

## OPINION NO. 381

A state employee indicated that he was interested in establishing a consulting business which would be involved in the operation and maintenance of large private sewage treatment plants. Because he worked in a related area, he asked the Commission if this would be prohibited by the ethics code.

We stated that the conflicts of interests section of the code which applies to the acquisition of outside financial interests is HRS §84-14(b). It 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.

A financial interest includes an employment interest (see HRS §84-3(6)(C)). Therefore, we indicated he could not become employed as a consultant by any business which he had reason to believe might become directly involved in official action he took in his state position.

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." His job description indicated that he carried out a wide variety of inspections, investigations and educational programs. Such work involved, but certainly was not limited to, dairies and dairy product plants, hotels, individual and condominium dwellings, hospitals, schools, water supplies, food and drink dispensing establishments, farms, beauty parlors, and slaughterhouses. We stated that the inspections and investigations conducted by him constituted official action. Therefore, he could not be hired by any business which might be involved in such action he took in his state position.

This employee had stated, and it was confirmed by his supervisor, that all employees holding the same type of position as he and working on this island were assigned to specific districts. Each employee worked outside his assigned district only if the regularly assigned employee was unavailable because he or she was on leave of some nature and the department had received a complaint in that district. Routine work was held in abeyance until the regularly assigned employee returned.

At the time of this request the employee was assigned to one particular section of the island. He indicated that the type of consulting work he wished to become engaged in would generally occur in another section of the island where the resorts were located. Those facilities were more apt to have the large private sewage waste treatment plants which needed the kind of "trouble shooter" services he wished to provide. Those businesses, because they were out of his district, were not generally involved in any official action he took. He might deal with them only if a complaint was lodged against the business when the regularly assigned employee was away.

Given these facts, we did not see that HRS §84-14(b) would prohibit him from being employed by a business which was not within his district. We did find that because of his wide range of responsibilities he did take official action that would directly affect some aspect of any potential employing business located within his district. For instance, while he was not responsible for inspecting the sewage treatment facility of a resort within his area he would be responsible for

inspecting any restaurant connected with the resort. Therefore, he could not be employed by that resort in any capacity.

The employee's supervisor indicated that he rotated his employees from one district to another approximately every two years or whenever a shift in population required it. The employee had indicated to the staff that he intended to seek individual contracts and would not be hired on a retainer basis by employers. If this were the case, we stated that once he became aware that he would be assigned to a new district, he could not accept any contract with any business in that new district if it were reasonably foreseeable that it would be involved in action he took in his state capacity. He might finish any incomplete projects but while doing so he could not take any official action affecting that business.

We noted that there might be some inclination on his part to try to avoid being assigned to those districts in which the most potential clients were to be found. We pointed out that the decision as to which district he should be assigned to was still his supervisor's and he or she should be placed under no pressure to make an assignment which was not in the best interests of the department.

We stated that if he chose to begin this business, he should be aware that HRS §84-14(a) would require that he abstain from taking any action which would directly affect any business in which he had a substantial financial interest. For example, we explained that if a complaint were lodged against a business which was out of his district and the business was at the time or would be soon employing him in his private capacity, and the employee regularly assigned to the district where the business was located was not available to inspect, he could not be assigned to follow up on the complaint. One of the other employees would have to be assigned. As noted earlier, however, he could not simply abstain if he were transferred to the district; he would be required to give up his private employment with the companies which would, because of the transfer, be involved in action he took in his state capacity.

We explained that he should also be aware that HRS §84-13(1) prohibits an employee from using his position to gain an unwarranted advantage for himself or for others. In this regard he was advised that he should not use his position with the department to gain contracts for himself. Specifically, he was prohibited from making reference to his position with the State when soliciting business for or engaging in his consultant business. Nor was he permitted to use his personal relationships with those persons in his division who would inspect his outside employers in seeking advantages for them. In addition, HRS §84-14(a) also precluded his representing his private clients for a fee in any problems they might experience with the enforcement of any laws or rules administered by his department. Finally, HRS §84-13(3) prohibited him from using any state time, equipment or facilities for a private business purpose. This included such things as using his state telephone and number in securing and maintaining his private business.

We commended him for requesting this opinion before beginning his private business. His concern for seeking these guidelines was exemplary. Because sections of this opinion involved actions by his supervisor, i.e., rotation and temporary assignments, we forwarded a copy of this opinion to him.

Dated: Honolulu, Hawaii, April 16, 1979.

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

Note: Commissioner Dorothy K. Ching was not present at the time this opinion was considered. There was one vacancy on the Commission.