OPINION NO. 386

A health practitioner at a neighbor island facility planned to earn additional income by offering his services on a private basis and on his own time. He asked the Commission to determine if such activity would be permissible under the ethics code.

In his state position he was responsible for providing a particular kind of therapy. He was also responsible for administering and implementing the program, though he did not provide services to persons outside of the facility.

We found that both the conflicts of interests and fair treatment sections of the ethics code had application to his question.

We noted that HRS §84-14(b) provides that an employee may not acquire financial interests in a business or undertaking that may be involved in action he or she takes in a state capacity. While he was a state employee and his interest in his proposed business was substantial, the information he had provided to us indicated that his business would not be involved in action he would take in a state capacity. Further, our understanding was that his private patients were unlikely to come under his care in his state capacity.

The fair treatment section, HRS §84-13, provides, generally, that an employee may not use state position to grant him or herself unwarranted advantages. In addition, the section specifically prohibits (1) the use of state time, equipment and facilities for private business purposes and (2) selling to or otherwise engaging in a substantial financial transaction with a person one supervises in a state capacity.

The meaning of this section for this employee's private business plans was that he would be required to keep his private business entirely separate from his state position. He might not conduct his business during state hours nor might he use facilities or equipment to further his business interests. For example, we advised him that he should not advertise his services on state facilities nor use the state phone to schedule or discuss his private clients. Nor was he to identify himself as the practitioner at a state facility. Further, he could not arrange private services with persons being served at the state facility, nor could he solicit the facility's patients, employees, or staff members to seek his services.

We advised him that if he could adhere to these guidelines he could engage in the private practice of his profession. We believed that his supervisor should be made aware of our decision in this matter and forwarded a copy of this opinion to him.

We advised him that, should a circumstance arise that would call for him to take action affecting either his business or his clients, he should abstain from taking such action.

We commended him for being aware of the ethical implications of this matter and for seeking our opinion at an early time.

Dated: Honolulu, Hawaii, June 25, 1979.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Chairman
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered. Vice Chairman Paul C.T. Loo was not present during the discussion and consideration of this opinion.