

## OPINION NO. 489

A state employee asked the Commission to determine whether he could work part-time for a private company. The question arose because the employee had been present during contract negotiations between the company and another state office in his department.

Because of the employee's expertise in a certain area, the head of the other state office and the director of the company agreed that he should be present during contract negotiations to provide technical information. Subsequently, the employee was asked to attend the negotiations. After the contract was drawn up, the company placed an employment advertisement in the newspaper and began accepting applications for the position of a trainer--a position included in the contract upon the employee's advice. The company received the employee's application, as well as about fifteen others, and decided to hire the employee. However, the head of the state office suggested that the employee contact the Commission to determine whether his participation in contract negotiations might bar him from accepting the position with the company.

The relevant ethics code provision was HRS §84-13, which prohibits state employees from using their official positions to secure unwarranted advantages for themselves or others. After reviewing the facts of the employee's case in light of this provision, the Commission was of the opinion that the employee could accept the position at the company. First of all, it was clear that the employee had no role in helping the company secure the contract with the state office, since the contract had been awarded before he was called upon to provide technical information. Secondly, the employee was neither an employee of the state office, nor did his duties in his own office require him to provide the sort of information he provided to the contracting parties. Finally, both the head of the state office and the company's director stated that the employee had not used his position as a state employee in an unwarranted manner in order to receive favorable treatment as a job applicant. According to them, the inclusion in the contract of the trainer position was bona fide, and the requirements for the position were not slanted in the employee's favor.

Of course, the employee's acceptance of the position with the company might have created an appearance of impropriety in the eyes of unsuccessful candidates. This was of great concern to the Commission. The Commission understood, however, that the employee's qualifications far surpassed the company's second choice for the position; furthermore, both the head of the state office and the employee were emergency hires and were unaware that the employee's presence during contract negotiations would affect his future employment opportunities. Thus, despite the appearance that unfortunately might have been created, the Commission believed that the employee's acceptance of the position with the company did not contravene any of the provisions of the ethics code.

Because the employee's request for an advisory opinion was forwarded to the Commission by the chief of his division, the Commission also sent a copy of the opinion to the chief.

The Commission commended the employee for bringing this matter to the attention of the Commission and told the employee that it also appreciated his candor in discussing the facts of his case.

Dated: Honolulu, Hawaii, March 24, 1983.

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

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