

## OPINION NO. 474

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. The faculty member and a number of other faculty members had recently formed a private corporation that intended to develop and apply various aspects of a rapidly expanding scientific field. The faculty member stated that he and the other faculty members would serve on the company's board of directors and would work as consultants on some of the company's projects. He therefore asked the Commission for an advisory opinion as to how the ethics code might apply to these private business activities.

At the outset, the Commission drew the faculty member's attention to HRS §84-14(b), part of the conflicts-of-interests section of the code. HRS §84-14(b) prohibits state employees from acquiring financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. However, based on the faculty member's conversations with the Commission's staff, it appeared unlikely that the faculty member would have occasion to take official action that would directly involve his company. The Commission noted that the faculty member's official duties were limited to research. Furthermore, the faculty member stated that the corporation would not be applying for the use of equipment under his official control, nor would it be contracting for services from his department. Thus, the Commission believed that the faculty member's acquisition of a financial interest in the corporation did not contravene the above provision of the code.

However, the Commission pointed out that employees who have financial interests not prohibited by HRS §84-14(b) are subject to the restrictions found in HRS §84-14(a). This provision of the code states that employees shall not take any official action that directly affects businesses in which they have substantial financial interests. The Commission noted that HRS §84-14(a) would prohibit the faculty member from taking official action that would directly affect his company in the event that the company appeared before him for official action later on. Of course, the faculty member had stated that it would be unlikely that his company would be subject to official action to be taken by him.

Other provisions of the ethics code that had general application to the faculty member's situation were the fair treatment, confidential information, and contracts sections of the code. The Commission discussed each of these sections briefly for the faculty member's information.

The fair treatment section of the ethics code, HRS §84-13, prohibits state employees from using or attempting to use their official positions to secure unwarranted advantages for themselves or others. Specifically, this section of the code bars an employee from

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position;
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law;

- (3) Using state time, equipment or other facilities for private business purposes; and
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

The confidential information section of the code, HRS §84-12, prohibits state employees from disclosing information they acquire in the course of their official duties if the information is by law or practice not available to the public. This section also prohibits employees from using such information for their own personal gain or for the benefit of anyone.

The contracts section of the code, HRS §84-15(a), provides that state agencies shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000, unless the contract has been awarded through an open, public process. A state agency may, however, enter into such a contract without resort to a competitive bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding, provided that written justification for the non-competitive award of the contract be made a matter of public record and be filed with the State Ethics Commission at least ten days before the contract is entered into. The Commission noted that the faculty member's institution was considered a state agency under the ethics law.

The Commission advised the faculty member that should questions arise as to the applicability of the above code provisions to a specific situation, he might wish to contact the Commission again for another opinion. Finally, since the faculty member had requested this advisory opinion on behalf of the company's other faculty members as well, the Commission told the faculty member that it would forward a copy of this opinion to each of them.

The Commission commended the faculty member for his sensitivity to the ethical considerations raised in this case and told him that it appreciated his 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, September 27, 1982.

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