

## **OPINION NO. 160**

A state employee inquired whether he would be in violation of the state ethics law in establishing a consulting firm and if not, whether the firm could provide services to business firms which had, or were currently doing, business with the government agency by which he is employed.

### **The Employee's State Position.**

The employee's duties and responsibilities included public relations and promotional work which required him to maintain contact with potential clients of the agency. He also maintained liaison with various federal government agencies concerned with the area of activity in which his agency was involved. The employee's duties also involved devising programs to assist businessmen in utilizing the services of his agency. He also evaluated a prospective user's application. In the absence of the manager, he performed the manager's functions which included overall responsibility for the operation of the service. A business utilizing the governmental service is subject to certain federal government requirements and regulations, and he assisted federal government personnel in enforcing them.

The employee was on call 24 hours a day and on some six occasions during the last year had been required to perform duties during other than normal duty hours.

### **His Proposed Consultation Services.**

His part-time outside employment was to involve analysis and development of programs for business firms for which utilization of the government service was not feasible. The proposed work would also involve contacting clients of his agency.

The employee stated that he would not offer services to firms operating under state programs, nor to any Hawaii state agency. He planned to engage in outside employment after work hours or during authorized leave. Private clients would be able to contact him at a separate office and telephone number.

Information from government agencies which he planned to use to service his private clients was available for use by members of the public.

We stated that the establishment of his consulting firm would not be a violation of the ethics law. However, we called to his attention specific activities which would violate provisions of chapter 84, HRS, if he engaged in them.

Section 84-14(a), HRS, provides:

(a) No employee shall take any official action directly affecting: (1) a business or other undertaking in which he has a substantial financial interest ...."

The Commission explained that the employee would have a financial interest in his clients since a "financial interest" includes employment. The Commission has generally interpreted the term "substantial financial interest" to mean "an interest of sufficient magnitude to have possible influence on an employee's action." Commission Opinion No. 58.

We advised him that if a client of his were to apply for the use of the agency's service, he would have to disqualify himself from taking recommendatory action on the application. His disqualification would be required regardless of the nature of the services he was providing his private clients. For the section to apply, it is not necessary that his financial interest be in employment pertaining to the specific activity of his client which was subject to official action by him.

In addition, if the application were granted, he would have to disqualify himself from taking regulatory action. To take action in either case would violate §84-14(a)(1).

Section 84-14(b), HRS, provides:

No employee shall acquire a financial interest in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

We advised the employee that as a consequence of this section he should not accept as clients present users of the services of his agency since they are subject to his regulatory powers. Further, he was advised that he should not accept as clients certain businesses which are potential users of his agency's services by reason of their operations. These businesses were directly involved in official action to be taken by him since his state position required him to evaluate such businesses for the feasibility of their use of the agency's services and to solicit those who could qualify. Upon this evaluation hinged whether he could accept the business as a client or must solicit the business for his state agency. The Commission advised him that he could accept clients from businesses which, by reason of their operations, were not potential users of the agency's services.

#### **Section 84-13, HRS.**

This section 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.

We advised the employee that if he were to use his state position to obtain clients for his consultation services, he would be in violation of §84-13(1). In addition, he was advised not to charge clients for services which he was otherwise obligated by his state position to provide members of the public.

With regard to §84-13(3), we advised him that he should refrain from using state time, equipment or other facilities for the purpose of conducting his consultation services. Given the normal business hours in Hawaii, the Commission believed this would be difficult.

Lastly, as to §84-13(4), he was advised that he should not solicit present users of the service to become participants in implementing plans he provided for his clients.

Because there was a likelihood that he would be dealing privately with persons with whom he was required to deal in his state capacity, he was advised that he should make it clear to them when he was acting in a private capacity. He was told that he should do the same when dealing in a private capacity with federal agencies with which his state position required him to maintain contact. The Commission believed that this would avoid confusion as to his public and private roles.

The Commission thanked the employee for his concern about state ethics and expressed hope that the opinion would be of aid to him in avoiding violation of chapter 84 while conducting his private consulting services.

Dated: Honolulu, Hawaii, May 17, 1973.

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

Note: There was one vacancy on the Commission.

**OPINION OF COMMISSIONER GWENDOLYN B. BAILEY  
CONCURRING IN PART AND DISSENTING IN PART**

I generally concurred in the ruling and caveats issued by the other members of the Commission in this opinion. However, I dissented from the ruling totally prohibiting the employee from acquiring clients from among businesses which are merely potential users of his agency's services. I would have limited the prohibition to those businesses which were determined to be probable users after evaluation.

Gwendolyn B. Bailey, Vice Chairman