

## OPINION NO. 296

The director of a department requested an opinion of the Commission concerning a long-standing practice affecting a certain group of state practitioners. For a number of years, certain of these state practitioners on the neighbor islands had had as private clients persons and businesses they regulated in their state capacities. As the director was aware, this dual practice system was in violation of the conflicts sections of the state ethics code.

This matter had been the subject of other Commission opinions. It had first come to the attention of the Commission in June of 1969 and was discussed in detail in Opinion No. 32. In that opinion the Commission had stated:

This arrangement did serve the needs of the territory and state through its infancy, at which time it seems to have been economically justified. However, in this era of greatly increased populations and of rapid transportation and communication, these areas are no longer inaccessible and sparsely settled or incapable of supporting a private practitioner. It is in areas which can economically support a private practitioner or where there is a private practitioner that the system becomes indefensible on an ethical basis.

We hold that there would be no violation in situations where it is, because of lack of work, impossible to support a private practitioner, or in situations of emergency where the private practitioner is away or unavailable. In these limited instances, and where there is no reasonable alternative, the situation can continue without violating the ethics law.

The Commission went on to state:

It is suggested that another system to correct the conflict situation--whether it be a piecework contract system or a full-time traveling State practitioner--be implemented with all due diligence in the circumstances.

The Commission reviewed this matter in Opinion Nos. 171, 199, and 243.

In 1975, the department decided to adopt a five-year policy that would phase out the dual practice system by 1980. In reviewing this policy in January and February of 1976, the Commission had determined that there was no justification for such a long period of time and, therefore, had ruled that the dual practice system should be terminated by January 29, 1978. That decision (Opinion No. 243) had been based on testimony presented by the department at a hearing conducted in January of 1976.

This opinion was issued as a result of a letter sent to the Commission in which the director requested reconsideration of that decision; he stated that many complications would be involved in the conversion and that neither the industry regulated by the practitioners nor the state program was in any advanced stage of readiness to meet the target date.

Because the Commission was concerned about the effects of its decisions, it gave full opportunity to the department to present testimony to indicate why the January 29, 1978 date would not be realistic. Testimony was presented by a deputy director and a senior practitioner. That

testimony, however, added no information that had not already been presented to the Commission. No facts were elicited or testified to to indicate that the 1978 date would be unrealistic. On the contrary, all evidence seemed to indicate that the termination of the dual practice system by January 29, 1978 would have a significant effect in one geographic area only. And in that area, it was quite clear that (1) there was sufficient business to support a private practitioner and (2) should the present state practitioner decide to go into private practice, the area was sufficiently attractive to enable the department to recruit another practitioner to take the state position. There being no evidence to justify an extension of time until 1980, the Commission accordingly reaffirmed its decision rendered in Opinion No. 243 that the dual practice system be terminated by January 29, 1978.

The Commission noted that the department and the practitioners involved had been put on notice in June of 1969 that the dual practice system could no longer be tolerated. Clearly this provided sufficient notice to all involved that efforts should be made to bring a smooth conversion from the dual practice system to one that would be in conformance with the state ethics code. We emphasized that it was past time for the principles of the ethics code to be adhered to in this matter.

The Commission commended the cooperation provided by the employees of the department who testified before it.

Dated: Honolulu, Hawaii, March 29, 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.