

OPINION NO. 472

A faculty member of a state institution requested an advisory opinion from this Commission concerning possible conflicts between his private business interests and his state position. In his state position, the faculty member was the project leader of a university research program. In his request for an opinion, the faculty member asked the Commission to consider the following three questions: (1) whether he could include his university affiliation on the title page of articles written by him if the title page also indicated his private business affiliation; (2) whether he could accept outside work as a consultant; and (3) whether his private company could receive and disburse payments made to his university research program. The Commission was of the opinion that the ethics code would allow him to engage in outside consulting work, but would prohibit the actions he wished to take in questions one and three.

With respect to the first question, the Commission has long maintained that a person's state employment must be kept entirely separate from his private business interests. The Commission has held that the use of an employee's official title in private business publications violates HRS §84-13(1), which states that employees shall not seek other employment or contract for services for themselves by the use or attempted use of their office or position. In Advisory Opinion No. 315, the Commission observed that if employees "used their state position in the business literature, it could easily be inferred that they were using their official position to seek other employment or contract for services for themselves."

Since the faculty member stated that the articles were written by him on the basis of his own knowledge and thus were not related to university research, the Commission was of the opinion that his university affiliation could not be indicated on the title page of the articles. The Commission also noted that if the faculty member changed his mind and decided to release the articles in his capacity as a faculty member, the name of his private company could not appear on the title page. However, the Commission stated that it believed that the faculty member could elsewhere acknowledge any aid received from his private company for the publication of the articles.

The Commission understood that state time and state personnel had been used in the preparation of the articles. HRS §84-13(3) provides that state employees shall not use state time, equipment, or other facilities for private business purposes. Thus, the Commission informed the faculty member that if he decided to publish the articles in his private capacity, the ethics law required that he reimburse the State for the state time and for the services of state personnel used in the preparation of the articles.

With respect to his second question, the Commission was of the opinion that the faculty member could engage in outside consulting work so long as such work did not constitute a part of his state responsibilities. Furthermore, the Commission informed the faculty member that the companies that employed him could not be subject to official action taken by him in his state capacity. The Commission told the faculty member that if questions later arose as to the specific application of the above restrictions, he might wish to contact the Commission again for another opinion.

With respect to the last question, the Commission understood that the faculty member believed that it would be expedient for his private company to receive and manage payments made by private companies for services performed by his university research program. Although the money would ultimately be paid to the faculty member's research program, the Commission was of the opinion that HRS §84-14(a) prohibited the faculty member from having such payments managed by his private company. HRS §84-14(a) states that employees shall not take any official action directly affecting businesses in which they have substantial financial interests. A decision by an employee to have his private company manage state funds would constitute such official action. Furthermore, the Commission was of the opinion that management of state funds by an employee's private company would create a strong appearance of impropriety and would thus undermine public confidence in state employees.

Finally, the Commission informed the faculty member that it understood that his program had engaged in outside business activities in the past, and might do so again in the future. The Commission noted, however, that without the prior approval of the university and the Commission, these activities might constitute a violation of the ethics law. Hence, the Commission advised that if his program anticipated engaging in such actions again, he might wish to contact the Commission for an advisory opinion.

The Commission informed the faculty member that it appreciated his cooperation and candidness in resolving these questions. The Commission told the faculty member 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, 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.