

OPINION NO. 443

We received a request for an advisory opinion from the head of a state program. An employee of the program had successfully sought and won an elected county government position; thereafter, he had been elected chairman of that government body. To enable him to fulfill his newly acquired county government responsibilities, the employee had reduced his work week to two-thirds time. Because some concern about this situation had been expressed, the program head had asked this Commission to issue an advisory opinion which discussed the application of the ethics code to the employee's circumstances.

The most relevant section of the code was HRS §84-14(b), the conflicts-of-interests section, which prohibits an employee from acquiring a financial interest in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him. In Advisory Opinion No. 284, the Commission determined that a county government was not a "business" as the term was defined in HRS §84-3(1). Similarly, in this case, the employee's elected position was a government interest, not a private business interest, and, as a result, the conflicts-of-interests section did not apply.

A portion of the fair treatment section of the code, HRS §84-13(3), prohibits an employee from "using state time, equipment, or other facilities for private business purposes." Because the employee's elected position was a governmental interest and not a private interest, the Commission found that his use of time was not governed by this provision. We noted, however, that limitations could have been set at the departmental level as a matter of policy. Further, while the specific applications set out in the statute were not relevant in this instance, we suggested that the employee be advised about the broader application of HRS §84-13, which prohibits an employee from using his state position to secure or grant unwarranted privileges for himself or others. The Commission realized that, in actuality, any individuals who raised questions about the situation were likely to be more mindful of the benefits which could have flowed from the employee's county position, not his state position. Because that question was not within the jurisdiction of this Commission, but within that of the county's ethics commission, a copy of this opinion with an accompanying cover letter, which noted the question, was forwarded to that commission for its consideration.

We appreciated the program head's sensitivity to the ethical considerations involved.

Dated: Honolulu, Hawaii, July 28, 1981.

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

Note: Vice Chairman Paul C.T. Loo and Commissioner Gary B.K.T. Lee were not present during the discussion and consideration of this opinion.