

OPINION NO. 169

Two state employees requested an advisory opinion whether the state ethics law would be violated if they should establish a private clinical facility on Oahu. They were employed by the State as technical specialists on a clinical team and their functions at their proposed facility would be that of principal investors who would be acting at a managerial and advisory/evaluatory/consultatory level. They did not plan to be actively involved in the actual work with the facility's clients but would periodically evaluate progress and confer with the facility's staff; they planned to engage in this work during periods of time other than their state working hours.

HRS §84-14(b) states that "[n]o 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 state employees sent to the Commission the job description for their two positions and a statement of the objective of the clinical team. The Commission noted that in carrying out the objective of the clinical team, the team occasionally made referrals to certain public and military agencies. The employees did not list centers similar to their proposed clinical facility among the agencies to which their state clients were referred and indicated that referrals to these centers have not been made. They further indicated that if a state client should be referred to a center similar to their proposed facility, such a referral would probably be made by another member of the clinical team.

The Commission found that they would not violate HRS §84-14(b) if they should establish the clinical facility. There was no reason to believe that it would be directly involved in official action to be taken by them.

They also raised the hypothetical question whether they would be in violation of the ethics law to include the name of their clinical facility along with the names of others if individuals should inquire about clinical centers that provide services that their proposed facility would offer.

HRS §84-14(a) states that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest". Official action is defined as action which involves the use of discretionary authority. HRS §84-3(7).

The Commission found that providing to individuals a list of clinical centers which included the name of their facility did not involve official action. Thus, the individuals were advised that they could include the name of their clinical facility on such a list. They were advised that they should be careful to include all agencies or organizations providing similar services and not to make any recommendations with respect to them. Recommendatory action is "official action."

Finally, they indicated that they would utilize the public news media and other private referral agencies to get clients for their clinical facility. They further stated that as corporate members of the clinical facility, they did not intend to use their names or positions in advertising. Such action would be in accord with HRS §84-13, which prohibits one from using his official position to secure unwarranted privileges or treatment for one's self or another. The employees were advised that if they should attempt to acquire clients for their clinical facility through the use of their state positions, they would be in violation of HRS §84-13. Also, they were told that they should not do

any work for their clinical facility during their state working hours. To do otherwise would also violate HRS §84-13.

The Commission commended the employees for recognizing the existence of an issue under the state ethics law and thanked them for their concern about ethics of state employees.

Dated: Honolulu, Hawaii, November 5, 1973.

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

Note: Commissioner Gwendolyn B. Bailey was not present at the meeting when this opinion was considered. There was one vacancy on the Commission.