

OPINION NO. 475

The Commission received a request for an advisory opinion from a state employee who was responsible for certain state property. Over the years, the employee had been contacted by private film companies to assist them in securing boats, other aquatic equipment, and personnel for the filming of water scenes. Depending upon the needs of the production company, the employee's services had ranged from recommending locations for water shots to securing manpower and aquatic crafts for the companies' use. In addition, the employee also had functioned as the coordinator of the aquatic needs for film companies. In this capacity, the employee's private duties involved not only acquiring aquatic craft and manpower, but also coordinating delivery and billing services. The employee's contacts with film companies had arisen out of his personal activities and interest in water sports. Naturally, this consultant work had been done on the employee's own time. Because the employee was responsible for certain property in his county, and film companies may have wanted, at times, to use the property, the employee wished to know if it was permissible for him to continue his consultant services.

A portion of the conflicts-of-interests section of the ethics code was most relevant to the employee's situation. HRS §84-14(a) provides that

....

- (a) No employee shall take any official action directly affecting:
 - (1) A business or other undertaking in which he has a substantial financial interest; or
 - (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

Further, the Commission has found an employment interest or a prospective employment interest to be a substantial financial interest for purposes of the ethics code.

All requests to use state property were processed through an office within another state department. The Commission staff spoke with the administrator of that office, who confirmed that the procedure for approval of applications was that outlined in the employee's letter. He also noted that generally, other divisions were responsible for reviewing applications. He did state, however, that it was possible that employees in analogous positions might be consulted on occasion. The administrator also noted that, with the exception of a particular property, the film companies' requests were "pretty routine" and would not normally require input by the employee. The employee himself had noted that, in his past experience, a request to him for information and input concerning the use of the property he administered had been very rare. Consequently, the Commission found that it was unlikely that a conflict would arise. However, the Commission did advise the employee that if film companies he might later work for applied for permits, he would be required to disqualify himself from any input or recommendations regarding those applications.

HRS §84-13(1), a portion of the fair treatment section of the ethics code, prohibits state employees from using their positions to secure other employment or contracts for services for themselves by the use or attempted use of their positions. The employee had stated that his contracts with film companies arose from his personal contacts and recreational activities, and not through his work. Furthermore, the employee had noted, and the administrator agreed, that film companies did not normally seek recommendations for sources of the services the employee provided in his private business. Given those circumstances, the Commission was satisfied that there was no need for concern regarding the application of HRS §84-13(1) to the employee's position.

The Commission also considered whether an appearance of impropriety might arise out of the employee's part-time work because he was an employee of the same department that approved certain permits. Further, we considered whether the employee's position in the county office of the department put him in a unique position that allowed him to garner additional work for his private business. Because the employee did not fall within the normal hierarchy for permit approval, we concluded that it was highly unlikely that film companies would contract with him for his private services with the hope of receiving undue advantages from the department. Accordingly, the Commission determined that the employee could continue to provide consultant services to the film companies.

We appreciated the employee's candor and the sensitivity he had shown regarding the ethical considerations of his position.

Dated: Honolulu, Hawaii, September 30, 1982.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Paul C.T. Loo, Vice Chairperson
Allen K. Hoe, Commissioner
Robert N. Mitcham, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.