

OPINION NO. 382

We received a request from the head of a state department's development program. At the time of the request, the employee was involved in the development and implementation of the state's plan for a certain large industry. He worked under the general direction of the head of the department or his deputy and was given considerable latitude to take independent action within a framework of general policy.

He had been offered an opportunity to work on a part-time basis for a company as a consultant to its insurance sales business. Because he had had experience in selling insurance before being hired by the State, the company wanted him to assist in establishing its insurance sales business with a certain group in the community. He was not to be involved in actual sales. Before accepting this offer he asked this Commission for an opinion concerning the application of the ethics code to this employment.

We stated that a number of sections of the ethics code had application to the pursuit of outside employment. HRS §84-14(b) states that an employee may not acquire a financial interest in any business which might be involved in official action to be taken by him. This employee had indicated that while this company had a number of business interests none of them presently involved the work he was doing. In past opinions we had stated that to prohibit an employee from accepting outside employment the involvement must be actual or at least reasonably foreseeable. Therefore, we stated that he could become employed by the company as it was not reasonably foreseeable that it would be involved in action he would take in the future.

We pointed out that HRS §84-13, the fair treatment section of the code, states:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others....

We explained that paragraphs of this section set out examples of the types of conduct which would be prohibited, but that these examples were not inclusive. We pointed out that paragraph (1) prohibits an employee from seeking other employment or contracts for himself by the use or attempted use of his position. We noted that, among other things, he should not refer to his position with the State in helping the company secure customers nor for that matter should he allow the company to do so.

Paragraph (3) states that using state time, equipment or other facilities for private business purposes is prohibited. We explained that this included such things as the use of his state phone, office and secretarial services. In addition, from his job description, we noted that what was considered state time for him might not be the hours which were considered normal state working hours for other employees. He was directly accountable to the department head and might indeed be required to participate in some activities which fell outside those hours. The intent of this section was to prohibit outside business involvements from disrupting the work which would normally be expected of a state employee.

Finally, paragraph (4) provides that soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person one inspects or supervises in an official capacity is an improper use of position. This required that he avoid soliciting or guiding the

company to solicit employees that he worked with as well as those persons or businesses he dealt with in his state position. We cautioned him to be particularly cautious about approaching businesses in his private capacity as his contact with the business community intensified when he began work on the actual implementation of the state plan.

Finally, we stated that if he accepted employment with this company and it became involved in the industry he dealt with in his state position, he should be aware that HRS §84-14(a) would require him to abstain from taking action affecting the industry. He was advised that should such abstention have a significant effect upon his ability to carry out his state duties, he should notify his department head and request additional advice from this Commission.

We commended him for requesting advice as to the application of the code before accepting this outside employment.

Dated: Honolulu, Hawaii, May 21, 1979.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Chairman
Paul C.T. Loo, Vice Chairman
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner
Robert H. Mitcham, Commissioner