

OPINION NO. 242

We received a request from a teacher in the state higher education system. He had been a faculty member for several years. During the time of his employment and prior thereto he had been very much concerned with a particular area of study. As a faculty member he had also performed work in this area for another state agency.

In 1974 he and an associate provided certain consulting services to a private company. The work performed was related to his area of study but did not draw on the work he had produced in his state capacity.

Using the fee received from this private company, he and his associate formed their own company with the purpose of developing a particular device related to his field of study. Such a device was developed and he and his associate filed patent applications and had been given some indication that the patent would be accepted.

He filed a disclosure of financial interests with the Commission setting forth his interest in his company and asked the Commission to determine if his association with that company presented a conflict with his various state duties. In conferences with him and other state employees, the staff learned the following facts:

1. His studies related to a matter that was of future economic significance to the State.
2. The subject matter of his studies was being commercially exploited in other geographical areas.
3. The work of his company was solely concerned with the design of a device that might be of use to companies with a commercial interest in his area of study.
4. His work as a faculty member had not been concerned with the design of a device.
5. According to one of his supervisors, the design of such a device was of minimal concern to the State.
6. Expectations were that the subject matter of his area of study would not be commercially feasible for many years.

HRS §§84-12, 84-13, and 84-14(b) had application to this instant case.

HRS §84-12 (Supp. 1975) states that "[n]o ... employee shall disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use the information for his personal gain or for the benefit of anyone." The facts of this case indicated that the research he had done as a faculty member was quite distinct from the research involved in his private work. Therefore we found no violation of HRS §84-12 in his efforts to design the device he was seeking to patent. Also, the work performed as a consultant in his area of study was sufficiently distinct from his state projects that it would not have involved the use of confidential information. Accordingly, we found that, with respect to this matter, also, he had not been in violation of HRS §84-12.

HRS §84-13 provides in part that "[n]o ... employee shall use ... state time, equipment or other facilities for private business purposes." He stated that all the work done in a private capacity was performed during weekends or evenings and that no state time or facilities were used in these

efforts. Accordingly, we found that he had not been in violation of HRS §84-13. We advised him that he should continue to exercise the discretion he had so far exhibited in performing his private work.

HRS §84-14(b) had most application to the question he had presented in regard to his private company. That section provides that "[n]o 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." His ownership interest in the business was a financial interest under the definition of that term set forth in HRS §84-3(6)(A). Because he was an employee of the State he was subject to the restrictions of HRS §84-14(b). Thus, the question that the Commission had to address itself to here was whether, at the time he acquired his financial interest, there was reason to believe that he would be exercising official authority in matters directly involving or affecting the company.

The Commission had held in the past that, pursuant to HRS §84-14(b), a state employee should not acquire a financial interest in a business if, at the time he is acquiring the financial interest, there is a strong probability that he personally will be required to take official action with regard to the business. We believed that the facts in this case did not justify a finding that such probability existed.

It was conceivable, from a view of the circumstances of this case, that actions taken in his official capacity might have an effect on or involve his company. It was possible that recommendations he might make in his state capacity would result in the use of the device he had developed privately. Significant royalties could have accrued. It was our opinion, however, that there did not exist a strong probability that this effect would result. It appeared to us at the time of our decision that any effect upon his private interests would be indirect; the direct effect of recommendations made by him in his state capacity would be the encouragement of the program that might use the device but not the encouragement of the use of the device itself.

We advised him that despite our finding in this matter that acquisition of his financial interest was not in violation of HRS §84-14 he must, for the future, be aware of the restriction of HRS §84-14(a) which prohibits an employee from taking official action directly affecting a business in which he has a substantial financial interest. While it did not appear likely that he would be required to take such official action affecting his private interest, we stated that he should be aware of this restriction; we stated that should circumstances exist in the future such that a possibility of such conflict was presented he should request an advisory opinion from the Commission.

We commended the concern for the ethics of state employees he had shown by bringing this matter to our attention.

Dated: Honolulu, Hawaii, February 3, 1976.

STATE ETHICS COMMISSION
Audrey P. Bliss, Chairman
Paul C.T. Loo, Vice Chairman
I.B. Peterson, Commissioner

Note: There were two vacancies on the Commission.