

OPINION NO. 481

The Commission received a request for an advisory opinion from a board member who wished to know whether he could sell a list he had compiled of the names and addresses of individuals who had been licensed by his board. Although the board member had compiled the list at his own expense, he was concerned about the possibility of an appearance of impropriety arising if he were to sell the list. After considering the facts of the case and the applicable law, the Commission held that the board member could sell the list, but at a price that would cover costs only.

In reaching its decision, the Commission considered the applicability of HRS §84-13, the fair treatment section of the ethics code. HRS §84-13 prohibits employees from using their official positions to secure unwarranted treatment for themselves or others. The board member explained to the Commission's staff that at a board meeting it had become apparent that a list of individuals licensed by the board would be helpful in carrying out the board's work. Although the board member volunteered the assistance of a staff member of his private company in order to make the list, the board member stated that the staff member's access to state records was probably facilitated by his association with the board. Furthermore, the board member stated that the list was updated with information he received during board meetings. Because the list was most likely prepared and was being updated with the aid of the board member's state office, the Commission believed that selling the list at a profit would violate HRS §84-13. However, as stated above, the Commission believed that the board member could sell the list at cost. In order to avoid an appearance of impropriety when sales were made, the Commission informed the board member that he should indicate to purchasers that the list was being sold at cost. Finally, the Commission noted for the record that the board member's board had stated that it had no desire to be involved in list sales itself, and thus intended to refer those interested in purchasing the list to the board member.

The Commission also drew the board member's attention to two other subsections of the fair treatment section of the ethics code, HRS §84-13(3) and HRS §84-13(4). HRS §84-13(3) prohibits state employees from using state time, equipment, or other facilities for private business purposes. HRS §84-13(4) prohibits state employees from engaging in substantial financial transactions with persons or businesses they inspect or supervise in their official capacity. The Commission informed the board member that the first subsection would prohibit him, for example, from selling the list on state premises, from using state copying machines, or from using state telephones for sales. The Commission stated that the second subsection would prohibit him from selling the list to a person or business he inspects or supervises as a board member.

The Commission commended the board member for his candor in discussing this case and told the board member that it appreciated his bringing the matter before the Commission at an early time. The Commission stated that such openness and diligence on the part of state employees helps to preserve and enhance public confidence in government officials--the primary goal of the State Ethics Code, as set forth in its preamble.

Dated: Honolulu, Hawaii, December 1, 1982.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Allen K. Hoe, Commissioner
Gary B.K.T. Lee, Commissioner
Robert N. Mitcham, Commissioner

Note: Vice Chairperson Paul C.T. Loo was excused from the meeting at which this opinion was considered.