

## OPINION NO. 343

An individual was employed by the State to provide information about a wide variety of services available to individuals using a certain state facility. Before accepting this position he was employed by a private company which provided a type of service about which the employee might provide information. The employee wished to work for the company on a part-time basis. He asked the Commission if this work would be prohibited by the ethics code.

He stated to the staff that upon taking the position with the State he had terminated his employment with the private company and now wished to return to it on a limited part-time basis. HRS §84-14(b) then applied to his question. That section of the code states:

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.

We pointed out that an employment with a company is a financial interest in that company for purposes of the ethics code. (See HRS §84-3(6)(c).) This section of the statute would then prohibit him from acquiring part-time employment with the company if it were involved in official action he took.

We noted that official action is defined by the statute to include "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." (HRS §84-3(7)) In looking at this employee's job description it appeared to us that he did take discretionary action. The individuals using the facilities where he worked came to him for information and direction. In talking to them he made some determination of their needs and we felt that to carry out his job properly he could not help but make some suggestions to them. We pointed out that this was discretionary action. For example, he indicated that if an individual using this state facility were to come to him and ask about certain same-day services provided by private companies, the employee knew whether the private company would be able to provide that service. If it was not a service provided by it, he could direct that individual to another company or help the individual seek out any company's representative who had arrived at the facility to meet pre-scheduled clients to see if that company would have space available when it next provided that service. Helping this individual find space with such a group was discretionary action. Since the company with which he wished to be employed or any other company offering the same type of services might be involved in such action, we held that he would be prohibited by HRS §84-14(b) from being employed by any of them.

While it was not a determining factor in our decision, the head of this employee's program brought to our attention a department rule that all persons who held positions such as his might not be employed on a part-time basis with any company situated at any of the facilities where these employees were assigned or with any company within the particular industry which operated through those facilities. This policy was made known to all such employees during a week-long orientation which they attended before or shortly after assuming their duties.

We noted that it is perfectly legitimate for a department to prohibit outside employment which might cause an appearance of impropriety without first seeking a determination from this Commission.

We commended the employee's concern for wishing to maintain high ethical standards as evidenced by this request. We wished him well in his position with the State.

Dated: Honolulu, Hawaii, August 8, 1978.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Chairman  
I.B. Peterson, Vice Chairman  
Dorothy K. Ching, Commissioner  
Gary B.K.T. Lee, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered.