

OPINION NO. 521

An employee who served as a neighbor island coordinator for a state commission requested an advisory opinion from this Commission. The employee had been asked by an administrator of a state institution to write the script for a slide show. It was agreed that the employee would be paid for his services. Thereafter, the employee submitted an outline and a draft of the script, together with an invoice, to the administrator. When this scriptwriting assignment came to the attention of the employee's supervisor, she contacted this Commission for advice. Subsequently, the employee and his supervisor met with a member of the Commission's staff to determine whether there might be a problem under the State Ethics Code. As a result of that meeting, the employee requested an advisory opinion on whether it was permissible for him to accept the work in his private capacity.

Because the general provisions of HRS §84-13, the fair treatment section of the code, prohibit employees from giving others unwarranted advantages, the Commission first looked at the circumstances surrounding the offer to work prior to reviewing the employee's questions. The Commission found that the administrator had solicited the employee's services after seeking names of individuals who could undertake the project from a number of sources. The administrator had contacted the employee because he had been recommended by more than one source. The Commission believed, therefore, that the employee did not receive any unfair advantage in this situation.

The applicable section of the ethics code was HRS §84-13(2), which states as follows:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

....

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

The employee stated that because he worked on the project outside of his employment hours and felt that the work was beyond the scope of his regular duties, it never occurred to him that his acceptance of the project might pose a problem under the ethics law. The employee noted that since he was the only staff person on the island, he had determined that taking on the project as a part of his regular duties with the state commission would have disrupted and displaced other projects and duties necessary to the daily functioning of the office. Furthermore, it was the employee's opinion that scriptwriting was a special skill that was not within the scope of his duties.

The Commission reviewed the employee's position description and noted that his responsibilities included disseminating information to the public, developing public awareness activities, maintaining a county clearinghouse of information on resources to a certain population, and providing technical assistance in the development of programs and services

to that population. In the employee's discussions with our staff, the employee also referred to and commented on these responsibilities. Furthermore, the employee's position description specifically referred to the development and implementation of public education activities, referrals to the particular population, and provision of technical assistance to agencies in the development of programs for the that population. In addition, the Commission noted that the Commission staff also had discussed the situation with the employee's supervisor who stated that, in her opinion, the scriptwriting project fell in a grey area between the employee's clearly delineated state responsibilities and an activity that could be considered a purely personal one. Because the state commission served a broad spectrum of needs in the community, the supervisor noted that it was possible but not probable that the commission might have provided staff to assist the state institution with the project. She noted, however, that the commission did have a limited staff, particularly on the neighbor islands, and that whether such a project might be accepted depended upon the resources and time commitments of the individual office.

In light of the above, it was the Commission's opinion that it probably was improper for the employee to accept the project in his private capacity because the project conceivably fell within the scope of the employee's responsibilities. Because the employee's job position included providing technical assistance for the development of programs and services to the particular population, as well as providing information and referrals concerning program services to them, it was difficult for the Commission to conclude that this project and other similar projects did not fall within the scope of the employee's responsibilities. The Commission recognized that there might be differences between the broad mandates of a state agency and the practical implementation of those mandates; however, the Commission noted that unless the Commission received written confirmation from an employee's supervisor stating that a proposed activity did not fall within the scope of that employee's state responsibilities, the Commission had determined that it would continue to follow the reasoning set out in numerous past advisory opinions regarding the application of HRS §84-13(2). The Commission did not receive such a statement; consequently, although the employee had already expended time and energy in working on the project, he generally would not have been allowed to accept payment for his services. However, the Commission recognized that, in this instance, sufficient confusion had existed regarding the question of whether or not the employee could be privately compensated for his work on the project. Furthermore, the Commission recognized that the amount of compensation was small and that the employee's acceptance of the project was an inadvertent error in judgment on his part. Accordingly, the Commission decided to permit the employee to complete the project and accept payment. The Commission advised, however, that if the employee were offered future work that related to services to the particular population he served or issues regarding them, he should consult with his supervisor and with this Commission.

The Commission expressed its regret that this matter did not come before it at an early time, but commended the employee for his cooperation and candid presentation of the facts of his situation.

Dated: Honolulu, Hawaii, December 30, 1983.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Allen K. Hoe, Vice Chairperson
Mildred D. Kosaki, Commissioner

Note: Commissioners Gary B.K.T. Lee and Arnold J. Magid were excused from the meeting at which this opinion was considered.