

## OPINION NO. 461

The Commission received a request for an advisory opinion from a state practitioner who treated individuals at two facilities associated with a certain state department. The state practitioner also conducted a private practice on a part-time basis. In regard to his private practice, he asked the Commission to determine the kind of practice he might engage in without contravening any of the provisions of the ethics code. Specifically, he asked the Commission to determine the following: (1) whether he could privately treat individuals who attended the facilities at which he worked, (2) whether he could privately treat individuals who attended other facilities of his department, (3) whether he could accept referrals from other department employees, and (4) whether he could accept therapy service contracts from an employee in his department who was responsible for granting such contracts to qualified practitioners. Therapy service contracts provided funds for therapy for individuals who applied for such aid. The individuals who applied for the aid were not connected with the department for which the state practitioner worked. In fact, they had no connection with any state department.

In accordance with HRS §84-2, the practitioner, as a state employee, was subject to the restrictions of the ethics code. The sections of the ethics code relevant to his case were HRS §84-14(b) and HRS §84-13. HRS §84-14(b) prohibits state employees from acquiring financial interests in businesses that they have reason to believe might be directly involved in official action to be taken by them. HRS §84-3(7) defines official action as a decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority. HRS §84-13, the fair treatment section of the code, prohibits state employees from using their official positions to secure unwarranted advantages for themselves or others.

In regard to the practitioner's first question, the Commission found that HRS §84-14(b) prohibited him from privately treating individuals who attended the facilities at which he worked, since it would be reasonable to assume that his private practice might be directly involved in official action to be taken by him if he were to treat such individuals. For example, a recommendation by the practitioner that those who attended his facilities should also seek outside treatment would constitute such official action. Furthermore, the Commission believed that an appearance of misuse of position would be created if those who attended his facilities appeared at his private office. Others could reasonably take the view that he was using his position in an unwarranted manner to further his private business. Even the appearance of an impropriety is prohibited by the ethics code since an appearance of impropriety undermines public confidence in state employees.

In regard to the practitioner's remaining questions, the Commission found that HRS §84-13 prohibited him from privately treating individuals who attended other facilities of his department, from receiving therapy contracts from his department, and from receiving referrals from other department employees or from other state employees. The Commission was of the opinion that acceptance of state referrals, therapy contracts, or clients who were in attendance at other facilities would create an appearance of misuse of position. Others could reasonably take the view that the practitioner had acquired such business through his contacts

with the state system. It has been the Commission's position that state employees who carry on private businesses should not receive state contracts or business as a result of their relationships to the State. It was the Commission's belief that in the practitioner's case questions would be raised as to whether such contracts or business resulted from his employment relationship with the State. In the interest of maintaining public trust in state employees, the Commission has previously held that state employees should avoid even the appearance of an impropriety by refraining from business transactions that create such appearances.

The Commission informed the practitioner that it recognized and appreciated his dedication to his profession. The Commission stated, however, that it was incumbent upon the Commission to prohibit situations that might undermine public confidence in state employees.

Because the practitioner's case involved therapy service contracts granted by his department, a copy of this opinion was also sent to the individual responsible for the program under which such contracts were awarded.

The Commission commended the practitioner for bringing this matter to the Commission's attention at an early time. 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, March 30, 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.