

OPINION NO. 310

A part-time faculty member at a community college asked the Commission to determine if he was a state employee for purposes of the ethics code. We had previously stated in an earlier opinion involving this individual (Opinion No. 239) that he was a state employee; he asked us to review this aspect of that opinion.

He had two teaching relationships with the community college. The college offered a particular course of credit in his area of expertise; in the past he had served as the instructor if enough students enrolled in the course. At the beginning of each semester when the course was offered, he would be given an appointment for that semester. Should too few students enroll, his appointment would be terminated. He indicated to the staff that under this arrangement, he had taught this course the Spring semester of 1973. He again taught this course the Spring semester of 1976. Lack of sufficient enrollment for the course accounted for his not having taught during those intervening semesters.

When teaching the course, he received a bi-monthly state check from which the University system deducted federal and state taxes. He was not eligible for certain state benefit programs, but he was eligible for workmen's compensation. He was considered by the college to be an employee rather than a contractor. We took note that the University system in making that distinction was careful to follow the definition of an employee for purposes of the State's labor laws. (See HRS § 383-6.) He also taught a four-hour class in a related field. This was a non-credit course taught in the apprenticeship program at the college.

To determine whether he was a state employee for purposes of the ethics statute, we addressed the question of whether the ethics statute was intended to cover a person with a relationship to the State such as his. HRS §84-3(4) (Supp. 1975) defines an employee as "any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State, but excluding legislators, justices and judges."

In each of his two positions he had received an appointment from the University system. The chancellor of the community college was the appointing authority for instructors in each of the courses he taught. This kind of appointment was included within the language of HRS §84-3(4); therefore, we found that a person appointed as a lecturer on a casual hire basis for either a credit course or a course in an apprenticeship program of the community college system was an employee for purposes of the ethics code during the period of that appointment.

This individual had been concerned that because the community college relied on a number of people from the community to serve as lecturers, a decision that such people were employees for purposes of the ethics code would cause a number of them to withdraw their services as lecturers at the college. We saw that concern as a misunderstanding of the requirements of the code as set forth in numerous Commission opinions. The ethics code was not so restrictive as to unreasonably burden those people who earned their livelihood in an outside business yet had some employment relationship with the State. We pointed out that many hundreds of non-paid members of state boards and commissions were employees for purposes of the ethics code and were as subject to its provisions as full-time state employees. While they earned their livelihood in private business, because they took action on behalf of the State, they were required to comply with a minimum standard of conduct when acting for the public. And, indeed, we had seen no evidence

of individuals turning down commission positions because of the application of the ethics code. Nor did we see the likelihood of such an effect in the matter of part-time teachers such as this individual.

This individual was already aware of the provisions found in HRS §84-15(a), requiring a state agency to utilize a bidding process when entering into contracts of a value over \$1,000 with a business in which a state employee has a controlling interest. We emphasized that the statute did not prohibit an employee's business from securing a state contract, but only required that the state agency go through a process which would assure fairness to all parties and the best possible price for the State. This individual had indicated that some people were questioning the fact that he was doing business with the State. A competitive bidding process was certainly an answer to those questions.

We did not feel that these requirements were unreasonable nor that they would cause a hardship to people who taught at the community college on a part-time basis. It was our view that if individuals found these standards too restrictive, they did not belong in public service. While the public may hope that private businesses will adhere to certain ethical standards, it had the right to require it of public employees.

We understood his desire to clarify his status as an employee and thanked him for the cooperation he had provided the staff in gathering the necessary information.

Dated: Honolulu, Hawaii, August 3, 1977.

STATE ETHICS COMMISSION
Paul C.T. Loo, Chairman
I.B. Peterson, Vice Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.