

**OPINION NO. 432**

We received a request from an employee of a state educational institution. He raised a question concerning a contemplated contract for the provision of certain services at the institution.

Over the past three years, the successful bidder for the contract, a private corporation, had lost \$30,000 a year in its operations at the institution. Because the contract with the corporation had expired, the employee put the contract out to bid. The specifications were essentially the same as those bid on by the corporation three years ago. No qualified bidders responded to the specifications. However, a company did respond with a counterproposal. This company proposed that the contract specifications be modified such that the company would be able to use certain of the facilities at the institution to produce goods for its private business purposes. The company operated a number of private operations for which it hoped to produce goods using the institution's facility. The company had indicated that the primary use of the facilities would be during periods when the institution was not in session and the facility was not being fully utilized.

It was the employee's view that while the company's proposal was somewhat unorthodox, it was a reasonable response to the difficulties presented by the situation at the institution.

Our review of the circumstances described by the employee and of the company's proposal persuaded us that the awarding of a contract to the company in accordance with its proposal would not have been an unwarranted use of state facilities. While it is true that, pursuant to HRS §84-13(3), state facilities may not generally be used for private purposes, the circumstances were unique. The negotiations with the company had been conducted in an open manner, and the alternative approach that the company had presented to the institution appeared to be a realistic response to a difficult situation. Accordingly, it was the opinion of the Commission that the institution could proceed to enter into the contract with the company without fear that the Commission would charge the state employees involved with violations of the statute.

This opinion was based upon and limited to the facts presented to us. The employee was advised to keep the Commission informed if those facts changed in the future. The Commission commended the employee for being sensitive to the ethics questions raised by the circumstances of the case.

Dated: Honolulu, Hawaii, January 6, 1981.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairman  
Paul C.T. Loo, Vice Chairman  
Gary B.K.T. Lee, Commissioner

Note: Commissioners Dorothy K. Ching and Robert N. Mitcham were excused from the meeting at which this opinion was considered.