

OPINION NO. 260

An employee under contract with a state agency was the owner of a company through which he provided services as a consultant to developers in the private real estate market. In addition, he was a real estate salesman with a private real estate broker. Pursuant to advice sent to the executive director of his agency by the Commission, he had disclosed his interests in the private real estate market to the Commission so that those interests could be reviewed in the light of his responsibilities to his agency. Because of the sensitive nature of the questions raised by the interests disclosed in his financial statement, the Commission treated his disclosure as a request for an advisory opinion pursuant to rule 3.5 of the Commission's rules and regulations.

As we noted in an earlier opinion in this area, there was little doubt that the agency's actions were having a growing impact on the private real estate market. In addition, employees of the agency in responsible positions who held interests in the private real estate market were likely to find themselves in situations where they dealt with the same individuals and businesses in both their public and private capacities. Because of the inside information available to such employees, a very strong possibility existed that such employees might, often inadvertently, make improper use of their positions to gain an advantage that they would not realize but for their employment with the agency. It was for these reasons that the Commission had determined that employees in such a situation should disclose their interests to the Commission for review.

He had stated that he was not actively involved in the real estate market and was hanging his real estate license with a private brokerage firm merely to keep that license active. It was our opinion that he might continue to maintain his license with the private brokerage firm so long as he did not actively engage in the sale of real estate. He might, however, sell his own residence or that of a relative as we did not believe that such sales would be in violation of the ethics code.

Because the services he provided for his private company were similar to those he furnished to the agency under his employment contract, we believed he must exercise caution in his private dealings. Specifically, it was our opinion that he should not solicit individuals or businesses or provide services to individuals or businesses which dealt with the agency. We believed that such dealings would be in violation of HRS §84-13 which prohibits the use of state position to gain unwarranted advantages, contracts, or treatment.

We also wished to bring to his attention HRS §84-14(a) which prohibits the taking of official action that directly affects one's substantial financial interests. Pursuant to that section we stated that he should abstain from taking any action in his capacity at the agency which would affect an individual or business with which he had dealt in a private capacity.

He had indicated to the Commission that he did not use state time, equipment, or other facilities for his private business purposes. His action in this regard was in conformance with HRS §84-13(3), and we stated that he should, of course, continue to exercise caution in this regard.

Finally, we directed his attention to HRS §84-12 which provides that an employee shall not disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties. While this provision, of course, applied to all state employees, we noted that his interests required that he exercise a special caution in this area.

We advised him that should situations arise in the future that did not appear to be covered by the advice we had rendered in this opinion, he should request a further opinion from the Commission.

We commended him for the cooperation he had provided the Commission in this matter.

Dated: Honolulu, Hawaii, July 23, 1976.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairman
Gary B.K.T. Lee, Commissioner
I.B. Peterson, Commissioner

Note: Chairman Audrey P. Bliss and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.