

OPINION NO. 315

This request was from an employee responsible for developing and administering a statewide program regarding the interpretation and implementation of federal and state directives concerning a certain area of the law. His duties included providing advice, technical assistance and support to state department heads. In addition, he was involved in giving lectures to private firms on the State's activities in this area. He was not, however, required to become involved in designing individual compliance plans for such firms.

The employee had been asked by a corporation to become a corporate associate. The corporation offered management services to small business owners. Their invitation to the employee stated that as an associate he would receive preferential consideration as a contracting consultant and he would be offered the first opportunity to accept contracts from the corporation for rendering advice to or training small business owners regarding certain programs on human relations matters. In addition, he would be listed as a corporate associate with referral privileges. In fact the agreement which he had been asked to sign specifically allowed the corporation to use his name as an associate in their corporate literature. He asked the Commission to determine if his accepting this position would create a conflict of interest. We noted that by accepting an associate position with this corporation he would be acquiring an employment interest in the firm, which, for purposes of the ethics code, was a financial interest. (See HRS §84-3(6)(C) (Supp. 1975)). HRS §84-14(b) (Supp. 1975) states:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe maybe directly involved in official action to be taken by him.

It was apparent from his job description that he would not be involved in taking any action in his state position which would involve the development of specific programs for small private businesses. Therefore, this section of the code did not prohibit him from accepting employment with this corporation as a consultant to small private business owners requiring the development of such programs.

We pointed out that there were, however, some additional considerations of which this employee and the corporation should be aware before he accepted their offer. In the past we had stated to employees who became involved in businesses that if they used their state position in the business literature, it could easily be inferred that they were using their official position to seek other employment or contract for services for themselves. We emphasized that this was prohibited by HRS §84-13(1). In practical terms, while this employee's name could appear in the corporation's literature, his state position should not be indicated prominently with his listing. If the literature contained a short resume of each associate, his experience in the area could be indicated, but there could be no use of his present position title.

We also indicated to the employee that HRS §84-13(3) prohibited him from using state time, facilities, and equipment for private business purposes. We noted that this prohibition would include but would not be limited to such things as using his state telephone number in any business literature and soliciting business on state time.

The general language of HRS §84-13 also prohibited him from acquiring as private clients any businesses which he may have dealt with in his official capacity.

In addition, HRS §84-12 prohibited him from disclosing or using for his personal gain or the benefit of others any information which by law or practice was not available to the public and which he acquired in the course of his official duties.

Finally, we reminded the employee that if he decided to accept the offer from the corporation, he should disclose this fact to the Commission.

We appreciated the employee's concern for the ethical questions involved in his accepting outside employment and we commended him for requesting this opinion before accepting the offer.

Dated: Honolulu, Hawaii, October 14, 1977.

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

Note: Commissioners Dorothy K. Ching and Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.