

## OPINION NO. 409

We received a request from an employee who had submitted a request for a year's sabbatical leave. As part of his proposal, he planned to produce a book identifying certain services available to libraries and small businesses in Hawaii. He wished to know if the State Ethics Code placed any restraints on the ownership and sale of any work produced by a state employee during a sabbatical.

The section of the ethics code most relevant to his question was HRS §84-13(2) of the fair treatment section which states:

No ... 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; including but not limited to the following:

...

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

This section prohibits an employee from receiving any additional compensation or benefits for the performance of his or her state duties. The question in this case was whether the production of a book, such as he proposed, fell within the parameters of his state employment.

He indicated that the book, as then conceived, was not to be a bibliography, but a descriptive directory of services approximately fifty pages in length. It was expected that one or two pages would be devoted to each of the systems described. While the methodology which he would follow had not been set, the major part of his work was to be outside source research, which might have consisted of the formulation of a questionnaire to be sent to identified services and a follow-up interview. Further, he stated that he had not thought to include a bibliography in his book, but if a bibliography were included, the listing would probably comprise less than ten titles.

The Commission's staff had discussed this matter with his supervisor and the head of his division on separate occasions, and had reviewed various division publications. We concluded that the production of his book would not fall within his present state duties.

At the time, the division had yet to go into the community to compile resources, and instead, generally confined its work to bibliographies of its resources relating to various subject areas. Long-term planning for the system called for the division to eventually become a resource center for the community. If and when that occurred, the project he proposed could then be construed to be a part of his state employment. Alternatively, if the division made this project one of its special projects, the research for this book would have been a part of his duties. Since this course of action was unlikely to be decided upon in the near future, we

ruled that he could pursue this project on his sabbatical as it could not reasonably be considered to be a part of his state duties.

Finally, he had offered total ownership of his work product to the division, without charge, provided he received credit for the work and the division agreed to publish the book within one to two months after its completion. It was this Commission's position that the terms of a civil service sabbatical leave, including ownership of work produced during that period, were matters which should be settled between the employer and the employee. We did note, however, that the provisions of the ethics code did not require that materials produced by an employee on sabbatical leave become the property of the State. Therefore, if the division decided that it could not accept his offer and publish the book within the stated time period, he would then be free to copyright, sell, and distribute the book as he wished. Further, it was our opinion that the ethics code did not require him to offer ownership of his work product to the division.

We commended him for bringing this matter to our attention early in the process.

Dated: Honolulu, Hawaii, May 9, 1980.

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

Note: Commissioner Edith K. Kleinjans was excused from the meeting at which this opinion was considered.