

## OPINION NO. 440

We received a request for an advisory opinion from a state employee whose responsibilities included investigation work for a particular state commission. He had considered becoming active in an industry regulated by the commission and wished to know whether it was permissible under the State Ethics Code for him to do so. The applicable section of the code was HRS §84-14(b), which precludes a state employee from acquiring 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. A financial interest as defined in HRS §84-3(6) included, but was not limited to, an ownership interest, an employment interest, or a directorship or officership in a business.

First of all, the employee wished to know whether he could activate a certain license while continuing as a department employee. The employee had stated that while some employees in the department were assigned to specific areas, he was not so assigned and worked in all areas regulated by the department. Generally, all employees were assigned cases from two high volume areas. One of these areas included the industry with which the employee wished to associate. The employee did, therefore, take action which directly affected his particular industry and, as a consequence, the Commission determined that he could not activate his license while he continued in his position with the department. The employee had also asked if he could acquire a business interest in the industry as an independent contractor, a sole proprietor, a partner in a partnership, or an officer in a corporation. These were all financial interests for purposes of the ethics code, and thus, because the employee took action which directly affected the industry, he was also prohibited from acquiring such interests.

In addition, the employee had considered transferring to other positions in the department and wished to know if the prohibition would still apply if he moved to either of two positions in the department. The administration of the commission or regulation of the industry in general was not included in the responsibilities of either of the two positions. Accordingly, the Commission concluded that the employee could activate his license or acquire a financial interest in the industry if he were transferred to either of the two positions.

Finally, the employee was employed in a different industry by a private firm and wished to know if it was permissible for him to continue such work as a part-time employee. The applicable section of the code was HRS §84-14(a), which prohibits an employee from taking any official action directly affecting a business or other undertaking in which he has a substantial financial interest. The employee's employment by the firm was included as a substantial financial interest under the code. Because the department did not regulate businesses in that industry and there was no conflict with his state responsibilities, the Commission found that the employee could continue to work in that industry.

We were pleased that the employee's sensitivity to the ethics questions involved here had led him to request an advisory opinion at an early time.

Dated: Honolulu, Hawaii, July 20, 1981.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairman  
Dorothy K. Ching, Commissioner  
Robert N. Mitcham, Commissioner

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee disqualified himself from consideration and preparation of this opinion.