

## OPINION NO. 480

A state employee who worked at a certain state center requested an advisory opinion from this Commission concerning possible conflicts between his private business interests and his state position. In his state position, the employee assisted individuals who wished to participate in various state programs. The employee's duties included helping individuals with applications, providing information, and making appropriate referrals.

The employee informed the Commission that a private company had employed him part-time to sell a certain product. He wished to know whether the State Ethics Code would restrict him in any way from selling to individuals who were or had previously been clients of his center. After examining the facts of the employee's case and the applicable law, the Commission found that the ethics code would prohibit the employee from selling his product to past clients of the center, to present clients, and to those who would most likely become clients in the future. The Commission also extended the restriction to the families of such clients.

In reaching its decision, the Commission found that a number of sections of the State Ethics Code were applicable to the employee's case. The first section that the Commission considered was HRS §84-12, the confidential information section of the code. This section states that employees shall not use for their own personal gain information that by law or practice is not available to the public. According to the employee's supervisor, the employee had knowledge of the financial circumstances of past and present clients of the center. Because the employee had knowledge of the financial situations and the particular needs of those clients, the Commission believed that the employee could not sell his product to past or present clients or their families without running afoul of this provision of the code. Furthermore, the Commission informed the employee that use of such confidential information would also entail a violation of HRS §§84-13 and 84-13(1). HRS §84-13, the fair treatment section of the code, prohibits state employees from using or attempting to use their official positions to obtain unwarranted treatment for themselves. HRS §84-13(1) specifically states that employees shall not seek other employment or contract for services by the use or attempted use of their positions. The Commission was of the opinion that use of confidential information would clearly constitute a misuse of position in violation of these provisions.

Another provision of the fair treatment section of the code, HRS §84-13(4), prohibits state employees from engaging in substantial financial transactions with individuals they supervise in their official capacity. Since the employee exercised supervisory responsibilities over present clients of the center, the Commission was of the opinion that this provision of the code would also prohibit the employee from selling his product to present clients of the center.

With regard to future clients of the center, the Commission found that HRS §84-14(b) was applicable. HRS §84-14(b), a part of the conflicts-of-interests section of the code, prohibits state employees from acquiring financial interests in any business or other undertaking that they have reason to believe may be directly involved in official action to be taken by them. The Commission found that this provision of the code would prohibit the

employee from selling his product to an individual if it appeared likely that the individual might apply to the employee's center for aid in the future.

The Commission held that another provision of the conflicts-of-interests section of the code, HRS §84-14(a), was applicable to the employee's private business clients. HRS §84-14(a) states that employees shall not take official action that directly affects businesses or other undertakings in which they have substantial financial interests. Because the employee had a substantial financial interest in his business clients, the Commission noted that HRS §84-14(a) would prohibit him from assisting, in his state position, private business clients if they were to become clients of the center. The Commission informed the employee that if any of his private business clients became clients of the center, he had to refrain from assisting the client and had to refer the client to his supervisor or another fellow employee.

The Commission also drew the employee's attention to another provision of the fair treatment section of the code, HRS §84-13(3), which prohibits state employees from using state time, equipment, or other facilities for private business purposes. The Commission explained that this provision of the code would prohibit the employee, for example, from using work time, his office, or his state telephone for private sales.

Finally, because the employee's supervisor suggested that the employee obtain an advisory opinion from this Commission, a copy of this opinion was sent to the supervisor for his information.

The Commission commended the employee for bringing this matter to 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, October 22, 1982.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairperson  
Paul C.T. Loo, Vice Chairperson  
Allen K. Hoe, Commissioner  
Gary B.K.T. Lee, Commissioner

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.