

OPINION NO. 495

The Commission received a request for an advisory opinion from an employee who wished to know whether he could purchase a facility in a certain area and serve as one of its corporate officers. The employee stated that his wife would serve as the director and president of the facility.

The Commission understood that in his state position the employee serviced clients in a district located about forty-five miles from the area in which the facility was located. The employee stated to the Commission that he would not be referring his clients to the facility for services because referrals for services his facility would offer were handled by another office. The employee also stated that he did not have clients in the district where the facility was located. In fact, his clients who moved to that district were transferred to a state employee who serviced that area. The employee told the Commission that it would be highly unlikely for any of his state clients to use his facility because of the traveling distance involved.

In light of these facts, the applicable code provision was HRS §84-14(b), which prohibits state employees from acquiring financial interests in any business that they have reason to believe may be directly involved in official action to be taken by them. After examining the facts of the employee's case and this provision of the code, the Commission believed that the employee could purchase the facility and serve as a corporate officer without contravening the ethics code. The Commission so held because, first of all, the employee had no authority to make referrals to his facility. Secondly, because of the traveling distance involved, it seemed clear that his state clients would not be contacting his facility for services. Finally, the employee's supervisor had reviewed the employee's question and had stated in an internal memorandum that he did not believe that the purchase of the facility would create a conflict of interest with the employee's official responsibilities.

Although the Commission concluded that the employee could purchase the facility and serve as a corporate officer, the Commission informed him that HRS §84-14(a) would prohibit him from taking any official action directly affecting his new business should the occasion arise later on. Also, the Commission informed the employee that since HRS §84-3(6) provides that a spouse's financial interests are imputed to the state employee, HRS §84-14(a) and (b) would still apply even if his wife were the sole purchaser of the facility or served as its director or one of its officers.

Finally, the Commission drew the employee's attention to HRS §84-12 and HRS §84-13(3). HRS §84-12, the confidential information section of the code, prohibits employees from using confidential information for their own or another's personal gain. Confidential information is defined in the code as information acquired in the course of one's official employment, but not available to the public. HRS §84-13(3), a part of the fair treatment section of the code, prohibits employees from using state time, equipment, or facilities for private business purposes. The Commission told the employee that this provision of the code would prohibit him, for example, from using state telephones or his state office when performing work for his facility. Although the Commission realized that the employee was

sensitive to the prohibitions set forth in these provisions, the Commission mentioned them for his information.

The Commission told the employee that it appreciated his cooperation and candor in resolving this matter. 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, April 29, 1983.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Mildred D. Kosaki, Commissioner
Gary B.K.T. Lee, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Allen K. Hoe was not present during the discussion and consideration of this opinion.