

OPINION NO. 293

An administrator of a certain division asked the Commission whether members of his staff could be compensated for teaching courses concerning the laws and regulations administered by his division. He indicated that his request concerned those courses which might be offered through the University system to its students for credit and/or open to the public for a fee and those courses which were not offered through the University system but might last for a relatively lengthy period and were not directed at a "target" group of his division. Specifically, he asked whether a member of his staff responsible for education programs could teach at one of the community colleges a ten-week course concerning laws and regulations administered by his division that affected a certain industry.

Given certain restrictions, the Commission found that employees of this division could teach such courses on their own time for compensation. These restrictions and guidelines are discussed below.

We stated to the administrator that the section of the ethics code most applicable to this question was HRS §84-13 (Supp. 1975). That section in part states:

No ... employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

....

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

The members of his division, through their work, had gained a certain amount of expertise in the area of the laws and regulations they administered and because of this they were often sought out by groups interested in this area to participate in educational activities. We understood that this was a natural occurrence when somewhat technical, lengthy or complicated regulations were being enforced by a relatively small group. We pointed out that the statute did not prohibit an employee from using his or her expertise in outside employment. However, as HRS §84-13(2) states, employees could not receive additional compensation for duties which were required of them in their state positions.

It was apparent to us from reading the statute administered by this division and the job descriptions of the division employees that short seminars, speeches to interested groups, and consultations with public and private employers were duties required of the division and its personnel. We stated that for these activities, employees of the division could not receive additional compensation even though those activities might have to be carried out during the evenings and on weekends.

However, we were of the view that the educator in this division could receive compensation for teaching a course at the community college. While we noted that this person had fairly broad responsibilities in the areas of the division's education programs, this type of course was quite

distinct from that anticipated by the statute and the educator's job description. Further, it did not appear to us that the presentation of such a course was the responsibility of this division. Therefore, we stated to the administrator that his employees could teach such a course on their own time and be paid a fee for their services. We stated that it was one thing to develop a seminar, workshop, or speech for a specific employer or employee group and quite another to prepare a series of class lectures and course materials for a varied group of people, some of whom might be receiving credit for the course. We did not see the latter as a function of this department and division.

We noted that as the administrator of the division, it would be that employee's duty to determine whether a request for educational resource people was one which was his division's duty to fulfill or was one which might be accepted by a member or members of his staff for compensation. We reminded him of our previous statements concerning our view as to the kind of course employees of his division might be compensated for teaching. He was advised that he should also consider whether teaching such a course would harm the effectiveness of the employee in carrying out his or her state duties. He had indicated to the staff that he would not look favorably upon an employee who became involved in a course which, because of the number of evenings it involved, would not allow the employee to participate in some of the division's evening activities. We pointed out that if an employee could not perform certain duties because of private teaching responsibilities, the employee would, in such a situation, be using state time for private business purposes. This would be improper under the ethics code. We noted that employees should also be made aware that they could not use state time or facilities in pursuing or executing outside interests. That would, of course, include the preparation and use of course materials.

Additionally, we stated that we could foresee one other possible problem should inspectors and compliance officers participate as instructors of courses for a fee. HRS §84-14(b) (Supp. 1975) prohibits an employee from acquiring a financial interest in any business "which he has reason to believe may be directly involved in official action to be taken by him." We explained that an employment interest was a financial interest for the purposes of this statute. Further, a business included any organization carrying on a business whether or not operated for profit but did not include another state organization. Official action was defined as a "decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." Therefore, we stated that inspectors and compliance officers could not be employed by a private group or school which they had reason to believe would be involved in official action they would take in the future. As an example, we indicated that an inspector could not be employed to teach a course by a private school which he or she might be assigned to inspect.

In summary, we stated to the administrator that a state employee could accept a request to teach a course for compensation if it was not a part of his or her state duties and if it did not interfere with his or her state responsibilities. The employee should also be careful to avoid using state time and facilities in carrying out those outside activities. In addition, an employee could not accept a request to teach a course for compensation if the private employer would be involved in official action to be taken by that employee.

We thanked the administrator for his complete cooperation and commended him for recognizing the ethical questions involved in this request.

Dated: Honolulu, Hawaii, March 24, 1977.

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

Note: Chairman Paul C.T. Loo and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.