

OPINION NO. 423

The director of a state agency asked the Commission to determine if it would be appropriate for members of his staff to receive compensation for coordinating and serving as instructors in a course to be offered by the College of Continuing Education and Community Service at the University of Hawaii.

It was our understanding that the College of Continuing Education had asked an information specialist in the agency to prepare a course which would consist of several three-hour sessions. It was our further understanding that the employee had discussed this idea with staff members and had prepared a course outline. These staff members were also asked to participate as instructors.

We learned that the college generally paid a fee based upon the number of students in attendance or, less often, paid instructors a flat rate. The total amount of compensation was expected to be approximately \$750 to \$1,000 and was to be shared among the several proposed instructors.

The issue raised here had come before the Commission on a number of occasions. We believed that the precedents that applied required that our decision be that these employees could not be paid for conducting the course.

The Commission had stated, beginning with Advisory Opinion No. 85, that for an employee to accept additional compensation for performing duties required by his state employment would be a use of official position to secure an unwarranted advantage. The underlying principle was that an employee may not be twice compensated for performing a service he has been hired to perform for the State. We noted that the ethics code specifically prohibits such a practice in HRS §84-13(2).

In Opinion No. 85, the employees were offered honorariums for giving educational talks. An examination of their position descriptions indicated that this activity, even when undertaken in other than usual state hours, was expected of them. The acceptance of an honorarium provided them with a double compensation.

In more complicated cases, the Commission had had to determine if the activity for which the employee sought compensation was, in actuality, a task the employee could be called upon to perform in his state capacity or, instead, represented an undertaking that was quite separate from his job responsibilities.

In Opinion No. 293, for example, an administrator had asked the Commission to determine if his staff members could be compensated for teaching courses concerning the laws and regulations administered by his division. We stated there that the employees were expected to provide short summaries of the law, make speeches to interested groups, and consult with members of the public as well as private employers. When we examined the material to be taught in the courses, we found that it was far more complex than that

prepared by the employees in their state capacities. Accordingly, these employees were permitted to accept compensation for teaching the courses they had described to us.

In another case, Opinion No. 398, we had received a request for an opinion from the manager of a state project who had participated in the filming of a commercial at the facility he supervised. We learned that other employees at the facility had also participated in the filming of this commercial and had been offered compensation. We noted that the employees had shown great dedication to the project. Their efforts had required considerable time, time that extended well beyond a normal work week. Further, the employees' participation in the filming had been approved by the responsible state authority because of its view that the State's interests would be advanced by the commercial. Accordingly, it was our conclusion that the tasks these employees had performed in assisting the private company were a part of their overall responsibility to the project and that they could not accept payment from the company.

Our review of the facts in this matter indicated that it was very close to the situation decided in Opinion No. 398. The promotion of the subject matter of the course was a responsibility of the department. The planning and the actual teaching of a course in this area helped in achieving this goal. We noted that the employee had consulted with several of the staff members in the agency and had apparently also contacted other state employees, a number of whom had been listed as instructors in the course description that had been provided to us.

It also appeared that much of the work involved in preparing the course materials and in holding discussions with the various people who had contributed their ideas had been accomplished on state time and with the use of state materials and facilities. The overall impression we had of this project was that it flowed from the employees' work and did not represent an independent use of their expertise on a project unrelated to the division.

While neither the department nor the division had anticipated that employees would prepare course materials and actually teach a course, neither was it an extraordinary function. Nor, unlike Opinion No. 293, did it call for the preparation of an extensive body of new material. Although we recognized the dedication of these employees and understood their desire to teach the course, the ethics code prohibited the receipt of compensation.

The system for determining the compensation to be paid further affirmed our decision. The usual procedure was to pay the instructors on the basis of the number of persons who attended the course. Because of this relationship, employees in the division would have been restricted from promoting the course in any way, a restriction opposed to the division goal of making information about the subject matter as accessible to the public as possible. While we understood that a flat rate could be paid to the instructors if the incentive system was objectionable, the fact that the incentive system would present a problem was an indication that the course was closely tied to the functions and goals of the agency. Accordingly, while we recognized the dedication of the employees, we could not approve the receipt of compensation for the preparation and teaching of the course.

We acknowledged and commended the sensitivity of the department to the ethics issues discussed here and expressed appreciation for the cooperation the director and his staff had provided. We also emphasized the point that we respected and acknowledged the right of employees to use their expertise to earn additional funds. In discussing the facts of this case and in reaching our conclusion, we intended no criticism of these employees. Rather, we acknowledged their dedication and professionalism.

Dated: Honolulu, Hawaii, October 27, 1980.

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