

## ADVISORY OPINION NO. 568

A researcher in a state agency asked the Commission to determine whether he could work as a paid consultant for two foreign companies involved in the production of a certain commodity. The two companies asked the researcher to travel to their country to provide on-site assistance in the manufacturing process for the commodity. The companies also requested that the researcher provide continued support and make periodic visits as the need arose.

The Commission understood that the mission of the researcher's agency was limited to developing the commodity's industry in Hawaii. Thus, the agency had no mandated official responsibilities requiring it to assist companies in foreign lands. However, the head of the agency, who was also the researcher's supervisor, stated that his agency might assist a company in a foreign country if in doing so his agency were to acquire information beneficial to the State of Hawaii. The agency head stated, however, that such assistance would be quite limited since his agency's chief responsibility was to assist local companies. According to the agency head, such assistance might include exchanging technical information, performing a sample analysis, or providing specific advice.

The first section of the ethics code relevant to the question the researcher raised was HRS §84-14(b), which reads as follows:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

Because decisions to provide assistance to foreign companies were made by the agency head, the Commission concluded that the researcher would not be taking "official action" directly involving the foreign companies and therefore could accept employment with the companies. Furthermore, the Commission concluded that any assistance the researcher might provide to foreign companies in his state capacity would be simply to provide technical information, which did not rise to the level of "official action." HRS §84-3(7) defines "official action" as action involving the use of discretionary authority.

The second section of the ethics code applicable to the question the researcher 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." This section of the ethics code would have come into play if the work the researcher intended to do for the companies had been a part of his state duties.

Both the researcher and the agency head had stated, however, that the work the researcher would perform for the companies went far beyond the sort of limited assistance the agency might provide to a foreign company. Thus, the Commission concluded that HRS §84-13(2) would not be violated if the researcher accepted the consultant work with the companies.

Although neither HRS §84-14(b) nor HRS §84-13(2) prohibited the researcher from doing paid consultant work for the companies, the Commission asked that the researcher note that HRS §84-12 prohibits state employees from using confidential information for their personal gain or for the benefit of others, and that HRS §84-13 prohibits state employees from granting unwarranted advantages to themselves or others, including using state time, equipment, or other facilities for private business purposes. The Commission suggested to the researcher that if he had any questions concerning the application of these or other sections of the ethics code, he might wish to contact the Commission for another opinion.

Finally, the Commission commended the researcher for seeking its advice at an early time and for his candor in discussing the facts of his case.

Dated: Honolulu, Hawaii, November 27, 1985.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Tim S. Farr, Vice Chairperson

Edith K. Kleinjans, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Laurie A. Loomis was excused from the portion of the meeting at which this opinion was considered.