

OPINION NO. 418

A member of the legislature had advised the Commission that he had been contacted by a company which had offered him a position as an account executive responsible for the sale of goods and services. He wished to know (1) if the State Ethics Code would prohibit him from accepting this offer of employment and (2) if the code did permit him to accept the position, whether any restrictions would be placed upon him as he carried out the duties specified by his new employer.

He had indicated that his prospective job would require that he contact potential clients who might be interested in the company's products and services. He expected that he would be contacting individuals in private enterprises as well as in public agencies. His prospective clients were to include, in addition to private individuals and companies, federal, state, and county agencies.

As we had previously advised him, the State Ethics Code had only limited application to legislators. This limited application was based upon the rationale that, because legislators served in a part-time capacity, they might need to earn additional income in the private sector. It was argued that, because of the broad range of issues considered by the legislature, it would be very difficult to impose the same conflicts-of-interests restrictions upon legislators that applied to full-time state employees and officials. Accordingly, the conflicts-of-interests section did not restrict a state legislator's attempts to acquire interests in the private sector so long as the legislator did not make unwarranted use of his or her position in acquiring such interests. In addition, once a legislator had acquired such a position or interest, the ethics code did not prohibit the legislator from taking action that would affect his or her new employer or business. Finally, the fair treatment section of the ethics code, while it prohibited the unwarranted use of position to assist oneself or others, did not restrict a legislator from engaging in activities that were purely of a legislative character. For example, a legislator was permitted to introduce bills or serve on committees that might be concerned with his or her business interest.

On the other hand, the legislator did have to ensure that his or her legislative position was kept entirely separate from private activities. And, of course, the legislator was required to avoid creating an appearance of bringing pressure upon state employees he or she was dealing with or hoped to deal with in a private capacity.

Accordingly, we concluded that, under the ethics provisions as described above, the legislator could accept the position of employment that had been offered to him. Our decision on this point was based upon the fact that this corporation had solicited his services and that he had not used his state position to acquire this new employment.

Further, it did not appear that the statute would prohibit him from approaching federal, state, or county employees or officials in his new position. However, it was clear that a certain degree of pressure might be felt by those county and state officials he would solicit in his private capacity. Certainly the implication could be created that favorable legislative

treatment could be dependent upon such agencies doing business with him. We believed that certain preventive steps could be taken to neutralize his influence as a legislator.

First of all, we advised him that his contacts with state agencies in his private capacity should be with appropriate personnel. By this we meant that when he approached a state or county agency, he should contact the individuals within those agencies who had responsibility for purchasing the goods and services sold by his private employer. To approach a department head in such a situation would create the impression that he was using his state position to advantage his private employment and his private employer.

Secondly, we believed that it was worthwhile for a legislator or other state official who was conducting private business with a state employee to make clear to that employee that he was discussing the matter in purely a private capacity and that there was no intent to put pressure upon the individual to do business with the legislator. That such a pressure might arise was, of course, something that we had to recognize as a reality. We observed that it would be naive to think that it could be eliminated or that private companies were not aware of it.

As legislators in increasing numbers had been accepting positions in the private sector to supplement their state incomes, we noted that citizens had expressed increasing concern about the possible influence that a legislator's position might have upon his or her private business interests. This concern was heightened, of course, when the legislator, in his or her private capacity, solicited business from the state employees and officials he or she dealt with in a legislative capacity. And we stated that it might be necessary to address this problem in coming sessions of the legislature. At the present time, however, the statute clearly permitted him to engage in the activities he had described in his letter, and he was so advised.

We commended him for bringing this matter to our attention at an early time.

Dated: Honolulu, Hawaii, October 2, 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 excused from the meeting at which this opinion was considered.