

OPINION NO. 336

The manager of a branch within a state department was responsible for providing certain specific consultations to persons or businesses regulated by the department. He had been offered an opportunity to become employed on a part-time basis with a group which intended to provide the same type of consultations to private businesses. The employee asked the Commission if this outside employment would be prohibited by the ethics code.

We noted from his job description that he was to act as a consultant in this area for public and private agencies and to supervise the other educators of his division. He had also stated to staff that the type of consultation that the private company would provide would be the same as that provided by his division.

HRS §84-13(2) had direct application to his question. That section prohibits an employee from "accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities." It was clear from his job description that providing these consultations to the private sector was a part of his official duties; therefore, he could not accept outside compensation for conducting them regardless of from whom he received the request.

The employee had indicated to staff that he felt his job description did not reflect his present duties and that he had not actually provided a consultation in the past two years. He also indicated that his present supervisor felt that he should perform administrative duties solely rather than participate in field work. We felt, however, that even if his job description did not require him to perform the actual consultations, his position as supervisor of those who did precluded him from performing these consultations for a fee.

We noted that in a recent news article he had explained that his branch was providing these free consultations to all those who asked. We stated that if it were a policy of his division and therefore of the State to perform these services for any qualified person or organization affected by the department's regulations, it was his responsibility as branch chief to see that all such requests were handled for free. It made little difference that someone he supervised would perform the actual consultation rather than himself. The point we stressed was that he was responsible in his state position for seeing that it was done.

We noted from his letter that he had a good appreciation and understanding of a number of ethical concerns involved in a state employee's acquiring an outside business interest. We commend him for his concern for ethics as evidenced by this request.

Dated: Honolulu, Hawaii, April 14, 1978.

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 not present during the discussion and consideration of this opinion.