OPINION NO. 203

A state employee asked us for an opinion on whether he might enter into a certain consultant contract. We previously issued Opinion No. 160 to him.

The employee provided us with the following facts:

In late 1973, two representatives of a firm located in another state visited the employee's office for a familiarization briefing on activities of his agency. These representatives had been visiting agencies in other states for similar briefings and were being extended the same courtesy by the manager of the employee's agency. The purpose of the briefing was to give the representatives an idea of how the employee's agency functioned. The representatives were not clients of the agency and the briefing given to them did not fall under any classification of chargeable services of the agency. No client information or confidential information was provided to them.

During the latter part of their visit, the representatives commented on the technical complexities involved in the operation of a similar agency and the problem of trying to understand them in such a short time. At this point, the representatives started to ask the employee about the possibility of his visiting them to assist them in their subsequent operational design. The employee immediately requested that they not pursue this matter until non-working hours. The representatives agreed to do this. During lunch, the employee provided the representatives with a copy of the business and fact sheet of his consulting firm and indicated that a consultant arrangement might be possible. The employee immediately informed the manager of his agency of the representatives' interest in a consultant contract with him. The representatives indicated that they would look over the material but that no decision or offer could be made until the final issuance of a grant by the federal government. No further substantive discussions were held with the representatives during working hours.

In late 1974, the employee received a call at his home from the senior representative of the company asking for a bid to provide consulting services to his company.

HRS §84-14(b) states:

> No 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 employee indicated that the company was not and would not be a client of his agency. Thus, it was unlikely that the company would be directly involved in official action to be taken by the employee.

Then HRS §84-14(d) states the following:

> No ... employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a ... employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the ... agency of which he is an employee ....

We held that HRS §84-14(d) would not preclude the employee from entering into the consultant contract. He had been asked to assist the company on designing an administrative organizational and operational structure and an outline of a tariff. It was our opinion that the providing of this service would be a different "transaction" or matter from the briefing that was

given to the representatives of this company by him and the other employees of his agency. The employee indicated that the subject of the briefing was the activities of his agency. The agency's staff and management did not design or provide any specific organizational or procedural systems to the representatives. The employee stated that the type of consulting service that he had been asked to perform was not provided by him in his state capacity or by his agency.

Finally, we considered the application of HRS §84-13 to this case. This section states:

> No ... 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 ....

The employee indicated that the subject of a consultant arrangement with the company was not brought up by him but by the representatives of the company. He further stated that discussion of a possible consultant contract was not conducted on "state time." We were also cognizant, as stated above, that the employee's agency did not offer the type of consulting services to its clients that the employee had been asked to provide. Thus, we held that HRS §84-13 had not been violated in this instance.

We expressed appreciation for his continued concern for ethics of public officials.

Dated: Honolulu, Hawaii, December 23, 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.