

OPINION NO. 455

The Commission received a request for an advisory opinion from an instructor who taught classes for a certain state department. The instructor appeared before the Commission at one of its meetings to explain the circumstances of his case. Subsequent to the commencement of his state position, the instructor became a representative for a company that produced and sold educational materials. As part of his duties as a representative of this company, the instructor displayed and demonstrated the company's materials at exhibits and conferences held at various places in Hawaii. The instructor did not receive a salary or commission for his services as a representative, but was compensated with an hourly wage. In his official capacity as a state instructor, the instructor purchased educational materials from the company for use by his students in the classroom.

In accordance with HRS §84-2, the instructor, as a state employee, was subject to the restrictions of the State Ethics Code. HRS §84-14(b), a part of the conflicts-of-interests section of the ethics code, provides that "[n]o employee shall acquire financial interests in any business or any other undertaking which he has reason to believe may be directly involved in official action to be taken by him." The purchase of educational materials by a state instructor for use in the classroom constitutes such direct official action. HRS §84-14(b), therefore, would prohibit state instructors from acquiring financial interests in businesses from which they purchase educational materials as part of their official duties.

Since the instructor in this case was a sales representative for the company and purchased its educational materials in his official capacity for use by his own students, he had already acquired a financial interest of the sort prohibited by HRS §84-14(b). In Advisory Opinion No. 145, the Commission held that an employee who had already acquired a financial interest prohibited by HRS §84-14(b) would be required to divest himself or herself of that financial interest as soon as practicable. The Commission thus informed the instructor that he, likewise, was required to divest himself of his financial interest in the company as soon as he was able.

The Commission noted that it understood that the employee did not intend to circumvent the provisions of the State Ethics Code by acquiring an employment interest with the company. The Commission also told the instructor that it was sympathetic to his desire to work with a company in the area of his expertise. However, the Commission pointed out that public confidence in state employees is undermined when it appears that state employees may be furthering their own financial interests as opposed to the interests of the State.

The Commission also drew the instructor's attention to HRS §84-3(6), which states that "'[f]inancial interest' means an interest held by an individual, his or her spouse, or dependent children." The Commission informed the instructor that, under this provision of the ethics code, financial interests acquired by his spouse would be imputed to him. Thus, his spouse would not be able to acquire financial interests if they would be affected by official action taken by him.

The Commission recognized and appreciated the employee's cooperation in resolving the ethical matters raised in this case.

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.