

## OPINION NO. 458

The Commission received a request for an advisory opinion from an instructor who taught classes for a certain state department. The instructor had purchased with his own money an education program for use in his classroom. The instructor told the Commission that his students were not required to purchase the program or any materials related to the program. The instructor also told the Commission that he had been contacted by the company that produced the program and had been offered a part-time position as a representative for the company. The instructor thus asked the Commission to determine whether work as a sales representative for the company would violate any of the provisions of the ethics code.

As a representative for the company, the instructor planned to sell the program to other instructors employed by his department and to certain department employees who were responsible for large-scale purchases of educational materials. In order to sell the program, the instructor planned to hold workshops during the weekends, to which other instructors and purchasers for the department would be invited. The instructor stated that he did not plan to sell the program to students or to parents of students. The instructor informed the Commission, however, that the program could be utilized by parents, who might wish to tutor their own children.

In accordance with HRS §84-2, the instructor was subject to the restrictions of the ethics code because of his status as a state employee. In regard to the above facts, the relevant sections of the ethics code were HRS §84-14(b) and HRS §84-13. The Commission found that both of these sections prohibited the instructor from engaging in the sort of outside work he wished to do.

HRS §84-14(b) prohibits state employees from acquiring financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. Official action is defined, in HRS §84-3(7), as a decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority. The Commission was of the opinion that the instructor's company was likely to be involved in official action to be taken by him. Since the company sold educational materials that a teacher in his position might wish to purchase, his acquisition of an employment interest in the company would conflict with his responsibilities as an instructor.

HRS §84-13, the fair treatment section of the code, prohibits state employees from using their official positions to secure unwarranted treatment for themselves or others. In order to further public confidence in state employees, even the appearance of unwarranted treatment is prohibited by the ethics code. The Commission believed that an appearance of impropriety would be created if the instructor were to acquire an employment interest with the company. Since the instructor would receive commissions from the company for his sales, others could reasonably take the view that his choice of class materials was influenced by the prospect of personal gain rather than by consideration for the best interests of his students.

The instructor had also stated that parents of his students might ask to purchase programs from him. Such a situation would also raise an appearance of impropriety, since others might reasonably take the view that the instructor was misusing his position as a teacher to further sales. The Commission told the instructor that it did not intend to imply that he would violate the provisions of the ethics code. The Commission stated that it was simply of the opinion that an avoidance of an appearance of impropriety was not possible given the circumstances of the instructor's case. Since even the appearance of impropriety reflects negatively on state employees, the Commission is obligated to prohibit actions that create such appearances.

Also, in regard to selling the program to other instructors, the Commission believed that it would be difficult for the instructor to sell the program without disclosing his position with the State or the fact that he used the program in his own classroom. Disclosure of his state position or disclosure of the fact that he used the program in his own classroom would constitute an unwarranted use of position, since it would appear that the State was endorsing the sale of the program.

The Commission also drew the instructor's attention to HRS §84-3(6), which states that "'[f]inancial interests' means an interest held by an individual, his or her spouse, or dependent children." Under this provision of the ethics code, financial interests acquired by the instructor's 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 to be taken by him.

The Commission told the instructor that it appreciated his dedication to his profession and sympathized with his desire to do part-time work in the area of his expertise. However, the Commission stated 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 commended the instructor for promptly bringing this matter to the Commission's attention. It has been our experience that this kind of attention to ethical matters furthers public confidence in state employees and thus contributes to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, March 17, 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.