OPINION NO. 487

An employee in a state agency had considered the possibility of engaging in part-time consultant work on his own time. Before starting his new venture, he requested a ruling from this Commission on whether his new enterprise might pose a conflicts-of-interests question under the State Ethics Code.

The applicable section of the ethics code was HRS §84-14(b), which states:

> No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

This section prohibits employees from placing themselves in positions where there is a potential for conflicts of interests.

The function of the state agency was to conduct financial and program audits of other state agencies and state programs. The Commission understood that although employees in the agency might possess expertise in a certain area, the employees were not limited to working only in that area, but also could be assigned to another kind of work. Consequently, the employee was required to perform a variety of functions depending upon the particular audits that had to be done by the agency. For example, it was clear to the Commission that although the employee's primary responsibility over the last several months had been to monitor state financing and bonding programs, his responsibilities would probably shift and his efforts would be focused on other state programs in the future.

In his request, the employee stated that he planned to assist in the preparation of certain documents by subcontracting with architectural and engineering firms. The employee noted that he did not intend to become involved with state projects but planned to work on federal, county, or private projects. Further, the employee explained that the nature of the work would be to consolidate information, to assist in writing the documents, and to fill out other forms that were part of the document submittals. In addition, because the technical input for the documents would be provided by the contractor, the employee commented that, as a subcontractor, his name would not appear on any of the work submitted as a part of a document. Finally, the employee noted that he did not intend to participate in any presentations to any state agencies; instead, the contractor would be responsible for all presentations.

The Commission noted that the employee's private employment interest as a subcontractor, pursuant to HRS §84-3(6)(c), was considered a financial interest under the ethics code. The Commission believed that because the employee's prospective employment might be directly involved in action he took in his state capacity, he would be prohibited from accepting such employment. The Commission noted that the documents the employee intended to work on would be submitted to a state division and might also be reviewed in part by other state departments or agencies. Furthermore, both the employee and the head of the agency commented that, within a reasonable period of time, every state department and

agency was likely to be reviewed by the agency. It was possible, then, that the employee might become involved in a program audit of the division to which the documents were submitted or of other reviewing state agencies. The Commission determined, therefore, that there was sufficient reason to believe that the employee might be required to take action that directly affected his employment as a consultant.

The Commission also was concerned about the possibility of an appearance of impropriety arising from this situation. The fair treatment section of the ethics code, HRS §84-13, prohibits employees from using or attempting to use their official positions to secure unwarranted privileges, exemptions, advantages, contracts, or treatment, for themselves or others. The Commission recognized that because the employee would not make any presentations and his name would not appear on any of the documents, the employee's involvement with a particular project might not necessarily become known to the state agencies. Nevertheless, such information might be easily communicated to the reviewing state agencies, and, in the Commission's opinion, this may have had a significant influence over the way the documents would be reviewed. Accordingly, the Commission concluded that the employee could not engage in this kind of consultant work.

The Commission commended the employee for his sensitivity to the ethical issues involved and appreciated his bringing this matter to our attention at an early time.

Dated: Honolulu, Hawaii, February 17, 1983.

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.