

## OPINION NO. 454

We received a request for an advisory opinion from an employee who was responsible for the conduct and administration of research, management, and development of animals on a neighbor island. Some of the specific tasks involved in the employee's work included assessing animal populations, conducting life history studies on various species, and management of certain public areas. In addition, as a part of his duties, the employee had served on two federal research groups. These groups were appointed by a federal agency and consisted of federal, state, and private individuals who studied particular species. After studying the species, each group developed and submitted a report.

At the time, the federal government had placed a moratorium on the naming of any new groups. There was, however, a need for a report on certain animals, and the federal agency had approached the employee to undertake the work. If the employee accepted the offer, he would have performed the work in his private, not his state, capacity.

HRS §84-14(b), a portion of the conflicts-of-interests section, prohibits state employees from acquiring financial interests where there is a possibility that they may take official action which may affect such interests. This provision, however, governs the relationship between private financial interests and governmental interests. Because the contract to develop this particular report was a federal contract, it was a governmental interest and HRS §84-14(b) did not apply.

A portion of the fair treatment section of the ethics code, HRS §84-13(2), was more relevant to the employee's situation. This section prohibits state employees from receiving additional compensation for the performance of their official duties. In the past, the Commission has applied this provision broadly. For example, in Advisory Opinion No. 398, the Commission found that state employees who had worked on an advertisement for a private corporation featuring the state facility where they worked could not be additionally compensated for their efforts in the making of the advertisement. More recently, in Advisory Opinion No. 453, the Commission found that an employee who undertook additional responsibilities in the production of a particular commodity could not later be compensated for his additional responsibilities in a proposed state contract after the commodity had become commercially valuable.

In this instance, the employee would have been performing work similar to work he had done as a member of other federal groups researching other animals. If the employee accepted the contract, he would have been required to perform tasks normally assigned to the federal groups. If a group had been appointed to study the animals, it was possible that the employee would have been appointed to serve as a member. And, if appointed, the employee would have served in his official capacity with the State. However, because of the moratorium, no groups could have been appointed. Further, the work involved would have been beyond the scope of what the employee could handle during the normal course of his state employment.

It was the Commission's opinion that the employee could accept payment to draft the report. First of all, while the employee may have contributed to federal reports in his state capacity in the past, because of the moratorium on the appointment of new groups, he would not have been able to do so in the future. Furthermore, the State did not anticipate assuming the responsibility for such reports. Finally, the scope of the work, formulating and developing such a report, was beyond the capability of the employee and his agency. Accordingly, the Commission determined that he could accept the contract to work on the report. The Commission noted, however, that the employee should be aware that the guidelines of HRS §84-13(2) precluded him from accepting payment for any work which he might perform in the course of his normal employment with the State. For example, the employee had noted that a part of his responsibilities was to research life histories of certain species. If the gathering of such information was a necessary part of the federal report, the employee would be barred from receiving payment for performing that task as a part of the report since it would also have been a part of his state responsibilities. While it did not seem likely that there would be overlapping areas, the Commission suggested that, in order to diminish the number of questions raised and to preserve public trust in state employees, the employee consult his supervisor in determining which portions of the report, if any, fell within the scope of his responsibilities.

The Commission appreciated the employee's candor and cooperation in bringing this matter to its attention.

Dated: Honolulu, Hawaii, February 1, 1982.

STATE ETHICS COMMISSION  
Edith K. Kleinjans Chairperson  
Gary B.K.T. Lee, Commissioner  
Robert N. Mitcham, Commissioner

Note: Vice Chairperson Paul C.T. Loo and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.