

OPINION NO. 508

An employee who had been with the a state program since 1979 had responsibilities that included assisting people who were interested in establishing certain businesses by guiding them through the state and federal regulatory processes. In addition to his state job, the employee had, with the consent of his supervisor, continued his private consulting business. None of this private work had been in the area of his state specialty and, for the most part, the work had been done outside of Hawaii. Recently, the employee had sought to become employed as a subconsultant to a firm that had submitted a proposal to draft a report for a county agency. If the employee were hired, his responsibilities would be to identify the area's land use and the flora and fauna of the region. The drafting and presentation of the report would have required interaction with two sections of the employee's department. Because the employee's program was a part of the department, he had requested an advisory opinion on the application of the State Ethics Code to his potential employment on the county project.

The relevant section of the ethics code was HRS §84-14(d), which states as follows:

No ... employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for fee or other compensation on such bill, contract, claim, or other transaction or proposal before the ... agency of which he is an employee

The question posed was whether the employee could work on the report because two of his department's sections would be involved in the submittal of the report. The staff of one section would be consulted for background information, and the staff of the other would conduct a portion of the review of the report after it ultimately was submitted to the State. The Commission noticed that the employee's initial proposal to the private firm included references to two state public hearings following the promulgation of the report. In addition, the employee had expected to participate in meetings with the two sections of his department. After discussing his situation with the Commission's staff, the employee spoke with the firm, and it was agreed that he would not be required to participate in meetings or to provide assistance to the firm in any meetings that might involve those sections. He would only be required to provide a work product to the firm and would not engage in transactions involving his department. Under those circumstances, the Commission concluded that the employee would not be in violation of HRS §84-14(d).

A second section of the ethics code that was applicable was HRS §84-14(b), which provides that employees may not acquire financial interests in any business or other undertaking which they have reason to believe may be directly involved in official action to be taken by them. It was the employee's opinion that he would not be involved in a review of the report. It had been his experience that his program had not been consulted regarding reports of this nature in the past, and, therefore, it was not likely that the program would be

consulted in this instance. Furthermore, the employee represented to the Commission that the treatment of his specialty in the report was not likely to be more than a few paragraphs in a document of approximately one hundred pages. The employee also did not believe that he would be consulted by others in his department in their review of the statement. However, his supervisor held a different opinion. In a letter to the Commission, the supervisor stated that the program might be asked to review the report because the report might include material relevant to the program. It was also the supervisor's opinion that the employee would be the logical staff person to lead a review of the report. If the Commission had determined that the program might be asked to review the report, HRS §84-14(b) would have prohibited the employee from accepting the outside consulting contract. After some research on reports of this nature, the Commission decided that the employee's assertion that the aspects relevant to the program would comprise a very small portion of the report was probably valid. Accordingly, based upon its research and the employee's representation, the Commission concluded that a review by the employee's agency was not likely and would not prohibit him from accepting this contract.

The final section of the ethics code that was applicable was HRS §84-13, the fair treatment section of the code. This section prohibits employees from using their official positions to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for themselves or others. The Commission discussed whether, by virtue of his state position, the employee might be receiving an unfair advantage in his private dealings with other agencies. The employee had commented that he dealt with a number of individuals in both his state capacity and as a private consultant. As a matter of policy, the Commission strongly discourages state employees from dealing with others on a regular basis in both state and private roles. Although the employee had clearly stated that he was careful to delineate between his different roles when speaking to other individuals in state and federal agencies, the Commission was deeply concerned that the situation might create an appearance of impropriety. The employee was told that if he continued his private consulting business, the Commission wished to emphasize that he must keep his state and private work completely separate. To minimize the possibility of questions arising, the Commission advised the employee to take note of the other guidelines contained in the State Ethics Code. In particular, the Commission pointed out that HRS §84-13(4) prohibits employees from engaging in substantial financial transactions with subordinates or persons or businesses whom they inspect or supervise in their official capacities. The Commission also stressed that HRS §84-13(3) prohibits employees from using state time, equipment, or facilities for private business purposes. For example, the Commission commented that the employee could not use state telephones or offices, even during his lunch hour or after normal working hours, to conduct his private business. Finally, the Commission advised the employee that HRS §84-12 prohibits employees from using information that is confidential by statute or practice for their own benefit.

The Commission commended the employee for bringing this matter to its attention at an early time.

Dated: Honolulu, Hawaii, September 1, 1983.

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

Note: Chairperson Edith K. Kleinjans was excused from the meeting at which this opinion was considered.