

ADVISORY OPINION NO. 556

The Commission received a request for an advisory opinion from a state employee who asked the Commission to determine whether she could continue working part-time for a private company and its parent firm.

According to the state employee, the private company had entered into a three-year contract with the employee's state agency in 1980 to publish some of the agency's brochures. The contract was renegotiated in 1983 for another three-year period. Under the contract, the employee, in her official capacity, was responsible for selling advertising space in the agency's brochures. The employee stated that, aside from providing background information to her supervisor, she did not participate in contract negotiations between her agency and the private company. The employee's supervisor had also submitted a letter to the Commission to that effect.

The provisions of the State Ethics Code relevant to the employee's question were HRS §84-14(a) and (b), which, respectively, prohibit state employees from (1) taking "official action" that directly affects companies they work for or (2) accepting employment in companies that may be directly involved in official action to be taken by them. HRS §84-3(7) defines "official action" as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."

Because the state employee was not involved in contract negotiations with the private company, the Commission believed that she did not take "official action" affecting the company and therefore could continue her employment relationship with the company and its parent firm. Although the employee provided background information to her supervisor regarding the contract with the private company, the Commission believed that such action was not "official action" under the ethics code.

Since the Commission determined that the employee could continue working for the private company and its parent firm, the Commission advised the employee to keep in mind the following restrictions in the ethics code. HRS §84-13(3), part of the fair treatment section of the ethics code, prohibits state employees from using state time, equipment, or other facilities for private business purposes. Thus, for example, private business may not be conducted over state telephones or in state offices or during state time. HRS §84-14(d), part of the conflicts-of-interests section of the ethics code, prohibits state employees from representing companies they work for before their own state agencies. Finally, as stated above, the ethics code prohibits state employees from taking "official action" that directly affects their companies. The Commission advised the employee that, should her official responsibilities change, she might wish to contact the Commission for another opinion.

The Commission commended the employee for bringing this matter to its attention and for her candor and cooperation in providing the Commission with information relevant to her case.

Dated: Honolulu, Hawaii, May 23, 1985.

STATE ETHICS COMMISSION

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