

## ADVISORY OPINION NO. 557

An employee requested an advisory opinion from the Commission because he had been told by the evaluation office of the department that materials the employee represented could not be reviewed for inclusion on the department's list of suggested materials because he was a departmental employee.

The Commission first considered the application of HRS §84-14(b), which prohibits an employee from acquiring a financial interest if there is reason to believe that the financial interest may be directly involved in official action to be taken by the employee. In past advisory opinions relating to teachers, the Commission had noted that while practices might differ from school to school, teachers often took official action that directly affected a company whose materials they represented. For example, a teacher might participate in the review by the department of certain educational materials. Additionally, a teacher might recommend educational materials to other teachers or to students and parents. Finally, a teacher might have the authority to expend specific amounts of money each year to purchase educational materials for the teacher's own classroom or a particular school department.

The employee represented that he did not review educational materials nor did he participate in any of the decisions made by the department or his school regarding the purchase of educational materials. The employee did, however, have the authority to determine how to use some funds each year for a variety of educational materials for the employee's own classroom. Nevertheless, the employee emphasized that he would never be required to use departmental funds to purchase the material he requested since he obtained the material free of charge from the company. Accordingly, the Commission determined that the employee would not be in a position to take action affecting the company that produced the materials and, therefore, concluded that the employee had not acquired a prohibited financial interest.

The second section of the code that applied was HRS §84-14(d), which states as follows:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

The Commission noted that this section prohibits employees from acting in a representative capacity for compensation before the agency of which they are employees. The employee had stated that he conducted his business by attending educational seminars and private home demonstrations, noting that he lived in a neighborhood that mainly consisted of individuals who were teaching professionals. Therefore, the nature of the employee's business had been informal and had not been the result of the employee's contacts within the department. The

Commission recognized that the ethics law allowed the employee to sell educational materials to private or public school teachers in their private capacities at these private demonstrations. However, the Commission considered whether HRS §84-14(d) would prohibit the employee from selling educational materials to those public school teachers who would be expending their classroom funds for this purpose. The Commission noted that although the decision to purchase the materials would be made by an individual teacher, the materials would be purchased with state monies and would become departmental material. In effect, there would be a financial transaction between the employee business and the department.

The Commission referred to Advisory Opinion No. 551, which stated that representation and assistance of persons before the department that an employee is employed by creates an appearance of impropriety and gives an advantage to the persons assisted or represented. The Commission also had stated that it believed that such an advantage would be unwarranted and would accrue irrespective of any efforts taken by the employee to prevent such an appearance. In this instance, the Commission was mindful that the size of the employee's company was modest; nevertheless, the Commission affirmed its belief that the public would not be persuaded that favorable results in a case involving representation by an employee did not result from the employee's relationship to the department. Accordingly, the Commission concluded that HRS §84-14(d) would preclude the employee from representing his company or the company that produced the educational materials before the department. Specifically, the employee could not represent the material before the department for review and inclusion on the department's list of suggested materials or sell the material to teachers who used departmental monies for the purchases. The Commission recognized that this result might seem harsh and could pose some difficulties for the employee in his business. The Commission noted, however, that the ethics law would not prohibit the employee from hiring another individual to represent the material or his company before the department. Furthermore, the Commission noted that because the Commission did not have jurisdiction over the spouse of an employee, so long as an employee refrained from assisting, a spouse would not be prohibited from representing a company before an employee's department or transacting business with the department.

The Commission commended the employee for his initiative in taking steps to separate his private business from his state responsibilities and appreciated the employee's willingness to conduct his business strictly in accord with the guidelines set out in the State Ethics Law.

Dated: Honolulu, Hawaii, June 3, 1985.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Tim S. Farr, Vice Chairperson

Edith K. Kleinjans, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: There was a vacancy on the Commission.