROPOSED PRIVATE EMPLOYMENT

He was informed that §84-14(b), HRS, is applicable to his prospective employment. That section provides, "No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him." The prospective employment constitutes a financial interest within the meaning of §84-3(6)(C). The facts he had submitted indicated that he in the past had occasion to take official action with respect to his prospective employer and that he would find it necessary to take official action in the event circumstances subject to his regulation arose. The fact of past regulatory action involving his prospective employer gave rise to reason to believe that in the future he would be required to take continuous and substantial official action directly involving it. The Commission believed that §84-14(b) was intended to preclude the acceptance of employment in this situation. This provision would apply regardless of the ability to disqualify one's self from participation. It was our opinion that a public employee should not voluntarily place himself in a position in which disqualification becomes necessary.

The Commission therefore advised that he should decline to accept employment by this prospective employer. To do so would be a violation of §84-14(b), HRS.

## II. HIS EXISTING PRIVATE EMPLOYMENT

The Commission informed the employee that §84-14(a)(1) provides, "No employee shall take any official action directly affecting a business or other undertaking in which he has a substantial financial interest." His regulatory responsibilities involve official action within the meaning of HRS, §84-3(7). The fees which he had received in a private capacity are a financial interest within the meaning of HRS, §84-3(6); and they are substantial in that they comprise an interest of sufficient magnitude to have a possible influence on his action (see Opinion No. 2).

Consequently, the rationale of the Commission in Opinion No. 32 applies to his case. In that case, the Commission stated:

There is a more basic conflict of interests problem in this situation. The state practitioner who renders treatment for a private client in his state capacity has the private interest of keeping his clients satisfied to assure that his client will continue to retain him. However, in this disease control work, the public interest is best served by impartial and stringent enforcement of disease control measures. In deciding upon the measures to be taken, some of which may be extreme, the state practitioner should be entirely free of concern for his private interests in the matter.

The Commission informed him that it recognized only two exceptions to their finding in Opinion No. 32, namely: (1) situations where it is, because of lack of work, impossible to support a private practitioner; and (2) situations of emergency where the private practitioner is away or unavailable. The factual circumstances in this case was not within these exceptions. The facts indicated there was sufficient work to support private practitioners in the area and it could not be said to be "an inaccessible and sparsely settled" area.

Given the apparent number of these clients and the existence of only one other state employee carrying out his functions in his area, disqualification was not a viable alternative. Consequently, he was advised that he should divest himself of those private clients whom he regulated in his state capacity.

Dated: Honolulu, Hawaii, November 30, 1972.

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

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