

## ADVISORY OPINION NO. 567

The Commission received a request for advice on whether an employee could serve as a consultant to a group of investors by providing an independent evaluation on whether an agreement between the investors and a contractor was on schedule. After reviewing the situation, the Commission concluded that the employee could accept the contract.

The Commission first considered the application of HRS §84-14(b), which prohibits employees from acquiring financial interests in any business or other undertaking that they have reason to believe may be directly involved in official action to be taken by them. The employee's responsibilities included providing technical assistance to the staff and presenting educational programs and training through publications, workshops, and conferences. The employee also noted that he sometimes provided direct assistance to private industry through both his research and public information and assistance roles. However, the employee stated that he would not normally provide services to investor groups such as the one that contacted him and that he would generally refer inquiries for services from such groups to other qualified individuals or organizations that might provide those services. In the Commission's view, the employee was not in a position to take official action that would directly affect the investor group; accordingly, the Commission did not believe that HRS 84-14(b) restricted him from this private contract.

The most applicable section of the ethics law was HRS §84-13(2), a portion of the fair treatment section, which states as follows:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

....

- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.

The employee indicated that he did not believe that the services the investor group sought were provided by his agency, and the Commission had received statements from two of the employee supervisors confirming his conclusion that this kind of work was beyond the scope of his responsibilities. In light of the opinions of those two individuals, the Commission concluded that the employee's acceptance of the consultant contract would not violate HRS §84-13(2).

Finally, the Commission noted that when the investor group sought the employee's services, it had contacted the employee at his agency. The Commission considered whether the employee might have received an unfair advantage in violation of HRS §84-13, which might bar him from accepting the contract. The employee stated that he did not refer the investor group to others because, to his knowledge, there had been only one other private individual who had done this kind of work some time ago and he had not been certain if that

individual had been still available for work in Hawaii. The employee also expressed an understanding of the underlying philosophy that would require fairness in any referral process and had indicated that he would abide by any conclusions the Commission reached. In the Commission's view, there was no evidence that the employee had misused his official position in any way to secure the offer of the contract; therefore, the Commission determined that the employee could enter into the contract.

The Commission commended the employee for his sensitivity to the ethical considerations of his situation.

Dated: Honolulu, Hawaii, November 19, 1985.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Tim S. Farr, Vice Chairperson

Edith K. Kleinjans, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Loomis was excused from the meeting at which this opinion was considered.