

## OPINION NO. 538

The Commission received a request for an advisory opinion from a state employee who asked the Commission to determine whether she and her daughter could establish a school offering training programs for two different types of equipment. In the event that the ethics code prohibited the employee from establishing the school, the employee also asked the Commission to determine what restrictions would apply if her daughter were to establish the school by herself. The official stated that her daughter was twenty-one years old, resided with her, and paid her rent.

The employee stated that although her office did not take official action affecting schools offering instruction for the first type of equipment, her office did approve the curriculum for schools offering instruction for the second type of equipment. At the time of the request for an advisory opinion, the employee's office recognized only a curriculum developed and sold by a national organization that specialized in instruction programs for the second type of equipment. The employee told the Commission that she and her daughter had successfully completed an instructor course offered by the national organization and had been certified by the organization as qualified instructors.

The section of the ethics code relevant to the question the employee raised was HRS §84-14(b), which prohibits a state employee from acquiring "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." Because the employee would be taking official action directly involving schools offering instruction for the second type of equipment, the Commission determined that HRS §84-14(b) prohibited the employee from establishing a school offering instruction for the second type of equipment or having any other financial interest in such a school, such as an employment interest. Since the employee did not take official action directly involving schools offering instruction for the first type of equipment, the Commission stated that the ethics code would not prohibit the employee from establishing a school offering instruction for the first type of equipment.

If the employee's daughter were to establish a school on her own, the Commission stated that HRS §84-14(a) would be applicable. This part of the conflicts-of-interests section of the ethics code prohibits a state employee from taking any "official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest." HRS §84-3(6) defines "financial interest" as an interest held "by an individual, his or her spouse, or dependent children."

The Commission informed the employee that if her daughter did not receive support from her, HRS §84-14(a) would not prohibit her from taking official action directly affecting her daughter's school, should she choose to establish one. However, to avoid any appearance of impropriety, the Commission advised the employee that she might wish to voluntarily refrain from taking any action affecting her daughter's interests if there were others in her office who would be able to take the necessary action.

The Commission also mentioned for the employee's information that HRS §84-12 prohibits state employees from using or disclosing confidential information for personal gain or for the benefit of anyone. Confidential information is defined as information acquired during the course of one's official duties that is not available to the public. Also, HRS §84-13 prohibits state employees from using their positions to give anyone any unwarranted advantages. Specifically, HRS §84-13(3) prohibits the use of state time, offices, equipment, or facilities for private business purposes. This provision of the ethics code prohibits state employees, for example, from using office telephones for private business purposes.

The Commission commended the employee for her candid discussion of the facts of this case and for seeking its advice in advance of establishing a school.

Dated: Honolulu, Hawaii, August 27, 1984.

STATE ETHICS COMMISSION

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