

OPINION NO. 302

We received a request from an employee, A, who worked as a program specialist with a state department. He and three other state employees had formed a business. He asked the Commission to determine if his involvement and that of his partners in this business would conform with the requirements of the Hawaii State ethics code.

The other members of his business venture, referred to here as B, C, and D, were, respectively, an administrator of a state counseling service, and instructors in the state educational system.

HRS §84-14(b) (Supp. 1975) was most pertinent to the situation he had presented to us for decision. This section of the ethics code provides:

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.

As state employees they were, of course, subject to the ethics code. Further, their equal partnership interests in their business constituted a substantial financial interest. Accordingly, we stated that none of them might acquire an interest in this business if it were probable that it would become involved in action they took as state employees. Their business was to provide a wide range of counseling services.

We examined the state responsibilities of each of the partners as they pertained to the business purposes of the company and the statutory requirements of HRS §84-14(b) and certain other sections.

As to employee A, in his position he was the chief designer and program manager for a certain area of instruction in public institutions. He designed program improvement guides and in-service plans. He worked with district office personnel and provided technical assistance and in-service training to teachers. He did not work with private industry and had no relationships or official contacts with private schools and services such as were provided by his company. It appeared to us that there was no likelihood that either his company or its competitors would become involved in the future in action he took as a state employee. Accordingly, we found that his involvement with the company would not violate the standards of chapter 84.

Employee B was the administrator of a state counseling center. The counseling center provided educational, vocational, and psychological counseling services on a free basis. In the course of an average year, the center counseled well over 2,000 persons. Of these persons, a small number required long-term care that could not be provided by the center's personnel and they were referred to outside private practitioners for assistance. The employee indicated that in the several years he had been administrator of the counseling center, approximately twenty students per year had required this kind of long-term care. We were advised that when one of the eighteen counselors on the center's staff perceived that a student would require long-term care, the counselor would first refer the student to private or state agencies. Those individuals who preferred individualized counseling were then referred to private practitioners. Approximately ten students per year were referred out to private practitioners for long-term treatment.

While the private company planned to provide educational, vocational, and psychological counseling, the business would not take on long-term patients. In addition, as indicated above, the counseling center did not refer educational, vocational, and short-term counseling problems to outside agencies and practitioners, but only long-term psychological cases. Accordingly, it appeared evident that the counseling center would not make referrals to the employee's company. At the same time, however, referrals would be made to private practitioners who were competitors of the company. The Commission had often stated in the past that action a state employee takes which affects his business' competitors also affects his own business. Therefore, in such cases, the Commission had held that an employee may not acquire an interest in a business if that business' competitors are subject to action he takes as a state employee. In this particular instance, however, we did not see that, as a matter of practicality, employee B or the counseling center would take action that significantly affected the competitors of his company. There was a very large number of private practitioners in the State. The referral of ten patients to this large number of private practitioners on a casual basis could have no more than a de minimis effect on this private industry. Accordingly, we did not believe that this employee's involvement in this business would constitute a conflict of interest under HRS §84-14(b).

Employees C and D were instructors in the state educational system. Neither of these individuals took discretionary action having anything to do with those businesses that provided private counseling. Accordingly, the Commission found that these two employees would also not be in violation by acquiring this business interest.

We advised all four of these employees, however, that should their positions change in the future such that any of them would be required to take action affecting either their company or its competitors, they should contact the Commission to determine what additional guidelines might apply to them. For example, HRS §84-14(a) prohibits a state employee from taking action directly affecting a business in which he holds a substantial financial interest. Since all of their interests in this business were clearly substantial, they were required to abstain from taking any action directly affecting their company.

In addition, we advised them of the language of HRS §84-13 which prohibits the use or the attempted use of one's position to grant unwarranted advantage to oneself or others. This section requires that all matters having to do with a state employee's private business be kept totally separate from his state responsibilities. This required that the partners avoid the use of state time, equipment or facilities for their private business purposes and in addition also required that they be very careful to avoid referring those people they came in contact with in the course of their state duties to their company.

We commended them for bringing this matter to the Commission's attention at an early time. We stated that should additional questions arise in the course of developing their business, they should bring these matters to the prompt attention of the Commission.

Dated: Honolulu, Hawaii, May 17, 1977.

STATE ETHICS COMMISSION
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