

OPINION NO. 2

The head of a division of a state department has asked the State Ethics Commission for an opinion as to whether the following is a violation of the standards of conduct of Act 263, SLH 1967: He is the sole stockholder and president of a business in the same profession in which he serves the State. His private business is run by one full-time professional and has the part-time services of another. In the past it has grossed in excess of \$50,000 annually, but for the past few years it has been in the red. The employee does not himself practice in the profession privately.

In his state position he serves in his professional capacity and is charged with the responsibility for an industry of great importance to the people of the State. He controls inspection and approves service facilities of members of his profession for referral purposes when referrals from a state agency are necessary. He has control over the private sources of certain materials used by the profession in the State, he controls some types of information of interest to the profession which must be reported to his office by members of the profession, and he controls a state facility which provides certain services to private practitioners of the profession.

It is the opinion of the Commission that he is presently in violation of section 8(a) of Act 263, SLH 1967.

He is an employee with a financial interest which is a substantial one; it is the entire interest in a business which has grossed in excess of \$50,000 annually. The delineation of what interests are "substantial" was left to the Commission. As the purpose of Act 263 is to assure that action of a state employee be taken in the public interest and not in his own interest, "substantial" must be interpreted to mean an interest of sufficient magnitude to have a possible influence on the employee's action. This is such an interest.

The Commission interprets section 8(a) of the Act to prohibit the existence of a situation wherein a public employee's performance of his public office must inevitably affect his private interests. To serve in his position with the State while he owns the business can mean only participation in violation of the Act. This unavoidable clash of private interest and public duties may well impair his loyalty and judgment. We therefore find this to be a conflict of interests situation prohibited by section 8(a) of the Act.

This decision does not imply the finding of any misuse of the employee's official position. A faultless record during long service with the State, however, would not lessen the present applicability of section 8(a).

Dated: Honolulu, Hawaii, April 8, 1968.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Mary George, Vice Chairman
James F. Morgan, Jr., Commissioner
S. Don Shimazu, Commissioner
July Simeona, Commissioner