

## OPINION NO. 439

A state employee requested an advisory opinion on whether he could have been compensated to teach a course using his own time on a subject which he had taught previously in a state program. He had served as a staff specialist for a state department but later had been promoted to head a special area in his department. Shortly before leaving his staff specialist position, he had been appointed as a part-time instructor for a state program. As the state program instructor, he had taught one of the subjects that he had been responsible for while working as a staff specialist for the state department. Since his term had ended, he no longer served as an instructor of the state program. The responsibilities of his new position had been limited to the special area and did not involve the subject that he previously had taught in the state program.

As an instructor for the state program, he had helped to conduct two courses where he had used approximately two hours to arrange the physical setting and five days of state time to teach each course. The course materials had been prepared by a mainland-based company, and a minimal amount of course preparation had been needed. Any preparation for the course had been done in the evenings by the employee. The two courses mentioned above had been sponsored, in part, by the state program and partially by private entities. State employees had been encouraged to attend each course. The brochure which advertised the two courses identified the employee as the head of the special area in his department.

After the end of his term as an instructor with the state program, the employee began teaching the course privately on non-state time. These later sessions had not been sponsored by the state program and no solicitations to enroll state employees had been made. The employee had been listed in the course brochure as someone who was knowledgeable in the course area, but there had been no reference to his current state position. He asked the Commission to decide whether he would be in compliance with the State Ethics Code if he were to receive compensation to teach this course privately.

The primary question was whether he would have received an unwarranted advantage since he had taught the course on state time and now wished to teach the course for private compensation. HRS §84-13 states in part that the following actions constituted an unwarranted advantage:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

- (3) Using state time, equipment or other facilities for private business purposes.

We found that he had not been using his office or position to contract for services because he would not be teaching the private course in his present state capacity. Since his present state position did not involve the subject area taught, he would not have been accepting compensation for the performance of his state duties. He did not use state time, equipment, or other facilities to develop or prepare the course materials. Accordingly, we determined that he could be privately compensated for teaching the course as long as he continued to prepare and teach this course on non-state time. In addition, we found that HRS §84-15, which dealt with contracts, had been inapplicable to his case because there had been no contract with the State to teach the current course.

We realized that bringing the facts of his situation to the attention of the Commission may have been difficult for him because of the impact our actions might have had on his interest. It had been the Commission's experience, however, that this kind of attention to matters of ethics had contributed to an improved ethical climate in state government, and we commended him for taking this step.

Dated: Honolulu, Hawaii, July, 15, 1981.

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

Note: Commissioner Gary B.K.T. Lee was not present during the discussion and consideration of this opinion.