OPINION NO. 450

An employee at a state school who also had a part-time business requested an advisory opinion. Last spring, he had been approached by a student who had asked him to submit a bid for work related to an extracurricular activity. The employee's bid had been selected over the other bids; however, because the school's principal felt that a conflict of interest could arise, he subsequently abrogated the selection of the employee's bid and awarded the business to another company. Because the employee wished to have this matter clarified, he asked this Commission if it would be permissible, under the State Ethics Code, to do business with the school, its students, or other schools and their students in the future.

The most relevant section of the code was a portion of the fair treatment section, HRS §84-13(4), which states:

> No ... employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:
> ....
>
> (4) Soliciting, selling or otherwise engaging in a substantial financial transaction with a subordinate or a person ... whom he ... supervises in his official capacity.

The employee was responsible for six classes, each class having approximately thirty students. In addition, the employee had, in the past, taught a class which required services he provided in his part-time business. In that instance, other companies had been hired to do the work because the employee had felt that it would have been inappropriate for him to do the work. Here, none of the students on the steering committee for the school activity, including the student who approached him, was a student in any of the employee's classes. Further, the employee noted that he did not know the teacher who served as the committee's advisor and only became acquainted with him after being awarded the bid. As a consequence, the employee concluded that it would be permissible for him to submit a bid and accept the contract to perform the work.

Generally, the Commission would agree with the employee's conclusion that the business had been executed appropriately. Since the employee had not been acquainted with the students or the teacher involved, he did not receive an unwarranted advantage in getting the business. Further, the business had been awarded to the employee in an open, public process; bids had been solicited and the employee's had been deemed to be the best. The Commission's concern in this instance, however, was the nature of the relationship between teachers and students. When applying the fair treatment section of the ethics code in the past, we had noted that an employee's relationship to the persons he dealt with might be of such a nature that the employee should not engage in business transactions with such persons. Where there had been a dependent relationship between the employee and those he wished to deal with, it had been the Commission's view that private business dealings were inappropriate. Such relationships had been found to exist, for example, between doctors and clients, hospital personnel and patients, and, in Advisory Opinion No. 357, between instructors and students. In this Commission's view, students may not be expected to deal objectively and effectively in a business relationship with a teacher at their

school. Accordingly, our conclusion was that the employee should refrain from conducting any private business with students at his school.

While the employee would not have been in a dependent relationship with other members of the school's community, such as other members of the faculty, we nonetheless extended the restriction to all business relating to that school's activities. This conclusion was based upon the general provisions of the fair treatment section which prohibit employees from securing unwarranted privileges through their relationships with other state employees. It has been our position that state employees who carry on private businesses should not receive state contracts or business as a result of their relationships to the State. If the employee were to perform work related to school activities, in our opinion, it was likely that questions of whether such contracts were the result of his employment relationship with the State would be raised. As a consequence, in the interest of maintaining public trust in public employees, the Commission had determined that the employee should avoid the appearance as well as the fact of impropriety and refrain from business transactions which would involve the school. This restriction was limited to the school or any other schools where the employee might later be transferred.

The Commission also called the employee's attention to the provisions of HRS §84-15(a), which could apply to any business relationships the employee initiated in the future with other state schools or agencies. This section provides that:

> A state agency shall not enter into any contract with ... an employee or with a business in which ... an employee has a controlling interest ... involving services ... of a value in excess of $1,000 unless the contract has been awarded through an open, public process.

We did, therefore, suggest that the employee acquaint himself with the procedures a state school or state agency followed in the award of a contract for his services in excess of $1,000, for his own protection.

We commended the employee for his sensitivity to the ethics questions raised by a state employee's potential business relationships with the persons he serves in his state capacity.

Dated: Honolulu, Hawaii, November 16, 1981.

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

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.