

OPINION NO. 476

The Commission received a request for an advisory opinion from an employee of a state agency who had recently been offered the opportunity to become a talk show host. As conceived, the radio talk show was scheduled for two hours on Sunday afternoons and included a number of topics of conversation. Because a state program the employee worked with and the radio talk show had one topic in common, the employee wished to know if it was permissible, under the State Ethics Code, for him to accept the position with the radio station.

HRS §84-14(b) prohibits state employees from acquiring financial interests in any business which they have reason to believe may be directly involved in official action to be taken by them. An employment interest is considered to be a financial interest pursuant to HRS §84-3(6). In his state position, the employee was responsible for the production of a program. The radio station was not involved in that production. Further, both the deputy attorney general who advised the state agency and the agency's administrator agreed that the employee was not in a position to take action that affected the radio station or the radio talk show. Accordingly, the Commission found that the employee would not be prohibited by HRS §84-14(b) from acquiring an employment interest with the radio station.

The application of HRS §84-13, the fair treatment section, however, was of greater concern to the Commission. This section prohibits state employees from using their official positions to secure unwarranted privileges, exemptions, advantages, contracts, or treatment, for themselves or others. Specifically, the Commission had to determine whether the employee would be receiving an unfair advantage through his association with the state agency. It was the employee's position, and the deputy attorney general and agency's administrator concurred, that while there was a common topic in both programs, the format of each program differed so greatly that the employee would not be in a position to incorporate information gathered for the state program for use in the radio show. The purpose of the state program was to specifically present and demonstrate a particular activity. It was clear to the Commission, given the nature of radio, that the focus of the radio program would necessarily be more general. Furthermore, while a specific activity was the primary focus on the state program, it was only one of many topics that would be discussed on the radio show. Finally, the employee indicated that he was sensitive to the possibility of an appearance of impropriety arising if, for example, he presented information on the state program and later discussed related information on his radio show. In light of these circumstances, the Commission determined that it was unlikely that the employee would receive an unfair advantage as contemplated in HRS §84-13.

In his request, the employee also noted that he had hoped to promote the state agency and specific programs produced by the agency on the radio show. As a general rule, when applying HRS §84-13, the Commission discourages state employees from intermingling their state and private business. In order to ensure that state employees do not receive unwarranted benefits in their private businesses through their state relationships, the Commission advises that state business be kept entirely separate from private business. Nevertheless, in its review of this question, the Commission also considered the benefit that might accrue to the state agency. Obviously, the agency would have benefitted

by the free promotion of its programs and activities on the radio talk show. The Commission, however, was concerned that it might appear that the employee would receive an unfair advantage in the process. To diminish the likelihood of the question arising, the Commission determined that the employee could promote the state agency and any of its specific programs so long as he did not refer to himself in conjunction with such promotion. For example, the Commission noted that it would be appropriate for the employee to promote his program on the radio show so long as the employee did not mention his state position when referring to that program.

The Commission appreciated the employee's candid discussion of the ethical considerations involved in his situation.

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.