

OPINION NO. 531

A professor at the University of Hawaii requested an advisory opinion from the Commission on whether the ethics code would prohibit him from doing work as a consultant for a mainland company. The professor's duties as a consultant were to include advising the mainland company on equipment design and technical aspects of the company's processing operations. At the university, the professor taught classes and did research on the technical aspects of the same process the company was involved in.

The provisions of the ethics code relevant to the question the professor raised were primarily HRS §84-14(b) and HRS §84-13(2), which in pertinent part state as follows:

HRS §84-14(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

HRS §84-13 Fair treatment. No ... 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 ...

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

Because it appeared to the Commission, and the professor had so stated, that official action the professor took at the university in performing his duties would not foreseeably involve the mainland company and that his official duties at the university did not include advising companies such as the mainland company, the Commission believed that neither HRS §84-14(b) nor HRS §84-13(2) would prohibit him from doing work as a consultant for the company. The Commission also noted that the chairman of the professor's department had submitted a letter to the Commission confirming that the professor's official duties at the university did not include advising companies such as the mainland company, nor would his duties directly involve the mainland company.

Although the Commission concluded that the professor could do work as a consultant for the company without coming into conflict with HRS §84-14(b) or HRS §84-13(2), the Commission informed the professor of the restrictions found in HRS §§84-13, 84-13(3), 84-12, and 84-14(a). HRS §84-13, the fair treatment section of the code, prohibits state employees from granting unwarranted advantages to private companies they may work for. In particular, HRS §84-13(3) prohibits state employees from using state time, facilities, or equipment for private business purposes. This provision of the ethics code prohibits state employees, for example, from using state telephones, state offices, state research facilities, and so forth, to carry on work for a private company. HRS §84-12, the confidential information section of the code, prohibits state employees from disclosing or using confidential information for non-state purposes. Confidential information includes information not available

to the public. Under HRS §84-12, state employees are prohibited, for example, from releasing research results to individuals before the results are published or otherwise presented to the public. Finally, HRS §84-14(a) prohibits state employees from taking any official action that would directly affect their financial interests.

The Commission informed the professor that advisory opinions issued by the Commission are based on and limited to the facts presented to the Commission. The Commission told the professor that he might wish to contact the Commission for another opinion should the facts of his case change.

Finally, the Commission commended the professor for seeking its advice before accepting the outside employment.

Dated: Honolulu, Hawaii, May 18, 1984.

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

Note: Commissioner Arnold J. Magid was excused from the meeting at which this opinion was considered.