

OPINION NO. 457

The Commission received a request for an advisory opinion from an instructor at a state institution who wished to apply to a state department for certification as a licensee. Because the department required state employees who applied for certification to obtain a clearance from the State Ethics Commission, he wished to know if it was permissible, under the State Ethics Code, for him to pursue this new business.

The applicable section of the code was HRS §84-14(b), which prohibits state employees from acquiring financial interests in any business that they have reason to believe may be directly involved in official action they take. As an instructor at a state institution, the employee was subject to the State Ethics Code. Further, his proposed new business was a financial interest pursuant to HRS §84-3(6)(A). Students at the institution were allowed to receive credits for outside employment, and, as a part of the employee's responsibilities, he checked these students' programs to see that they met the institution's guidelines. The employee's teaching responsibilities fell within the area in which he wished to start his new business. After reviewing the employee's duties, the Commission found that it was not likely that the employee would, in his position at the state institution, be able to affect his new business. Accordingly, the Commission decided that the employee could pursue his plan to become certified by the department.

The Commission also noted that if the employee intended to accept as clients individuals who were also state employees, he should be aware that other sections of the ethics code might apply. One of these sections, HRS §84-15(a), governs contracts between state agencies and businesses in which employees have controlling interests. Where services valued in excess of \$1,000 are involved, the contracts must be awarded through an open, public process. The employee was advised to consult with this Commission to verify that the provisions of HRS §84-15(a) were being met, if in the future, he decided to provide services to state employees. In addition, the Commission stated that HRS §84-13, the fair treatment section of the code, would prohibit the employee from using his state position to secure unfair advantages or treatment for himself or his business. The Commission noted that this provision precluded the employee from referring to his position as an instructor at a state institution when seeking employment or a contract for services for his new business. Furthermore, the employee was advised that he should not be the beneficiary of referrals made by other employees at the state institution in their official capacity. Finally, the Commission noted that HRS §84-13(3) bars employees from using state time, equipment, or other facilities for private business purposes. Because the employee stated that he intended to pursue his career during the summer when he was not teaching, the possibility of the employee's public responsibilities overlapping with his private business was diminished. Nevertheless, the Commission emphasized that all functions incidental to the employee's private business should be performed solely on his own time and at his own business place or residence.

We commended the employee for bringing this matter to our attention at an early time and for the concern he had shown for the ethical questions presented by his situation.

Dated: Honolulu, Hawaii, February 16, 1982.

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

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered. Commissioner Dorothy K. Ching was not present during the discussion and consideration of this opinion.