

OPINION NO. 421

The director of a state department requested an advisory opinion concerning the status of a half-time employee.

The department employee had been an assistant at state facility A since 1972. In 1975, he became the administrator of a private facility, a residential rehabilitation program. Individuals placed at the private facility were state facility B residents whose applications for a transfer to the private facility had been approved by both the private facility and the department.

The department contracted with the private facility on an annual basis for the services which the private facility provided to state facility residents. Because the employee was employed by both the department and the private facility, the department head wished to know if a conflict of interest existed which might affect the contract between the department and the private facility.

The applicable section of the ethics code was HRS §84-14(b) which prohibits an employee from acquiring a financial interest in a business which may be involved in official action to be taken by him. The employee's employment with the private facility was a financial interest pursuant to HRS §84-3(6)(C).

In his state position, the employee was the "worker-in-charge" during the evening at state facility A, an in-community residential rehabilitation program. His primary responsibility was to monitor and supervise residents during the staff's off-hours. He also provided support services to the facility's regular daytime staff by assisting, when necessary, in the implementation of the residents' programs. He was, however, generally limited to making decisions with respect to the supervision of residents while he was on duty, and, therefore, did not participate in the design of their treatment programs, nor was he involved in decisions relating to their placement. In addition, we noted that the employee did not have any official duties at state facility A which would have affected the contract between the department and the private facility.

The department contracted with the private facility for the services it provided to residents through its programs. Although he was the administrator of the private facility, the employee's duties did not include participation in the contract negotiations between the department and the private facility; the facility was represented by its executive director. In his capacity as the private facility's administrator, the employee provided basic information and figures concerning the operations at the facility to the executive director; this information later served as a basis for the contract negotiations. He did not, however, have any input with respect to the contract provisions or the negotiations.

Since the employee exercised no discretion in his state position and did not participate in the negotiation of the contract between the department and the private facility, we found that a conflict did not exist, and therefore, the department could proceed with negotiations for the 1980-81 contract for continued services. We noted, however, that this conclusion

was based upon the employee's present circumstances. In our view, because of the nature of the relationship between the department and the private facility, the potential for a conflict of interest to arise was a real one. Nonetheless, we recognized that a conflict was beyond the present scope of the employee's job. He was advised, however, to consult with this Commission if, in the future, the status of his position or assignment in the department changed or events within the department occurred such that he might take official action with respect to the private facility.

We commended the department for its sensitivity to the ethics code considerations in this matter.

Dated: Honolulu, Hawaii, October 22, 1980.

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

Note: Chairman Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.