

OPINION NO. 412

The public participation coordinator for a state division wished to accept a part-time position with a private consulting firm. Because the division reviewed documents which could have been submitted by the private firm for approval by the division, he asked this Commission if it was permissible within the provisions of the ethics code for him to accept the employment.

In his position, the employee planned and coordinated his division's public awareness programs which included distribution of newsletters and flyers, presentation of slide shows and technology transfer seminars, organization of workshops, public information meetings and public hearings. These programs not only disseminated information, but also provided a basis for input from members of the public, public officials and private organizations involved in the area, since federal guidelines required public participation. The employee was more than a public information officer since he served as a communication liaison between his department and the various groups. This function, however, was limited to coordinating and facilitating any discussions between the groups and the State and did not extend to any decision-making function with respect to department policies or any rules and regulations the department may have promulgated. In the past, while he had worked on rules, his participation had been limited to stylistic changes to increase clarity and had not included input as to the substance of the rules.

A portion of the conflicts-of-interests section, HRS §84-14(b), states that an employee may not acquire a financial interest, which includes an employment, in any business or other undertaking which may be directly involved in official action to be taken by him. Official action as defined in HRS §84-3(7) means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

While the private firm might have been expected to require action on the part of the division, we judged that the employee would not become involved in such action since he did not participate in the review of the type of document the firm would submit. Therefore, we advised the employee that he could become employed by the private firm since it was not involved in action he took in his state position, nor was it reasonably foreseeable that it would be so involved in the future. We did advise the employee, however, that if the status of his position at the division changed or events within the department occurred such that he would be called upon to take official action with respect to the private firm, he should notify this Commission promptly.

In addition, we commented upon the application of the fair treatment section of the code, HRS §84-13, which prohibits an employee from using or attempting to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for himself or others. We noted that this section also requires state employees to refrain from conducting private business by the use of state time, equipment or other facilities.

We commended him for his sensitivity to the ethics code considerations in this matter.

Dated: Honolulu, Hawaii, July 21, 1980.

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

Note: Commissioner Robert N. Mitcham was absent from the meeting at which this opinion was considered.