

## OPINION NO. 268

A state employee in a department with regulatory powers was interested in obtaining part-time work during his non-state hours. He was the only investigator in a certain geographical district. His duties as an investigator for his department were quite broad, and, being aware of the provisions of the ethics code, he was concerned about the type of job he might be able to accept. Accordingly, he requested an opinion on this matter.

The section of the ethics code which was applicable to his question was HRS §84-14(b) (Supp. 1975). It states that:

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.

We pointed out to the employee that the term "financial interest" includes an employment (HRS §84-3(6)(C)). In addition, "official action" is defined as a decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority (HRS §84-3(7)). Our review of his duties as an investigator indicated that he had a broad range of responsibility in his position. We, therefore, concluded that he did take official action. Accordingly, his attempt to acquire outside employment was subject to the restrictions of HRS §84-14(b). We had previously interpreted this section to mean that an employee should not acquire a financial interest in a business or other undertaking if there were a strong probability, rather than a mere possibility, that it would be involved in official action to be taken by him. As applied to this employee's situation this meant that he might not acquire a part-time job if it were likely that he would be required to take action as an investigator that would involve his employer. We realized that because of the broad jurisdiction of his department he might have occasion to investigate a broad range of business activities. Accordingly, we acknowledged that HRS §84-14(b) did severely limit the areas in which he might seek employment.

We suggested to the employee that if he did wish to pursue outside employment, he should consult with the director of his agency to determine those few areas that were not likely to require his action as a state employee. We pointed out to the employee that if he were successful in obtaining outside employment or an interest in a business, HRS §84-17 required that he disclose this fact to the Commission.

We appreciated the difficulties our opinion would cause the employee to face as he sought outside employment. Because of this we emphasized that neither the Commission nor the ethics code disfavored outside employment; however, where such employment would conflict with the employee's public performance, such employment must be avoided. The employee had recognized the necessity of avoiding such conflict, and we commended him for the concern he had shown for ethics in government.

Dated: Honolulu, Hawaii, August 27, 1976.

STATE ETHICS COMMISSION  
Audrey P. Bliss, Chairman  
Dorothy K. Ching, Commissioner  
Gary B.K.T. Lee, Commissioner  
I.B. Peterson, Commissioner

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.