

OPINION NO. 469

The Commission received a request for an advisory opinion from a state employee who was a loan representative for a certain state department. The loan representative requested an advisory opinion from this Commission as to whether a loan applicant's state position and private business interest were in conflict. The loan representative informed the Commission that he had apprised the loan applicant of the fact that he had asked this Commission for an advisory opinion.

The loan applicant was a faculty member of a state institution. He had applied for a state loan for his private business, which sold certain goods. The loan applicant's duties as a faculty member required him to assist individuals who also had businesses in the same industry in which he had his business. However, the assistance he provided to these individuals related to goods that were entirely distinct from the goods he sold at his own private business. The loan applicant had acquired his business before his employment as a faculty member began.

Because the faculty member was a state employee, he was subject to the provisions of the State Ethics Code. In light of the above facts, the relevant provision of the code was HRS §84-14(a). This provision states that employees shall not take official action directly affecting businesses in which they have substantial financial interests. However, since the faculty member's official duties involved goods that were not marketed by his business, the Commission was of the opinion that HRS §84-14(a) was inapplicable. The Commission understood that the industry, as well as the department to which the faculty member belonged, made a sharp distinction between the goods that were sold at the faculty member's business and the goods that the faculty member, as a state employee, was responsible for. Thus, under these circumstances, the Commission was of the opinion that no conflict of interest existed in regard to the faculty member's state position and ownership interest in his business.

The Commission also understood that a question had been raised concerning the possibility that the faculty member might have had access to useful information in his department that was unavailable to the public. The Commission's staff discussed this problem with the former chairman of the department who had hired the faculty member and had overseen his work for some time. The chairman stated that, in his opinion, there was no problem in regard to the use of confidential information. First, he stated that he did not believe that there was any information available in the department that would give the faculty member an advantage over others who marketed the same sort of goods that he did. Secondly, the chairman stated that information in the department was readily available to others engaged in the same business. He stated further that those engaged in the same business were aware of ongoing research and were given information as soon as it was available, since dissemination of information was one of the chief functions of the department. In light of these facts, the Commission was of the opinion that the faculty member did not have access to privileged information that would be of a substantial advantage to him.

Section 21-4-2(c), State Ethics Commission Rules, requires that a copy of an advisory opinion rendered by the State Ethics Commission be sent to a state employee who is the subject of, but has not requested, the advisory opinion. Accordingly, a copy of this advisory opinion was forwarded to the faculty member.

The Commission told the loan representative that it appreciated his concern for the ethical considerations raised in this matter. 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, June 14, 1982.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairperson
Gary B.K.T. Lee, Commissioner
Robert N. Mitcham, Commissioner

Note: Chairperson Edith K. Kleinjans and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.