

OPINION NO. 188

A state employee inquired whether he might teach for compensation a series of evening classes on a certain subject matter for a private organization. The specific facts relating to his request were as follows:

1. The private organization wanted to offer a course on the subject matter in question and asked the state employee to be the instructor. The employee did not solicit the job. The classes would be open without charge to members of the organization.

2. The employee anticipated that the classes would run for six evenings. He stated that the private organization normally offered an honorarium of \$25 per evening.

3. The employee had the responsibility for planning, developing, directing, and conducting on a state-wide basis his department's program on the subject matter in question. This involved establishing a system and developing procedures to ascertain whether private individuals were complying with their obligations and to monitor their progress; informing and instructing others on the subject matter in question; and establishing and maintaining effective liaison with groups and organizations. He indicated that he worked "normal business hours" and had not been asked to alter his hours of work or to work overtime.

4. As part of his state responsibilities, the employee provided a training program on the subject matter in question to employees of his department. The training program differed in several respects from the proposed classes of the private organization. Whereas the classes of the private organization would be open to all members of the organization, the training program which he had organized for department employees was limited to employees of the department. The training program had always been conducted during normal business hours, had been of one or two days' duration, and had been conducted, for the most part, by invited speakers. The program had been oriented specifically to the needs of the department.

5. In his state capacity, the state employee had spoken on the subject matter in question to various groups although on separate occasions and usually not as the sole speaker. The contents of the proposed classes would differ from the contents of his talks to the different organizations. His talks had normally been limited to a brief and factual address of ten to thirty minutes and had dealt with limited aspects of the subject matter in question, depending on the needs of the group or organization. In the proposed classes of the private organization, the employee planned to have group involvement and interaction, including role-playing situations.

6. The employee's supervisor had stated that he did not see a conflict of interest in the employee teaching the classes and accepting an honorarium. He had indicated that the department did not expect the employee to teach the proposed classes of the private organization as a part of his job. He did state, however, that the employee could propose classes limited to department employees and held during working hours, and, if approved, these classes would be part of his job. The employee had also indicated that he had proposed classes on the subject matter in question for department employees, but they had not been approved to date.

HRS §84-13 (Supp. 1973) prohibits a state employee from using his official position to secure unwarranted privileges or treatment for himself. Based on the facts before us, we concluded that the employee would not be in violation of this statutory section if he should give the proposed classes to members of the private organization and to accept an honorarium. In our opinion, this situation differed from that in Opinion No. 85 in which we concluded that an education specialist was in violation of the ethics law for accepting honorariums for giving speeches which were expected as part of his regular state responsibilities.

In rendering this opinion, we stated that we were cognizant that, pursuant to the employee's duties as set forth in his class specification, he was required to disseminate information to the general public and speak before various groups about the subject matter in question. He also established and maintained effective liaison with various public and government organizations and agencies. However, we pointed out that the employee had indicated that his supervisor had stated that the department did not expect him to teach the proposed classes of the private organization as a part of his job. The employee was not expected to give the type of comprehensive instruction contemplated for the classes of the private organization to non-departmental employees nor was he expected to teach classes outside of his "normal business hours." Also, we pointed out that the proposed classes differed in content and in length from the speeches which the employee was required to give to the general public and various groups on the subject matter in question.

Then, we pointed out that HRS §84-14(b) stated 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." We reviewed the class specification for the employee's position that he had submitted to us. As we noted previously, one section stated that he established and maintained effective liaison with various private groups. The employee indicated to us, however, that the private groups referred to in this section did not include the private organization that was proposing the classes.

We concluded, after reviewing the employee's responsibilities as stated in his job description, that HRS §84-14(b) would not be violated if he should give the proposed classes and accept an honorarium. One of the factors that we considered was the short-term nature of the employee's private relationship with the private organization.

We repeated that our conclusion that the employee would not be in violation of the ethics law by giving the proposed classes was based on the facts before us. We stated that if the employee's department should give him additional responsibilities, he should again request an advisory opinion on this subject matter.

We thanked the employee for his concern for ethics of state employees.

Dated: Honolulu, Hawaii, July 12, 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.