

OPINION NO. 471

The deputy director of a department requested an advisory opinion from this Commission as to whether an employee in his department had a conflict of interest by virtue of his outside employment. The employee worked part-time for a company that provided certain services. In his state position, the employee's primary responsibility was to provide information in response to questions asked by members of the public. These questions usually concerned companies with which members of the public wished to do business. Some of the questions concerned services that the employee's company could provide. Since the employee's company was one of a number of businesses that the employee might have occasion to recommend to members of the public, the Commission was of the opinion that the ethics code would prohibit the employee from working for the company while employed by the State.

The Commission determined that the applicable provision of the ethics code was HRS §84-14(b), which states that employees shall not acquire financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. Because it was reasonable to assume that the employee would have occasion to recommend his own company to members of the public, it was the Commission's opinion that HRS §84-14(b) prohibited the employee from acquiring a financial interest in the private company.

Since the employee had already begun working for the private company, the Commission informed the deputy director that the employee, in order to avoid a violation of the ethics code, had to either terminate his employment with the company or resign from his state position, as soon as was practicable.

The Commission stated that it understood that the ethics code might appear to overly restrict some employees who, because of the broad nature of their duties, would be barred from many outside positions. The Commission pointed out that it was not insensitive to the difficulties or inconveniences that the ethics code might impose upon such state employees. However, the Commission noted that it was incumbent upon the Commission to prohibit those situations where public confidence in state employees would be undermined because of the existence of conflicts of interest.

Section 21-4-2(c), State Ethics Commission Rules, provides that a copy of an advisory opinion rendered by the Commission will be sent to a state employee who was the subject of, but did not request, the advisory opinion. Accordingly, a copy of the advisory opinion was forwarded to the state employee.

The Commission informed the deputy director that it appreciated his concern for the ethical considerations raised in this matter. The Commission noted 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, August 27, 1982.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Allen K. Hoe, Commissioner
Robert N. Mitcham, Commissioner

Note: Vice Chairperson Paul C.T. Loo and Commissioner Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.