

## OPINION NO. 427

We received a request for an advisory opinion from the field manager for a project concerned with alternate energy resources. His expertise involved the collection and analysis of data. He had learned that there might be a demand by private businesses for consultants who were expert at obtaining measurements and acquiring data. He wished to know if he could engage in this business on a part-time basis while retaining his state position.

In a meeting he held with the Commission staff he indicated that the state project was primarily concerned with ventures that broke new ground in the area of alternative energy research. In the course of doing this work the project did use private facilities and developed data and apparatus that could be helpful to a specific private business. However, this assistance was incidental to the primary object of the project.

He had stated, and his department had affirmed, that the project would not respond to a private business's request to study the conditions at a particular site so that it might either construct an energy-producing facility or use data collected for any other private business purpose.

In reaching a decision on the question, the Commission judged that two sections of the ethics code were pertinent. The most directly relevant was the conflicts-of-interests provision contained in HRS §84-14(b) which reads as follows:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

We pointed out to the employee that his interest in any private business would constitute a financial interest for the purposes of the code. However, because of the distinct approach taken by his employing agency, it did not appear that either his business or the clients of his business would be directly involved in work he would be performing in his state capacity. Accordingly, it appeared to the Commission that it would be appropriate for him to establish the consulting business he had described to us.

However, the fair treatment section of the ethics code was also applicable to this question. That section provided that a state employee may not make use of his state position to grant himself an unwarranted advantage. Specific examples of an unwarranted advantage include the use of state time, equipment, or facilities for carrying on a private business and the use of position to gain a private contract. In addition, a state employee may not become involved in a substantial financial transaction with a subordinate or with a person or business subject to the employee's supervision. The fair treatment section established certain guidelines which he would be required to adhere to as he carried on his private business.

First, he might not generally engage in a business transaction with a company he had dealt with or expected to deal with in a state capacity. However, if the passage of time or other factors indicated that his private approach to such a company would not give him an

unwarranted advantage, he could do business with such a company without violating the statute. Our advice to him was that he contact the Commission before doing business with a company he had served in his state capacity.

Secondly, we stated that he should not involve any individual in his private business whom he had supervised in his state capacity. In addition, the same restriction would apply to any state employee who had supervisory responsibility over his position. Accordingly, he could not engage in a business transaction with his superiors. This included employing them in his consultant business or forming a partnership or other business relationship with them.

Thirdly, we advised him that his private business had to be kept entirely separate from his state responsibilities, and that he must avoid using state time, equipment, or facilities for carrying on his private business. This included the use of the state phone, secretarial staff, or his office. While we recognized that emergency situations might sometimes arise which would call for an incidental use of state equipment, such instances should be rare if the guidelines were being adhered to.

Fourth, while the information that was developed in the project was not confidential and was freely available to the public, he, nevertheless, had an access to that information which might be unique. While it did not appear in the circumstances he had described that he would gain any unfair advantage because of that access, we advised him that he should be aware of and sensitive to this possible issue and should bring any such question to the Commission for resolution if it should arise while he was a state employee.

We commended him for being sensitive to the ethics issues involved in establishing his business.

Dated: Honolulu, Hawaii, November 3, 1980.

STATE ETHICS COMMISSION  
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