OPINION NO. 431

We received a request from an employee whose responsibilities concerned the development of new industries in the state and new markets for local products generally. The employee indicated that he might have an opportunity to become a partner in two companies that would do business in Hawaii. Because the other partners in these businesses may have included persons who were doing business with the State of Hawaii, the employee wished to know if the ethics code would restrict him from establishing those relationships.

The other individuals were partners in a company which had two contracts with the department. Those contracts were to terminate in the next month. The employee was not involved in choosing the contractors, but he had become familiar with the individuals through their performance on the contract.

The company was a marketing consultant company with its principal office in a mainland city. One contract called for the company to formulate a strategic market development plan for a particular industry. The plan advised the firms in the industry as to what markets they should develop, the kind of position they should occupy in the industry, and similar marketing questions. At the same time, the company had also been contracted to formulate a development plan for another industry. The primary goal of this contract was for the consultant company to map out what the State should do in this area.

The employee's business involvement with the representatives of the company, if it were accomplished, would have involved two different operations. In one, the employee would have been a one-third partner in an organization that would provide management services to private industry. The company would have provided a varied range of services including marketing advice and business support. The second organization would have been involved in another industry. This would be a larger company and would consist of seven or eight employees of a state higher education institution together with the same two representatives of the company.

Neither of these proposed companies would have been at all involved in the work the employee did in his state capacity. Accordingly, the Commission found that if these companies were formed, it did not appear that the employee's participation in them would conflict with the ethics code.

However, there were sections of the ethics code, particularly HRS §84-13 and §84-14(b), which would appear to restrict, at least for a time, the employee's becoming involved with the company in any business venture. HRS §84-14(b), a portion of the conflicts section, provided 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.

The employee's partnership interest in the two businesses would have constituted financial interests regardless of the amount of financial investment he was required to make in either of them. However, while he was a state employee and therefore subject to all provisions of the ethics code, it nevertheless appeared to us that the conflicts section did not strictly apply
to these ventures. This conclusion was based upon the fact that the employee was not, in his state capacity, involved with the business he contemplated forming with the company. Since the employee was not contemplating acquiring an interest in the company, HRS §84-14(b) did not have direct application.

HRS §84-13(4) was more directly relevant. That section provided that a state employee may not solicit, sell, or otherwise engage in a substantial financial transaction with a subordinate or person or business whom he inspects or supervises in his official capacity. In his state position, the employee was responsible for monitoring the company's contracts with the department. He saw to it that the company met its contractual responsibilities and obligations and that the general requirements of the contract were met. Because of this monitoring responsibility, it appeared that HRS §84-13(4) would prohibit the employee from engaging in a business relationship, at the time of the request, with principals in the company. The business arrangements the employee contemplated constituted, because they concerned an ownership interest, substantial financial transactions with all of the partners. While the Commission recognized that the second contemplated company would involve several more people, it was, nevertheless, a rather small group of people. The employee's relationship with the company's principals would continue to constitute a substantial financial relationship and transaction.

We understood that the obligations of both contracts were to be completed shortly. HRS §84-13(4) only applied while the state employee occupied the supervisory role we had described above. Once the contracts were terminated, the Commission determined that the employee could begin concrete discussions and negotiations with the company's principals. However, while the employee did have responsibility for monitoring the two contracts, he was prohibited from engaging in a private transaction with those two people.

The employee had also advised us that the company was interested in establishing an office in Hawaii and had discussed possible employment with another member of the employee's staff. The staff member also had responsibilities for monitoring the company's contracts with the department. Accordingly, HRS §84-13(4) also operated to prohibit him from discussing or agreeing to an employment relationship with the company during the time he exercised official state responsibilities with respect to that company. In addition, HRS §84-14(b), discussed above, also applied to this employee because he was contemplating the acquisition of a financial interest in a company he was dealing with in a state capacity. Accordingly, because of the application of both of these sections of the ethics code, the Commission determined that the staff member should cease discussions on possible employment with the company or its representatives.

We appreciated the employee's bringing this matter to our attention for resolution. We advised the employee to contact the Commission if he required additional assistance, particularly if he should proceed to establish a business relationship with the representatives of the company.

Dated: Honolulu, Hawaii, December 20, 1980.

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