

OPINION NO. 184

Two state employees requested that the State Ethics Commission review Opinion No. 169 which had previously been issued to them and to render another decision that would apply to them this summer and in subsequent summers.

The employees were employed by the State as technical specialists on a clinical team. In Opinion No. 169, the Commission advised them that they would not violate HRS §84-14(b) if they were to establish a private clinical facility on Oahu.

They informed us that they had established the clinical facility and stated that they had operated very cautiously and had adhered to the decisions rendered by the Commission in their procedures and policies at their private facility. In their request for Opinion No. 169, they stated that they would be acting at a managerial and advisory/evaluatory/consultatory level and that they did not plan to be actively involved in the actual teaching of the students. They now requested our opinion on whether they might teach some courses during the summer for their clinical facility.

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 Commission had advised the state employees in Opinion No. 169 that this statutory provision would not be violated if they were to establish the private clinical facility. After reviewing their job descriptions, the Commission found that there was no reason to believe that their clinical facility would be directly involved in official action to be taken by them.

We stated that HRS §84-14(b) was also relevant with respect to the students that the clinical facility might enroll. In Opinion No. 150, the Commission held that it would be a violation of HRS §84-14(b) for a teacher to accept employment for summer lessons by a student who was still subject to official action to be taken by him at the end of the year or from a person he had reason to believe would be his student the following school year. In the instant case, because of the financial interests of the state employees in their clinical facility, this restriction also applied to students whom the clinical facility might accept as summer students. (See Opinion No. 159.)

Therefore, we said that the clinical facility should not accept as summer students individuals who were still subject to official action to be taken by the state employees at the end of the school year or who they had reason to believe would be subject to official action taken by them the following fall.

As long as the above restriction was followed, we stated that they might personally teach students of the clinical facility this summer. We pointed out that this restriction would still be applicable even if students were not assigned to them on a regular basis or their activity were limited to an advisory/evaluatory/consultatory level.

The employees also informed us that their supervisor had requested that they submit to him a list of the names of the students enrolled by the clinical facility for summer classes. They asked us to render a decision on this request.

Under HRS §84-31, the Ethics Commission has been granted the power and responsibility to "render advisory opinions ... as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the standards [ethics law]." Thus, we stated that our advisory opinions were limited to questions related to the standards of conduct of the ethics law. The question that they had raised on whether they were required to provide the list of names of their students to their supervisor did not involve an ethical matter. We, therefore, recommended that they request the advice of the Attorney General on this matter.

We pointed out, however, that the responsibility of preserving public confidence in public servants or in seeing that the ethics law is followed did not fall solely on the Ethics Commission. We stated that we believed that department and other administrators also had the responsibility to promote public confidence in government. We said that in carrying out this responsibility, it may be assumed that administrators may establish guidelines or rules on ethical matters for their employees or require their employees to provide certain information to them.

We commended the employees for their interest and concern for ethics of public servants.

Dated: Honolulu, Hawaii, June 24, 1974.

STATE ETHICS COMMISSION
Gwendolyn B. Bailey, Chairman
Vernon F.L. Char, 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.