

## OPINION NO. 465

The Commission received a request for an advisory opinion from a state employee who was in charge of overseeing and regulating activities at a certain state facility. The employee normally performed his duties at the facility during the day shift. The State, pursuant to a contract, had hired personnel for the facility's night shifts from a certain private company. The employee had worked for this company full-time before accepting his state position at the facility. After accepting his state position, the employee continued working for the private company on a part-time basis. The employee thus asked the Commission to determine whether the two positions he held created a conflict of interest.

In his state capacity, the employee was responsible for providing instructions for the night-shift personnel who relieved him. When the employee began his day shift, he was responsible for reviewing reports written by the night-shift personnel regarding occurrences at the facility during the night. The employee corrected these reports, advised the night-shift personnel of any deficiencies in their work, and reported serious deficiencies or problems to his supervisor. The employee was also available during the night in the event that the night-shift personnel needed his assistance or advice.

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. The section of the ethics code relevant to his case was HRS §84-14(a), which provides that state employees shall not take official action directly affecting businesses in which they have substantial financial interests. 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. HRS §84-3(6)(C) states that an employment interest constitutes a financial interest.

After examining the facts of the case, the Commission determined that since the employee in his state capacity exercised duties of a supervisory nature, his actions taken in regard to the night-shift personnel were more than ministerial. HRS §84-14(a) therefore required him to disqualify himself from taking official action that directly affected the company. However, since the employee was the only state employee on duty during the day, he was not able to refrain from taking official action that directly affected his company. Hence, the Commission determined that the employee should terminate his part-time position with the company as soon as was practicable in order to avoid a conflict of interest.

The Commission commended the employee for bringing this matter before the Commission at an early time. The Commission noted that it 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.