## OPINION NO. 234

An employee with enforcement duties in a state regulatory agency requested that the Ethics Commission make a determination as to the propriety under the ethics law of his accepting part-time employment as a salesman with a real estate brokerage firm.

In his state employment he had a wide range of responsibilities. Among his duties, he made investigations, referred complaints, settled claims through negotiation and enforcement, conducted inspections, and recommended the taking of legal action in certain instances. While his position description indicated that he was under fairly close supervision in those duties that were of a difficult and complex nature, he indicated that, in reality, he exercised a broader range of responsibility than the position description indicated. He had received an offer from a brokerage firm to work on a part-time basis as a salesman; he would work on Saturdays and Sundays and occasional evenings after 5 o'clock p.m. In his state employment he worked usual state office hours, that is, 7:45 a.m. to 4:30 p.m. On rare occasions he was required to vary his hours.

We indicated that HRS §84-14(b) had application to the question he had raised. That section 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.

Under HRS §84-3(6) an employment constitutes a financial interest; his prospective position with the real estate firm would be such an interest within the meaning of HRS §84-14(b). In his state employment, despite the supervision to which he was subject, he exercised considerable responsibility in performing his functions. The making of investigations, the conducting of inspections, and the settling of claims and referral of complaints, a few of his many duties, are the kinds of action which involve the use of discretionary authority. Accordingly, under the definition set forth in HRS §84-3(7), we found that he did take official action in his state employment.

We pointed out that the Commission had held in the past that a state employee should not acquire a financial interest in a business if there is a strong probability that that business will be involved in official action to be taken by the state employee. We indicated, however, that the mere possibility that the business will be involved in such official action is not sufficient to prohibit the state employee from accepting an offer of private employment.

His supervisor advised the Commission's staff that the large majority of the state's realty firms were not subject to the regulating authority of his agency. It was the supervisor's opinion that it was highly unlikely that any real estate company the employee might be associated with would come before him for official action in his state capacity. We concurred in this view.

Accordingly, we held that his acceptance of a real estate salesman position would not constitute a violation of HRS §84-14(b). We emphasized, however, that our opinion was restricted to the facts he had presented to us. We advised him that if the circumstances of either his proposed private or present state employment should change such that it would become likely that a firm he became employed with would become the subject of official action to be taken by him, then he might be required to disassociate himself from that firm or refrain from taking official

action. We advised him that should this occur he should seek another advisory opinion from the Commission.

The Commission emphasized that while other employees within his division might be able to perform his duties in his stead, it was the Commission's belief that a public employee should not place himself in a position in which disqualification becomes necessary.

Finally, we brought to his attention HRS §84-13 which prohibits a state employee from using state time or state facilities for private business purposes. We noted that the hours he would work in his private position would not conflict with the office hours of his state agency. We advised him additionally that all functions incident to his private employment should also be performed solely on his own time.

We noted that HRS §84-13 also prohibits an employee from using his position to secure unwarranted contracts and treatment for himself. We advised him that in general he should not solicit business from individuals with whom he had dealt in his state capacity. Conversely, we stated that he should abstain from taking action in any matter before his department that involved individuals with whom he had dealt in his private capacity as a real estate salesman. We directed his attention to Commission Opinion No. 140 which concerned a factual situation similar to his own.

We commended him for the concern for the ethics of state employees he had evidenced by bringing this matter to the Commission's attention.

Dated: Honolulu, Hawaii, October 30, 1975.

STATE ETHICS COMMISSION
Vernon F.L. Char. Chairman
Audrey P. Bliss, Commissioner
Paul C.T. Loo, Commissioner
I.B. Peterson, Commissioner

Note: Vice Chairman Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered.