

ADVISORY OPINION NO. 564

The Commission received a request for an advisory opinion from an employee who administered a state preservation program, which was responsible for identifying and registering certain properties, reviewing development projects for their impact upon the properties, providing technical assistance and advice to government agencies and the private sector in this area, and generating public information with respect to the properties. A state educational institution had advertised a half-time position for someone to direct a certain course of study. This course of study had been established as a result of an earlier feasibility study. Because the employee had participated as a member of the committee that reviewed the feasibility study and her state responsibilities included administering a state program, the employee asked the Commission if it would be permissible under the State Ethics Code for her to apply for the advertised position.

A number of sections of the ethics law were applicable to the employee's situation. The first was HRS §84-13(1), which prohibits an employee from using his position to secure unwarranted privileges, including seeking other employment or a contract for services for himself by the use of his position. In addition to participating as a member of the committee that reviewed the feasibility study, the employee had been mentioned in the study as a possible instructor for a course as a prerequisite for the course of study. Both the author of the study and the department chairman at the time the study was done stated that this course differed from the one that was to be a part of the responsibilities of the position the employee wished to apply for. Additionally, the author of the study had represented to the Commission that the employee's role on the review committee had been very minor. The author of the study also had stated that the suggestion that the employee teach a course had been solely the author's idea and he emphasized that it had been his intention in the feasibility study to point out potential resources within the community, including the employee, to the department. The former department chairman confirmed that he had initiated a brief discussion with the employee at the author's suggestion. The former department chairman noted that the discussion had been extremely preliminary, without any reference to specifics, because at the time he had spoken with the employee, the decision to initiate the course of study had not yet been made. Given those representations, the Commission concluded that HRS §84-13(1) would not preclude the employee from applying for the position with the department.

Another portion of the fair treatment section, HRS §84-13(2), prohibits employees from accepting, receiving, or soliciting compensation or other consideration for the performance of their official duties or responsibilities except as provided by law. Because a portion of the employee's responsibilities included educating members of the public and property owners in the area of preservation, the Commission sought and received written confirmation from her supervisor stating that teaching the course would be outside the scope of the employee's public educational functions with the state agency. The Commission noted that it did not receive any other information to the contrary; accordingly, the Commission determined that HRS §84-13(2) would not prohibit the employee from teaching the course.

In summary, the Commission believed that the provisions of the ethics law would not prohibit the employee from applying for the position. First, the Commission noted that the position had been advertised in the local newspapers and an open, public process had been initiated. Second, if the employee were successful as an applicant, the course she would teach would not be the same one that had been contemplated in the feasibility study. Finally, the Commission had received written verification from the employee's supervisor confirming that the content of the course fell outside of the scope of her present job responsibilities.

The Commission appreciated the employee's cooperation in submitting all of the necessary information and commended her for seeking its advice at an early time.

Dated: Honolulu, Hawaii, August 28, 1985.

STATE ETHICS COMMISSION

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