

OPINION NO. 499

The Commission received a request for an advisory opinion from a state employee who asked the Commission to determine whether his performing consulting work for certain private companies, the University of Hawaii, or other state agencies would create a conflict of interest with his state duties. The employee had recently purchased his own computer and intended to use the computer to perform his state duties.

The relevant provisions of the ethics code were HRS §84-14(b) and HRS §84-13(2). 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 §84-13(2) prohibits state employees from accepting compensation for the performance of their official duties except as provided by law. This provision of the code thus prohibits state employees from receiving double compensation for the performance of their state duties.

Since the employee did not take official action involving the kind of company he planned to work for, the Commission believed that he could do consulting work for those companies without violating HRS §84-14(b). Although other divisions or offices of the employee's department did on occasion take official action involving those companies, the Commission believed that since the employee's duties were distinct, his involvement with the companies was unlikely to give rise to a serious appearance of impropriety. The employee stated to the Commission that it was not the practice of other offices in his department to avail themselves of his services, and, so long as this was the case, the Commission believed that consulting work he did for the companies would not contravene the provisions of the ethics code.

The Commission believed that the employee could also do consulting work for the University of Hawaii or other state agencies so long as these agencies were not subject to official action to be taken by him. However, the Commission informed the employee that HRS §84-13(2) would prohibit him from receiving compensation for consulting services if performing consulting services for these agencies was or could be construed to be one of his state responsibilities. In particular, the Commission advised that the employee decline consulting work that pertained to the kind of companies involved in his state duties. The Commission noted that the employee had stated that the University of Hawaii and other state agencies did not as a practice avail themselves of his services as a state employee.

Another provision of the code, HRS §84-13(3), prohibits state employees from using state time, equipment, or other facilities for private business purposes. The Commission informed the employee that this provision of the code would prohibit him from using his computer to acquire data from, or use the programs of, the University of Hawaii's computer. The Commission realized that the employee was sensitive to this issue and that to some extent his work was monitored by his supervisor. The Commission informed the employee that HRS §84-13(3) would also prohibit him from using his computer in his state office to perform consulting work. Finally, the Commission told the employee that HRS

§84-13(3) prohibits state employees from using state telephones for private business purposes.

The Commission told the employee that he should also be aware that HRS §84-12 prohibits state employees from using confidential information for their own or another's personal gain and that HRS §84-15(a) requires state agencies to use an open, public process when contracting with a state employee when the contract price exceeds \$1,000. The Commission pointed out, however, that a state agency may contract with a state employee without resorting to a competitive bidding process when such a process would be fruitless--for example, when the employee to be contracted with possesses unique skills. The Commission mentioned that in such a case, however, the state agency would have to submit a written justification to the Commission for the non-competitive awarding of the contract at least ten days before the contract is entered into.

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 supervisor for his information.

Advisory opinions issued by the Commission are based on and limited to the facts in the opinion. Thus, the Commission informed 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.