

OPINION NO. 498

The Commission received a request for an advisory opinion from a state clerk who worked at an office that managed certain facilities at the University of Hawaii. The employee asked the Commission to determine whether working part-time as a marketing agency for a private company would conflict with his state responsibilities.

The employee's duties as a clerk involved only ministerial action. The employee's supervisor handled all discretionary matters that involved the university facilities the office managed. As a marketing agent for the private company, the employee planned to contact university personnel in order to sell them a service. The services purchased were to be for either university or personal use. The employee informed the Commission that another division of his office was in charge of the maintenance of university equipment to which the services pertained. However, the employee's state duties were distinct from this division, and the division did not sell the particular services in question to the university of its personnel.

Two provisions of the ethics code, HRS §84-14(b) and HRS §84-13(4), were relevant to the question the employee posed. HRS §84-14(b) prohibits state employees from acquiring financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. HRS §84-14(4) prohibits state employees from soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person they inspect or supervise in their official capacity.

Since the ethics code defines official action in HRS §84-3(7) as action that involves the use of discretionary authority, and since the employee's duties were ministerial in nature, the Commission believed that the employee could sell his company's services to university personnel without violating HRS §84-14(b). Furthermore, the Commission believed that HRS §84-13(4) did not apply to the employee's case since he did not inspect or supervise university personnel. The Commission noted that the employee's supervisor had stated to the Commission that the employee's duties were ministerial in nature. Finally, although the Commission realized that another division within the employee's office handled the maintenance of the equipment the services pertained to, the Commission nevertheless believed that since the employee's duties were distinct from this division he could work for the private company without violating the ethics code.

Although the Commission believed that the employee could work for the private company, the Commission informed the employee that HRS §84-13(3) would prohibit him from using state time, equipment, or other 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 from referring to his state position when conducting business for the private company. The Commission realized that the employee was sensitive to these restrictions, but mentioned them for his information.

Since the employee's supervisor requested that the employee contact the Commission for an advisory opinion, the Commission forwarded a copy of the opinion to the employee's supervisor for his information.

The Commission informed the employee that advisory opinions issued by the Commission are based on and limited to the facts in the opinion. The Commission told the employee that should these facts change, he might wish to contact the Commission again for another opinion.

The Commission told the employee that it appreciated his bringing this matter to the attention of the Commission at an early date and that it also appreciated his candor in discussing the facts of the case.

Dated: Honolulu, Hawaii, June 2, 1983.

STATE ETHICS COMMISSION
Allen K. Hoe, Vice Chairperson
Gary B.K.T. Lee, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Chairperson Edith K. Kleinjans and Commissioner Mildred D. Kosaki were excused from the meeting at which this opinion was considered.