

OPINION NO. 154

The director of a state agency providing medical care inquired whether it would be a violation of chapter 84, HRS, if state practitioners in his agency became involved in a program to be implemented in the area which the agency served. In the contemplated program the state practitioners, on off-duty hours, would respond to calls from the hospital which served the area to provide specialized medical services. The individual patient would compensate the practitioner according to his ability to pay.

The director indicated in telephone conversations with the Commission staff that the state practitioners are compensated by the State for a 40-hour week pursuant to contractual arrangements between the State and the practitioners. He also indicated that most state practitioners in this specialty work during the period 8:00 a.m. to 4:30 or 5:00 p.m. In another state agency providing full-time care, the work hours of state practitioners in this specialty included weekends and after hours. The program which he envisioned is one wherein state practitioners in the specialty would answer to emergency situations which may arise after normal agency hours or on weekends by making on-site visitations at the hospital which serve the agency's area or possibly the home of the patient. The State does not have funds available to pay these practitioners for this service. Patients partaking of this service would be charged according to their ability to pay. He stated that the program to be initiated in his agency's area was but one facet of what his superiors hoped to be a statewide program.

Patients would personally compensate the practitioners for service during this period of time if the patient were not already admitted to the hospital serving the area. If the patient were admitted after hours or during weekends, a member of the staff at his agency would tend to him starting the next working day.

He indicated that the only discretion state practitioners have with regard to patients treated in his and similar agencies is discretion within their clinical discipline. He indicated that his agency provides the services to anyone who is a member of the community regardless of his ability to pay. Those who are able to pay are charged by the State according to a sliding-fee scale pursuant to which one may be charged a maximum fee which is in keeping with the charges rendered by private practitioners in the specialty. Funds collected through this source are turned over to the State's general fund. He indicated that his agency would take anybody who is a patient with almost any degree of problem. The only qualification on accepting the patient with a minor problem was the workload of his agency. He indicated that his practitioners may, on occasion, recommend to the person seeking services that they seek help elsewhere where more appropriate treatment is available for the problem.

The State Ethics Commission advised that this program will not involve violations of chapter 84 of HRS if certain safeguards are observed. Section 84-13, HRS, provides:

No legislator or 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; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which he believes may be affected by legislative action.

The Commission stated that subsection (1) meant state practitioners in the specialty should not utilize their official position to obtain private clients.

Subsection (2) of §84-13 would not be violated as long as practitioners were compensated for a fixed number of hours per week and they engaged in this program after hours. If, on the other hand, the practitioners were compensated for a 24-hour day, accepting further compensation for the performance of their duties in this program would be violative of that subsection. Hence, as to a given practitioner, the Commission advised that it would depend upon the terms of his contract of employment with the State.

Subsection (3) meant the state practitioner should not utilize state time, equipment or other facilities to conduct a private practice.

It was the opinion of the Commission that as long as safeguards are utilized to ensure that such matters as discussed above do not occur, state practitioners will not be in violation of the provisions of chapter 84 if they participate in this program. The Commission rendered this advisory opinion noting:

- (1) there is a shortage of practitioners available for this program;
- (2) the State has no funds with which to compensate practitioners for this extension of the State's program;
- (3) this program involves short-term emergency care on a onetime basis;
- (4) there is a logical rotating system to which the program adheres;
- (5) the patients are advised of this service; and are further informed they have to pay for it; and
- (6) that all practitioners licensed in this specialty are advised that they may submit their name to be placed on the rotating list.

In addition to the factors enumerated above, the State Ethics Commission stressed that this advisory opinion was directed specifically to action taken by a state practitioner involved only in clinical work. The holding of the Commission would be otherwise if the discretionary activity of the practitioner involved administrative or regulatory power over his patient, as well as clinical evaluation and treatment. Cf. Opinion No. 32.

The Commission thanked him for his concern about the ethics of state employees and hoped that this advice would be of aid to him in formulating and implementing this program.

Dated: Honolulu, Hawaii, January 17, 1973.

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

Note: There was one vacancy on the Commission.