

INFORMAL ADVISORY OPINION NO. 14

On January 30, 1973, the State Ethics Commission initiated a charge against a state employee having responsibility for the business affairs of a state facility. The employee was given notice of the Charge of Violation HRS §84-13 and Further Statement of Alleged Violation, pursuant to HRS §84-31(b) and Rule 12 of the Rules and Regulations of the Commission.

The Statement alleged a violation of HRS §84-13 (relating to use of position to grant unwarranted treatment) based upon the following: That the employee, in carrying out his responsibility for the business affairs of this facility, had the authority, through formal or informal bidding procedures, to contract for a specific service involving the collection of accounts, that the employee had caused his subordinates to refer all accounts in the month of January 1972 to a newly created company because the new company had offered services at lower rates than the old company which had been doing business with the facility for some time and which had requested a raise in rates; and that the fact of the referral of accounts to the new company was not communicated to the old company. Thereafter, although the old company changed its rates to coincide with those of the new company, the facility referred, except for a one month period when accounts were divided evenly between the old and new companies, a disproportionate number of accounts to the new company. During most of the period of January through November 1972, it was alleged that accounts had been referred on a two to one basis to the new company and to the old company, respectively. It was further alleged that an officer of the old company frequently attempted to ascertain the reason for what appeared to him to be a referral of a lesser number of accounts to his company but was unable to do so.

In initiating the charge, the Ethics Commission voted to proceed directly to a contested hearing. A preliminary hearing was held in which a Motion to Dismiss was considered by the Commission. The Commission denied the Motion to Dismiss. Thereafter, the Associate Director and the attorney for the Respondent negotiated a Stipulation in which the Respondent agreed to forthwith cease and desist from causing the disparate referral of accounts and to take steps to ensure fairness in the referral of future accounts. The Respondent agreed, among other things, to ensure that the companies would be informed whenever one of them proposed to modify its rates or other terms of its contract. According to the terms of the Stipulation, the signing thereof was for settlement purposes only and did not constitute an admission of violation as alleged in the Charge and Further Statement of Alleged Violation; and acceptance by the Commission meant the Commission acceded to termination of the proceedings and the Stipulation would become a final order. As a part of the Stipulation, the employee agreed that the Charge, Further Statement of Alleged Violation and Agreement could be reduced to deleted summary form. The proceedings were conducted in this fashion pursuant to §91-9(d).

Dated: Honolulu, Hawaii, June 7, 1973.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Walters K. Eli, Commissioner

Note: Commissioner Audrey P. Bliss was absent from the meeting at which this summary agreement was considered. There was one vacancy on the Commission.