

OPINION NO. 387

An employee who headed a specific division of a state agency indicated to the Commission that he was in the process of negotiating with a foreign company for a position as a broker and consultant. He stated that he would provide technical assistance in developing sugar cane and other by-products as animal feeds to be used in the company's foreign operations. He asked this Commission if he might accept this employment.

He explained to the staff that the company wished to assess what cane by-products would be available to the company, determine the needs of its operation and then assist in developing the technology here to convert the by-products into a consumable product which could then be shipped abroad to its operations. To do this, he would have to deal with the local cane companies both for the by-product and for the development of a system to convert it to feed.

We stated that the section of the ethics code which applied to the acquisition of financial interests was HRS §84-14(b). That section 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.

We explained that one of the definitions of financial interest is "[a]n employment, or prospective employment for which negotiations have begun" (HRS §84-3(6)(C)). And, official action is defined as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority" (HRS §84-3(7)). Therefore, we pointed out that he might not become employed by or even enter into employment negotiations with this company if it were at the time of this request, or was likely in the future to be, involved in official action he would take in his position with the State.

The employee indicated to the staff that the company was not involved in any action he took as a state employee. We stated that if this were the case he had not violated the statute by entering into negotiations with the company nor would he be prohibited from becoming employed by it.

There were, however, other sections of the code which had some application to his question. We pointed out that HRS §84-12 would prohibit him from disclosing or using any information "which by law or practice is not available to the public" and which he "acquires in the course of his official duties." An example of this would be his using research data gathered by him or members of his department which was not available to the public.

HRS §84-13 prohibited him, in general, from using his official position to secure or grant unwarranted privileges or treatment for himself or others. More specifically, we pointed out that we had ruled that paragraph (1) of that section prohibits the use of an employee's position title when conducting outside business. Accordingly, he was advised that he should be careful not to identify his position with the State when dealing with persons or companies on behalf of this company nor should he allow the company to do so.

Paragraph (2) prohibited him from receiving consideration from the company for work which he was required to do in his state capacity. He might not, for example, be paid by the company for

the development of a type of technology if he was also receiving a grant from any arm of the state government to do the same thing for the State.

Paragraph (3) prohibited him from using state time, equipment and facilities for his private business purposes. This prohibition included such things as his state office, telephone, stationery, and secretarial assistance. Finally, paragraph (4) prohibited him from soliciting, selling or otherwise engaging in a substantial financial transaction with a person he supervised or did business with in his official capacity. We pointed out that this meant he might not, on behalf of this company, become involved in substantial financial transactions with any businesses that were involved in official action he took in his state position.

We suggested that should a situation arise where he was unsure of the application of the code or a holding in this opinion, he should contact our staff with the particular facts involved.

We commended him for requesting this opinion before pursuing this employment further.

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.