

ADVISORY OPINION NO. 86-9

A department head asked whether it would be a violation of the State Ethics Code for full-time employees in the department to be appointed to additional part-time positions within the department.

The Commission believed that no section of the ethics code automatically prohibited full-time employees from accepting an additional appointment to a part-time position. The fair treatment section of the ethics code, section 84-13, Hawaii Revised Statutes, was relevant, however, to the extent that it prohibits preferential treatment. Section 84-13 reads in pertinent part as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

The Commission noted that this section of the ethics code mandates that the selection of individuals as part-time employees be carried out in an impartial manner, with no preferential treatment being given to any particular individual. Thus, the Commission stated that appointments made on any unwarranted basis such as friendship, status as a relative, current employment with the department, or for the purposes of generating campaign funds or as a political favor would violate this section of the ethics code and would thus be prohibited.

Although the Commission noted that section 84-13 did not *per se* prohibit the appointment of full-time department employees for additional part-time work, the Commission believed that the more that department employees received such appointments, the more likely it was that allegations of preferential treatment would arise. For this reason, the Commission advised that the department might wish to consider excluding its full-time employees from being appointed for additional part-time work. In any event, the Commission stated that appointments had to be made in a fair manner.

The Commission also noted that the various duties of the full-time employees and those of part-time employees might be inconsistent or might otherwise conflict. The Commission stated that it believed that the Attorney General had in the past ruled that state employees may not hold two state positions that are inconsistent. The Commission also noted that a prohibited conflict under

the State Ethics Code would arise if any full-time department employee had supervisory duties with respect to the part-time work if at the same time the full-time employee was also serving as a part-time employee in the department.

The Commission informed the department head that it appreciated his requesting an advisory opinion on this matter.

Dated: Honolulu, Hawaii, November 5, 1986.

STATE ETHICS COMMISSION
Tim S. Farr, Chairperson
Cynthia T. Alm, Commissioner
Rev. David K. Kaupu, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Laurie A. Loomis was excused from the meeting at which this opinion was considered.