

OPINION NO. 483

The Commission received a request for an advisory opinion from a part-time faculty member of a state institution who wished to know whether he could work for a certain private company without contravening any of the provisions of the State Ethics Code. After examining the facts of the case and the applicable law, the Commission determined that the faculty member could work for the private company so long as he did not refer to the company when carrying out his state responsibilities.

The Commission understood that in his official capacity the faculty member served as the coordinator of a certain state program. This program provided training to counselors of a division of a certain state department. The training sessions helped to develop the skills of the counselors in their area of expertise. Although the training sessions were for the division's counselors, counselors from private organizations were also allowed to attend the seminars, but on a space-available basis.

The private company for which the faculty member wished to work aided individuals in developing certain skills. The company planned to develop a special program for which the faculty member would be the chief provider of a certain specialized service.

The State Ethics Code bars state employees from acquiring financial interests in businesses that are directly involved in official action taken by them [HRS §84-14(b)], and also bars state employees from granting themselves or others unwarranted advantages [HRS §84-13]. Since the faculty member did not take official action in his state position that directly involved the private company, the Commission determined that his work for the company would be permissible under HRS §84-14(b).

The Commission was concerned, however, about the possibility of the private company receiving clients, in violation of HRS §84-13, by virtue of the faculty member's position as coordinator of the training program. The Commission understood that the department whose counselors the faculty member trained had a contract with the private company, and that under the contract the company provided guidance for a set number of individuals referred to it by the department's counselors. Since the number of referrals was set by contract and since the faculty member was not involved in contract negotiations, the Commission concluded that the faculty member's position as coordinator of the training sessions would not affect the number of those referrals. Furthermore, with regard to the private company's new specialized program, the Commission understood that those who attended the faculty member's training sessions offered similar programs, and thus would not be inclined to send their own clients to the private company's program. Since only those few counselors who attended the training sessions on a space-available basis would have occasion to send clients to the private company for services distinct from the faculty member's specialized program, the Commission believed that the faculty member could work for the private company so long as he did not mention the private company while performing his state duties.

The Commission also drew the faculty member's attention to HRS §84-13(3), which prohibits state employees from using state time, equipment, or facilities for private business

purposes. The Commission informed the faculty member that this provision of the code would prohibit him, for example, from using state telephones or his state office when performing work for the private company.

The Commission told the faculty member that it appreciated his cooperation and candor in resolving this matter. The Commission noted that it 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, December 30, 1982.

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

Note: Commissioner Allen K. Hoe was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee was not present during the discussion and consideration of this opinion.