

OPINION NO. 366

A member of a county council had been employed by a state department at the time of his election. The department had an existing rule which required employees who were elected to office resign or be terminated from the department. Accordingly, he had been denied a request for a leave of absence without pay to serve on the council.

The council member was challenging this decision of the department; while he recognized that this Commission had limited jurisdiction over the question he was raising, he had, nevertheless, requested that we determine if any of the provisions of the ethics code would prohibit him from retaining his position in the department on a leave without pay basis.

The question he was raising was generally dealt with by the fair treatment and conflicts of interests sections of the ethics code, HRS §§84-13 and 84-14(a) and (b) respectively.

The fair treatment section provides that a state employee may not use his position to provide an unwarranted advantage to himself or others. The question here then was whether by holding the Council and the state positions at the same time he could personally advantage himself. We saw no possibility of such a result. An employee in this state department appeared to have no particular influence over the council. Nor did we believe that his state position would be particularly advantaged either by actions he might take on the council or by the prestige of the position. The council had no jurisdiction over the department and so it was difficult to find an advantage that would flow from one position to the other.

A similar analysis applied to our review of the application of the conflicts of interests section to his situation. HRS §84-14 prohibits an interest in an undertaking that may be involved or affected by action taken in a state capacity. His council position could not conflict with the performance of his state duties unless he were required to use state time, equipment or facilities to perform his council duties. If such use could be avoided, however, no conflict would result.

Accordingly, if, as a council member, he were to continue to be an active employee, then he would be required, of course, to perform his council duties on his personal time rather than on state time. If such a guideline could be followed by a council member who was employed by the State, then he or she could continue to hold his or her position while serving in this capacity without being in violation of chapter 84. It followed that a state employee who was granted leave without pay to serve on the council would not be in violation of the ethics code.

We were aware of his challenge to the department rule. However, it was not within our jurisdiction to comment on the legitimacy of that policy. Our competence was limited to indicating to him that that rule was not required by the state code of ethics. We had noted on a number of occasions that state departments and agencies might make rules that were stricter than the ethics code if they appeared to meet some goal or requirement of the department or agency that was not met by the existing ethics rules of chapter 84.

Dated: Honolulu, Hawaii, March 2, 1979.

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

Note: There was one vacancy on the Commission.