

OPINION NO. 369

We received a request from an employee who was considering certain business opportunities in which he would use expertise he had acquired in certain areas of state law. He wished to know if these private interests, if acquired, would conflict with the code of ethics.

He had requested our opinion on four different employment possibilities:

- (1) Teaching a part-time course at an institution of higher education concerning the subjects in which he was expert.
- (2) Presenting seminars to groups interested in decisions made by his employing department in the area of his expertise.
- (3) Acting as a consultant to licensed attorneys, advising them concerning procedures and techniques they might use in representing clients before the department.
- (4) Personally representing persons before the department on contested matters.

The conflicts of interest section was most relevant to the situations he had presented for review. Two provisions of this section had particular application. They provide:

§84-14(b) 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.

§84-14(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

HRS §84-14(b) prohibits an employee from acquiring financial interests in businesses that have a good probability of coming before the employee in his or her state capacity. As he was a state employee, he was, of course, subject to the restrictions of this section. In addition, his position required him to gather information and make decisions concerning matters brought before his department, matters related to his expertise. There was no doubt that he took official action as that term is defined in HRS §84-3(6). Further, all of the endeavors he had described in his letter would constitute financial interests in the persons or businesses that would be providing compensation to him for the services he would render. These various interests would constitute employment as that term is defined in HRS §84-3(4).

The critical question that remained with respect to HRS §84-14(b) was for the Commission to determine if any of these interests were likely to be involved in action he would take in a state capacity. We discussed this issue for each of the situations he had presented to us.

1. Teaching at an institution of higher education would give him a financial interest in the institution. We stated that if the institution might be involved in matters that could come before him for a decision, the conflicts section would prohibit him from providing services to the institution for compensation.

We also pointed out that since state agencies were not businesses for the purposes of the ethics code his employment by a state institution would not constitute a financial interest. HRS §84-14(b), therefore, would not prohibit him from teaching a course at such an institution.

2. As in situation 1, above, his presentation of seminars to groups of interested persons would also constitute a financial interest. Again, if there was a likelihood that a group would come before him in his state capacity in the near future, he would not be permitted to receive compensation from it. There appeared to us to be a likelihood that these groups would be involved in cases before him. Accordingly, HRS §84-14(b) would prohibit him from providing services to them for a fee.

3. In this situation he would act as a consultant to private attorneys. It seemed likely that these attorneys would, at some time, come before him on a matter requiring his decision. While, under HRS §84-14(b), he could provide instructional services to attorneys who were not involved in actual cases, i.e., law students, or other persons who were interested in these areas of law but not likely to actually practice in them, he could not provide consultation concerning these matters to attorneys who did handle such cases.

4. In this proposed outside employment he would represent clients on matters to come before the department. Under HRS §84-14(b), if the persons he would represent would be likely to come before him in his official capacity, his representation of them would constitute a conflict of interest and would, therefore, be in violation of the ethics code.

Whereas HRS §84-14(b) appeared to permit him to advise, teach, or represent persons who were exclusively involved in matters outside of his jurisdiction, HRS §84-14(d) prohibited him from engaging in this kind of activity. We noted that this subsection prohibited him from assisting or representing a person or business before the department that employed him even if the matter was not one that would come before him in his state capacity.

We thought that the rationale for this restriction was clear and reasonable. His representation and assistance of persons before his department would create an appearance of impropriety and an advantage to the persons he assisted. Such an advantage would be unwarranted and would accrue irrespective of any efforts he took to prevent it. The public would not be persuaded that favorable results in his cases did not result from his employment _ in the department. For this reason, among others, the legislature determined that employees should not be privately involved in matters that came before the agencies that employed them.

SUMMARY

Our conclusion then was that:

- (1) He would be permitted to teach part-time courses in his fields of expertise in state institutions of higher learning. He could also engage in such private employment in private institutions if he could demonstrate that these institutions and their employees were unlikely to come before him for official action.
- (2) He could provide consultative services to any person or business in his field of expertise if such persons were unlikely to be involved in action he would take in his official capacity so long as his services to such persons or businesses were not related to a specific case that was before his department.
- (3) He could not assist or represent any person or business in a matter in which he was or might become involved; nor could he assist or represent a person or business on any matter that involved official action by the department.

We commended him for discussing this matter with the staff and requesting an opinion before becoming involved in private employment.

Dated: Honolulu, Hawaii, March 8, 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.