## OPINION NO. 542

The Commission received a request for an advisory opinion from a state employee who wished to know whether the ethics code would prohibit him from accepting compensation for discussing his agency's programs and events on a regular basis in the media.

The section of the ethics code relevant to the question the employee raised was HRS §84-13(2), which prohibits a state employee from "[a]ccepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law."

Because the employee's job description stated that he had general responsibility for planning, developing, and promoting his agency's programs and events, the Commission believed that HRS §84-13(2) would prohibit him from accepting compensation for discussing his agency's program and events in the media on a regular basis. Although the employee stated that he did not believe that discussing his agency's programs and events on a regular basis on his own time in the media constituted one of his official responsibilities, the Commission believed that, in light of his job description and the nature of his position, the outside employment would constitute a normal function of his position. The Commission believed that its determination was supported by the employee's statement in a letter to the Commission that discussing his agency's programs and events on a regular basis in the media would provide a vehicle for his agency to keep the public informed of the activities available to them.

The Commission noted in its opinion that it had received a letter from the employee's supervisor stating that the employee's contemplated outside employment did not constitute one of his official responsibilities. In Advisory Opinion No. 509, the Commission stated that in cases where it was difficult to ascertain whether a particular activity fell within an employee's official responsibilities, the Commission might choose to rely on a statement made by an employee's supervisor. The Commission also stated in Advisory Opinion No. 509 that it did "not intend to waive its right to make an independent judgment in double compensation cases." Although the employee's supervisor stated in his letter that the contemplated outside employment would not fall within the scope of the employee's state employment, the Commission believed that the outside employment described in the employee's letter to the Commission would clearly constitute a part of his official responsibilities as set forth in his job description. In making this determination, the Commission also took into consideration HRS §84-1, which states that chapter 84, HRS, "shall be liberally construed to promote high standards of ethical conduct in state government."

The Commission realized that its decision in the opinion might be at variance with the practices of other states that have similar agencies. However, given the provisions of the ethics code and its applicability to the employee's agency, the Commission believed that its decision was in keeping with the legislative intent behind the State's ethics code.

The Commission informed the employee that advisory opinions issued by the Commission were based on and limited to the facts in the opinion. The Commission advised

the employee that, should the facts of his situation change, he might wish to contact the Commission for another opinion or a reconsideration.

Finally, the Commission commended the employee for his candor in discussing the facts of the case and for seeking the Commission's advice before accepting the outside employment.

Dated: Honolulu, Hawaii, September 19, 1984.

STATE ETHICS COMMISSION
Allen K. Hoe, Chairperson
Edith K. Kleinjans, Vice Chairperson
Tim S. Farr, Commissioner
Rabbi Arnold J. Magid, Commissioner

DISSENT

I respectfully dissent. I believe the case under consideration is similar to that which resulted in the issuance of Advisory Opinion No. 509 by the Commission. In Advisory Opinion No. 509, the Commission allowed the employee to engage in outside employment since he had complied with five conditions set forth in the opinion by the Commission. The fifth condition required the employee's supervisor to file a statement with the Commission that the outside employment did not fall within the ordinary course of the employee's state employment. I believe that the facts of this case indicate that the employee has complied with the five conditions set forth in Advisory Opinion No. 509. Therefore, I would find that HRS §84-13(2) does not prohibit the employee from accepting compensation for engaging in the outside employment.

Mildred D. Kosaki, Commissioner