

OPINION NO. 464

The Commission received a request for an advisory opinion from a state employee who was the head of a division that operated and maintained a data processing facility. The employee was also the president of a private company that wished to purchase computer time at the facility. The employee thus asked the Commission to determine whether the purchase of computer time by his company would involve him in a conflict of interest.

The employee's division had previously decided to sell computer time to private users in order to generate monies for the facility's maintenance and development. Thus, the division welcomed the use of the facility by others and had in fact held open houses and presentations to encourage the purchase of computer time at the facility.

The employee stated that the division had appointed a committee to set rates for the facility's use. This committee had established that the same rate was to be charged to all users and that computer time was to be allocated on a first-come, first-served basis. Although the employee was the head of the division, he did not serve on the committee, nor was he involved in the approval of the rates proposed by the committee. Furthermore, the employee did not supervise the operation of the data processing facility. The employee also stated that he would not be involved in his company's use of the facility, since, he explained, his company had employed staff for that purpose.

In accordance with HRS §84-2, the employee was subject to the restrictions of the ethics code because of his status as a state employee. Sections of the ethics code relevant to his situation were HRS §84-14(a) and HRS §84-13. HRS §84-14(a) requires state employees to refrain from taking official action that directly affects their businesses. HRS §84-13, the fair treatment section of the code, prohibits state employees from using or attempting to use their official positions to secure unwarranted advantages or treatment for themselves or others.

After examining the facts of the employee's case, the Commission found that neither of these sections would be violated if his company were to purchase computer time from the data processing facility. Since the employee was not on the committee that established rates for computer time and since the employee was not involved in the supervision of the facility, HRS §84-14(a) was not applicable to his situation. In regard to HRS §84-13, the Commission was of the opinion that the company would not be unwarrantedly advantaged, since use of the facility was encouraged and since the facility was available to all upon an equal basis. Furthermore, since the employee did not serve on the facility's committee and since the employee would not be using the facility on behalf of his company, the Commission was also of the opinion that even the appearance of an impropriety would not be created. Although the Commission found that the purchase of computer time under these circumstances would not involve the employee in a conflict of interest, the Commission informed the employee that he might wish to contact the Commission again if the circumstances discussed above changed substantially.

The Commission commended the employee for bringing this matter before the Commission at an early time. The Commission has found 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, April 22, 1982.

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

Note: Commissioners Dorothy K. Ching and Robert N. Mitcham were excused from the meeting at which this opinion was considered.