

OPINION NO. 451

We received a request for an advisory opinion from a member of a certain state board who was also a faculty member of a state institution.

One of the responsibilities of the board on which he served was the licensing of certain professionals. The examinations that were given to those prospective professionals were national examinations administered by a national organization. This national organization drafted and corrected all examinations. The board, however, was responsible for overseeing the administration of the examinations in Hawaii, pursuant to a contract with the national organization.

Although, as a matter of practicality, another state branch handled the details of test administration, a member of the board served as a supervisor at each examination. On Oahu, a board member or the executive secretary of the board served as the supervisor. On the neighbor islands, the board member who resided on the particular island served as the supervisor. The board viewed the supervisor's services performed during the licensing examination as part of his or her state responsibilities, and thus a supervisor was not additionally compensated for those services.

Additional proctors that were needed for examinations given on Oahu were hired at a rate of \$4.50 per hour by the state branch. Such proctors were selected from a list of names submitted by the board. For examinations given on the neighbor islands, the resident board member who supervised the licensing examination had the authority to hire an additional proctor at the same rate.

As a faculty member of a state institution, this board member was responsible for teaching his students the same subject matter that appeared on the national licensing examination his students were required to take in order to obtain their professional licenses.

In regard to the above-stated facts, the board member posed two distinct questions to this Commission:

- (1) whether the ethics code would allow a board member to be hired and paid compensation as a proctor for the board's licensing examination, and
- (2) whether the ethics code would allow a faculty member who taught the subject matter tested by the licensing examination to proctor the examination.

The code section applicable to the first question raised was HRS §84-13(2), which provides that state employees may not accept, receive, or solicit compensation for the performance of their official duties or responsibilities, except as provided by law. The rationale behind this provision is that employees should not be compensated twice for performing services that they are already obligated to perform. The Commission has determined that this provision applies even when those duties are performed outside normal employment hours,

since the acceptance of additional compensation gives the appearance of the use of position to obtain an unwarranted advantage, to the detriment of the integrity of the State.

It was clear in this case that the duties of proctors were almost exactly those required of the supervisor in the performance of his or her official duties or responsibilities. Thus, while a board member might serve as a proctor, HRS §84-13(2) prohibited that board member from receiving compensation for such service.

In regard to the second question raised, the general provisions of HRS §84-13 were applicable. They prohibit a state employee from using or attempting to use his official position "to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others" A violation of the state code of ethics would occur if, while serving as a proctor during a licensing examination, a faculty member used or attempted to use his or her position to grant unwarranted privileges, advantages, or treatment to his or her students.

The Commission's staff discussed the actual licensing examination test procedure with the executive secretary of the board. It was his opinion that the examination procedure itself precluded the possibility of such assistance on the part of a proctor, since the national organization sent sealed examination forms to the test site, examinations were resealed by the examinee prior to collection, and the examinees were not allowed to ask proctors any questions. Based on his statements, this Commission determined that there were sufficient safeguards which made a violation of HRS §84-13 unlikely, and thus a faculty member might serve as a proctor for licensing examinations.

The board was also responsible for the review and accreditation of education programs provided by the faculty of the state institution of which the board member was a member. If a board member who was also a member of such a faculty were to proctor a licensing examination, a conflict-of-interests issue would be raised. However, since the interests in conflict would be state, not private, interests, such a conflict would not be prohibited by the State Ethics Code.

We commended the board member for bringing these matters to the attention of the Commission. It has been the Commission's experience that this kind of attention to matters of ethics has contributed to an improved ethical climate in state government.

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.