

OPINION NO. 238

On October 3, 1975, the Commission issued Opinion No. 232 to a state employee in response to a question as to whether a state practitioner who was a director of a state facility was in violation of the state ethics code by virtue of his employment with a private agency that operated in the same area as the practitioner's state facility.

The Commission found that the practitioner's private position constituted a conflict of interest under HRS §84-14(b). We also expressed concern regarding the questionable posture his acceptance of the position appeared to place him in as a member of the administrative staff of his state agency; we expressed our belief that the facts indicated that he had shown an insensitivity to the ethics questions raised by his private employment and noted a concern that his effectiveness as a state employee had been compromised by his actions.

By letter of November 26, 1975, the practitioner requested that the Commission reconsider Opinion No. 232 in light of what he believed to be a number of factual inaccuracies.

As a result of this letter, the Commission staff questioned certain individuals employed by the state agency. In view of the circumstances revealed by this further investigation, the opinion of the Commission was that while the practitioner's position with the private facility did constitute a conflict of interest under HRS §84-14(b), the rather harsh tone of that opinion with regard to his conduct was not justified by the newly revealed facts.

In his private position, the practitioner was significantly involved with the providing of services to individuals who might foreseeably have used the services of his state facility, and, in fact, he did himself refer clients of the private facility to the state facility for services. We believed that he should have foreseen this possibility either at the time he assumed the position with the private facility or shortly thereafter. That the private facility received substantial funding from the state agency, the director's primary employer, and that there was, during the period of his employment, controversy between the state agency and the private facility concerning the adequacy of its services to the state agency's catchment area, affirmed our belief that it was not wise for him to serve in these positions simultaneously. We took note of the fact that the head of the state agency had issued guidelines to prevent a situation such as this from again occurring. No such guidelines, however, were given to the practitioner during his tenure with the state agency or the private facility.

In our original opinion we concluded that the practitioner, as a member of the administrative staff of the state agency, would provide input on the performance of private affiliate agencies. While a review of this aspect of the matter indicated that a director might be expected to provide this kind of input under certain circumstances, it appeared that this would not be a usual function. We found, as a practical matter, that it was highly unlikely that the practitioner would have provided this kind of input. We also noted in Opinion No. 232 that the practitioner's superior had advised him against providing services to residents of the catchment area in a private capacity and to avoid conflicts with his state position. We noted a factual disagreement as to whether or not these assertions were made; in any event, we did not believe that the practitioner was provided with sufficiently specific guidelines to justify the opinion's harsh questioning of his judgment. We also noted that his superiors gave at least implicit approval to the work he was performing at the private facility.

We stated that we had held in previous opinions that it is the individual employee's responsibility to be aware of potential violations of the ethics code and to bring such matters to the attention of the Commission for review. While the practitioner had violated HRS §84-14(b), it was our view that his primary motivation in continuing his private work was the servicing of the clients of both facilities and that he believed that his conduct was proper.

The practitioner had terminated his employment with the state agency; accordingly, we advised the state employee that the question raised by his request was now moot. We emphasized our affirmation of the conclusion of the original opinion so that it might continue to provide guidelines should similar situations arise in the future. We revised the opinion only to reflect our belief that the facts did not justify the critical tone of that opinion in regard to the conduct of the practitioner.

Dated: Honolulu, Hawaii, December 31, 1975.

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

Note: Chairman Vernon F.L. Char did not participate in the consideration of Opinion No. 232; he did participate in the consideration of this opinion, which is a reconsideration of question number one of Opinion No. 232. Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.