

## OPINION NO. 235

An employee of a state agency asked the Commission to determine if accepting employment as a consultant to a private facility was a conflict of interest under the state ethics code.

The individual had been employed with the state agency for ten years and had acted as coordinator of a particular program for approximately two years. The coordinator acted primarily as a supervisor and as such maintained an overall supervisory role and made evaluations of the services rendered to individual clients.

The program team provided services to certain private facilities and was involved in followup services for a wide range of client problems. The employee, as coordinator of the program, was responsible for total program supervision, planning, and coordination, including supervision of employees assigned to the program.

As a part of the program, monthly meetings were held with owners of the facilities. Plans were made for certain activities and recommendations were made concerning services provided by the facilities to their clients. The employee indicated that if, from personal observation or that of a staff member, a determination was made that a facility was not functioning properly, the employee could make a recommendation to a regulatory division within the agency and on the basis of such recommendation, action might be taken with respect to that facility.

In addition, the employee might recommend that clients of the agency be sent to a particular facility; people were regularly referred to these facilities.

The employee began work as a consultant on a part-time basis in early 1975. The owner of this facility had been advised by a state agency that it did not have sufficient professional personnel on its staff. The consultant position was then offered to the employee while visiting the home in the course of his state duties.

The employee worked approximately ten hours per week and was compensated at the rate of \$5.00 per hour. The required duties were generally performed before and after state work hours and occasionally on Saturdays and Sundays as well. As a consultant, the employee provided care to and evaluation of the residents' needs.

We concluded that the employee's consultant position constituted a conflict of interest.

HRS §84-14(b) provides:

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.

HRS §84-3(6) defines a "financial interest" as an interest held by an individual which is an employment. We found that the individual's employment constituted a financial interest. HRS §84-3(7) defines "official action" to mean "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." The position description indicated that the employee exercised considerable responsibility and authority as the

supervisor and coordinator of the state program. Accordingly, we found that the employee did take official action in his state capacity.

As the facility was clearly of the kind that the program was specifically designed to serve, it was reasonably foreseeable that it would be involved in official action that the employee might take in the future. Further, participation in monthly meetings, the referral of state clients, and general supervision of the program which, among other things, might place the employee in the position of making a recommendation concerning the services rendered by these facilities, constituted the kind of official action which was the concern of HRS §84-14(b). There had been instances in the past when the employee had taken official action with regard to this facility and we believed it was likely that such action would again be required in the future. We pointed out that even if it were possible for the employee to disqualify himself from taking action, it was the Commission's belief that the purpose of this provision was to prohibit employees from voluntarily placing themselves in such conflict situations.

We commented that HRS §84-13 prohibits a state employee from using state time, equipment, or other facilities for private business purposes. We took note of the fact that the employee had been very careful to avoid using state time in his private employment. We also took note of the fact that he had not used his official position to solicit the consulting job, but, in fact, had been solicited by the owner.

Nevertheless, we believed that the acceptance of this position might compromise the judgments the employee was required to make as a state employee with regard to decisions concerning the private facility. Accordingly, we held that he should divest himself of this position as soon as possible.

We pointed out that the statute did not preclude a state employee from using skills acquired or developed in his state position in the private sector; we expressed the thought that the community should have access to the capabilities of people with valued skills. But the employee's responsibility to the State must come first; where employment in the private sector would conflict with the employee's public performance, such employment must be avoided.

We commended the employee for bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, November 25, 1975.

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