

## OPINION NO. 185

A state employee who was opening a private school requested an advisory opinion on this matter.

At the outset, we brought to his attention HRS §84-14(b) (Supp. 1973), which 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." In past opinions, the Commission has stated that a state employee should not acquire financial interests in a business or other undertaking if there is a "strong probability," not just a "mere possibility," that it will be involved in official action to be taken by him. Official action is defined in HRS §84-3(7) as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."

HRS §84-13 was also relevant. This statutory section prohibits a state employee from using his state position to secure unwarranted privileges, advantages, or treatment for himself.

The employee submitted for our information the class specification for his state position. In his state capacity, he provided a wide range of consultant and advisory services to clients of his agency and planned and coordinated the agency's educational programs. As indicated *supra*, we noted that in the class specification for his position he planned and coordinated educational programs for clients of his agency.

His agency has sponsored and administered a number of training workshops. He indicated the following differences between these workshops and the course that would be taught at his private school:

1. His agency's course usually has no more than 20 class hours; the private school would have approximately 100 hours of class instruction plus outside work;
2. The private school would have the students prepare written text material. This material would be analyzed in class or individually by the instructor. His agency's workshops are taught by means of lectures and question and answer sessions;
3. The private school curriculum would be more coordinated, technical, and comprehensive;
4. One instructor would be used to teach the course of the private school; his agency's workshops have used many instructors for each series; and
5. Cost: His agency charges a nominal fee of less than \$50.00 for its workshops. The tuition in the private school would be over \$400.00.

The state employee indicated that while he coordinated his agency's program of workshops, it was not his responsibility to teach any part of the program. He stated that his supervisor had decided that qualified, well-known individuals from the private sector would be used as instructors.

Finally, the employee indicated that it was not probable that a student of his private school would later come to him for assistance in his state capacity. He pointed out that students completing the private school course should have the knowledge to solve their individual problems.

Based on the facts before us, we concluded that the state employee would not be in violation of the ethics law (HRS ch. 84) by starting the private school. As pointed out *supra*, he indicated that it was not part of his responsibilities to teach his agency's program. Moreover,

he stated to us that his supervisor felt that there was no conflict with his duties in establishing the private school.

We stated that while he might establish the private school, he should not accept as students of his private school individuals whom he was seeing in his state capacity.

Moreover, we said that he should not recommend the course of his private school to individuals who were his state clients. 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." Recommendatory action is official action.

We also said that pursuant to HRS §84-14(a), he should abstain from taking official action directly affecting a student of his private school if the student should seek his advice as a state employee.

Finally, the state employee indicated that he would not solicit business on government time. We said that this would be in accord with HRS §84-13, which prohibits a state employee from using state time, equipment, or other facilities for private business purposes. We thanked the employee for his concern for ethics in government.

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.