

## OPINION NO. 191

A state employee filed a disclosure of financial interests with the State Ethics Commission and inquired whether any of his activities as a lawyer in private practice would conflict with his state duties.

On his disclosure, he listed several clients of his legal practice. He indicated that it would probably be necessary for him to represent certain clients before certain state governmental agencies. He also pointed out that it might be necessary for him to represent clients before boards and commissions of the City and County of Honolulu and that he practiced before all of the courts of the State of Hawaii.

It was our opinion that HRS §84-13 (Supp. 1973) (the fair treatment section of the ethics law) would not preclude the state employee from representing his private clients before State or county agencies and the courts of the State. We stated that we had held in past cases that this section might be violated when there were circumstances in which a reasonable man could infer that the state employee was using or had attempted to use his official position to obtain unwarranted treatment or advantages for a client. We did not believe, however, that objective treatment of a case of any of this employee's clients would be precluded due to his state position.

We pointed out that he should be cognizant, nevertheless, of other sections of the ethics law that may limit his private practice as an attorney. HRS §84-14(c) states that "[n]o ... employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State."

Then, we stated that HRS §84-14(d) would prohibit him from assisting a client to "secure passage of a bill or to obtain a contract, claim, or other transaction or proposal" in which he had participated or would participate as a state employee. Moreover, we said that this statutory subsection would preclude him from assisting a client on a bill, contract, claim, or other transaction before his state agency.

Moreover, we said he should be cognizant of HRS §84-14(a)(1), which may limit his participation as a state employee on certain matters. This statutory provision 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." Pursuant to the disqualification requirement of this section, we said that he should abstain from taking official action on matters directly affecting a client of his. We pointed out that official action was defined in HRS §84-3(7) as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."

We expressed appreciation for his concern for ethics of state employees.

Dated: Honolulu, Hawaii, July 31, 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.