

## OPINION NO. 391

We received a request for an advisory opinion from an employee who was the only state psychiatric social worker in the community his agency served. He had been asked to provide social work consultant services to a private, health care facility, for a fee. To keep its accreditation the facility was required to provide social work services. However, it either could not or would not, because of the expense, hire a full-time social worker. Instead, the facility wished to have a staff member provide the required services and have a social worker available to him or her as a consultant. The facility had, therefore, asked the state employee to provide consultant services to the social worker designee. While he was not the only trained social worker in the community, there were very few other persons with social work skills. The proposed contract called for him to work a maximum of eight hours a month. He had indicated that some of the work might have to be performed during his normal state hours.

In addition, the employee was occasionally required, in his state capacity, to assist the private facility in transferring patients to a facility on Oahu for psychiatric treatment. Same-day transportation to Oahu could not always be arranged, thus necessitating that patients be kept at the facility overnight.

Three issues were raised by this employee's request that he be permitted to accept this consultant contract: first, the propriety of his accepting a contract with the facility; second, his use of state time; and, third, the range of services he might provide as a consultant.

We indicated that the first issue was covered by the provisions of HRS §84-14(b). That section prohibits an employee from acquiring a financial interest in any business which may be directly involved in official action he takes. In discussing this issue, we noted that an employment is a financial interest. Further, we stated that 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)). The only official action the employee took that in any way involved the private facility concerned the patients who were being held at the facility for transfer to Oahu; in our view, however, this action did not directly involve or affect the facility. Therefore, we concluded that he would not be prohibited from accepting employment with the facility as it would not be affected by action he took in his state capacity.

We then considered his use of state time in carrying out his proposed interest. HRS §84-13(3) prohibits an employee from using state time, equipment, and facilities for a private business purpose. We indicated to the employee that if he became an employee of the private facility, the pursuit of his duties would be his private business purpose. Therefore, he could not conduct his consulting sessions during the time the State was requiring him to perform state duties. We pointed out that this did not mean that he could never provide consulting services between the hours of 7:45 a.m. to 4:30 p.m. on weekdays. He could use vacation, lunch, or compensatory time if he needed to meet with the staff of the facility during those hours. In addition, however, we cautioned him that the use of this time must not prevent him from carrying out his state duties, and that his supervisor must approve the use of this time.

Finally, HRS §84-13(2) states that an employee is prohibited from "[a]ccepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law." We noted that this section would be applicable if the facility requested him to provide direct services to a patient in the facility. We stated that if the

facility requested him to provide services to a patient that would be of the kind he provided in his state position, he could not accept compensation from the facility for providing these services.

The employee provided us with a sample contract; the text indicated that the facility wished to contract for consultant services only and not for direct patient services. While his state position description was very broad, we concluded that he was not required to consult with the staffs of private institutions on a regular basis. While he did act as a mental health resource person to the community and could be called upon, occasionally, to give general guidance, this contract went far beyond those duties. We reminded him that he should be careful to avoid providing direct psychiatric social work services to the facility's patients.

We stated again that the code did not prohibit this employee from entering into this contract; it did place restrictions upon the time he could spend completing the contract and the services he might provide. We suggested that before accepting the employment he make the facility fully aware of these restrictions. We pointed out to him that, by becoming employed by the facility, he should be aware that he might be criticized by persons in the community because of this employment arrangement with the private facility.

We commended the employee for seeking this opinion from the Commission.

Dated: Honolulu, Hawaii, September 17, 1979.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Vice Chairman  
Dorothy K. Ching, Commissioner  
Edith K. Kleinjans, Commissioner

Note: Chairman Gary B.K.T. Lee was not present during the consideration of this opinion. Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.