

OPINION NO. 405

We received a request for an advisory opinion from an employee who was also the licensed member for a branch office of a private business. We had already issued an advisory opinion with respect to his present state position. He asked that we advise him as to whether a promotion in his state employment would result in a conflict of interest with his private employment.

The applicable provision of the conflicts-of-interests section of the ethics code is HRS §84-14(a) which states that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest" "Official action" is defined in HRS §84-3(7) to mean "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." As an inspector, he clearly would exercise many of these functions, and we therefore concluded that he would be taking official action in his state role. Finally, HRS §84-3(6) defines "financial interest" as an employment. His employment by a private company constituted a substantial financial interest.

If promoted, the employee would, as a part of his duties, inspect public places. Another branch of his department inspected places frequented by the public. If there was a problem in these areas, the matter would then be referred to the employee's branch for follow-up. In these instances, it was the practice in the branch to recommend that private assistance be sought to eliminate the problem. In making such recommendations, he would be in a position to take official action directly affecting his interest in his private employment, and a conflict of interest would arise. Because he lived in a small island community, it was unlikely that those whom he would advise would not be aware of his private interests. Whether he intended to generate business for himself or not, in such circumstances, recommendations to get private assistance would have some effect upon his private employment.

However, he was then restricting his activity in the private business to one specific area. If he continued to limit his business to that area, the Commission found that no conflict would exist between his private employment and his state position. If and when he was promoted, the Commission asked that he inform us as to the status of his private employment in that particular area.

We appreciated his concern for the ethics questions which could arise in his future employment with the State, and commended him for seeking the advice of the Commission at an early time.

Dated: Honolulu, Hawaii, February 26, 1980.

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

Note: Vice Chairman Paul C.T. Loo and Commissioner Robert N. Mitcham were absent from the meeting at which this opinion was considered.