

## OPINION NO. 171

A professional employee with regulatory and disease control responsibilities has inquired whether he may have a private professional practice. He proposes to practice on a part-time basis; he does not intend to accept retainers from any client.

In our opinion, he posed the same question which has been discussed and decided in Opinion No. 32, issued June 10, 1969. In that opinion, we held that a practitioner with regulatory responsibilities would be in a conflict of interest situation if he were to accept as private clients persons over whom he would have to regulate or exercise official authority in his state capacity. When this holding was issued four years ago, we recognized that the long accepted dual practice system could not be altered in an instant. We, therefore, indicated that we would find no violation in situations where there was "lack of work impossible to support a private practitioner or in situations of emergency where the private practitioner is away or unavailable." During the past four years, there has been no substantial decrease in the dual practice system. In fact, in some situations we have noted private practice grosses two to three times the state salary of a practitioner. From these statistics, we found that the "lack of work" exception should no longer be applicable; these practitioners have been so advised. Therefore, we likewise advised this employee that he would be in probable violation of HRS §84-14 if he were to accept as private clients individuals whom he must regulate in his official capacity. The only time when a violation may be excusable would be in a case of a true emergency where another private practitioner is away or not available. Of course, this employee was allowed to accept as private clients individuals where there was little likelihood that he would have to exercise official action over such clients.

We commended this individual for his sensitivity to ethics in government and for his compliance with the conflict of interest working policy of his division.

Dated: Honolulu, Hawaii, November 29, 1973.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.