

OPINION NO. 539

The supervisor of the records department of a state institution wished to become employed part-time in a private attorney's office. If she accepted this position, the employee's duties would include reviewing and summarizing records of a similar nature. Because some of the records also might come from the institution, the employee asked whether there might be any problems under the State Ethics Code.

The most applicable section of the code was HRS §84-14(b), a section designed to prevent future conflicts of interest from occurring by precluding employees from placing themselves in positions of potential conflict. This section prohibits employees from acquiring financial interests that may be directly involved in official action taken by them in carrying out their state responsibilities. A "financial interest" includes an employment or prospective employment for which negotiations have begun. Furthermore, "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

The only interaction between the records department of the institution and private attorneys occurred when private attorneys requested a release of records from the institution. The release of the records was done under the employee's supervision. The Commission noted that the employee did not have the discretionary authority to decide whether information requested by a private attorney should be released or withheld. Furthermore, the employee had explained that the institution's policy regarding the release of records was clear; a record was only released when accompanied by written permission or in response to a subpoena. The Commission reviewed the written procedures followed by the records department and agreed that the procedures were fairly straightforward, detailed, and did not seem to require independent judgment. Finally, the employee had stated that with the exception of information necessary for filing purposes, she and her office staff did not add information to the records. Consequently, the Commission believed that the employee did not take official action that might directly affect her new employment interest, and HRS §84-14(b) would not prohibit the employee from accepting the private position.

The Commission also wished to draw the employee's attention to two other sections of the ethics code that might be applicable to her situation. The first was HRS §84-12, the confidential information section, which prohibits employees from disclosing or using information which by practice or statute is not available to the public. The second section, HRS §84-13, prohibits employees from using or attempting to use their official positions to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others. The Commission noted that the employee had exhibited sensitivity to the ethical considerations of her situation and advised her to continue to guard against any accidental transgression of these provisions.

Because the deputy director for the division had transmitted this request for an advisory opinion to this Commission, the Commission directed that a copy of this opinion be forwarded to the deputy director.

The Commission commended the employee for seeking its advice at an early time.

Dated: Honolulu, Hawaii, September 10, 1984.

STATE ETHICS COMMISSION
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