

OPINION NO. 5

The employee of a state housing agency has asked whether he can accept the directorship of a private corporation which deals in land and housing. In his state employment he is responsible for carrying out the policies and programs of the state agency responsible for providing accommodations to certain segments of the population. He is responsible for acquisition of land, demolition of existing buildings, planning, financing, construction and management, and makes recommendations to the agency on real property purchases to be made by the agency. The agency also administers two new programs, one dealing with the condemnation of residential leaseholds for resale to the former lessee and the second concerning giving financial help to qualified persons to enable them to apply for federal housing monies.

The employee has been asked to serve on the board of directors of a local corporation, whose interests include land development, banks and other financial institutions. He would be paid a director's fee for attending meetings, rendering all services at other than state agency working hours.

Neither the employee nor any members of his family own any interest in the corporation or in any of its wholly-owned subsidiaries.

The Commission finds that there would be no violation, per se, of Act 263, SLH 1967, *as amended*, Act 21, SLH 1968, by the employee's serving on the board of directors of a private corporation while being at the same time employed by the state agency. However, as the activities of the public and private organizations are similar in nature, the employee may in the future be in a position where his action will violate the Act.

In occupying these two positions, the employee must keep Act 263 clearly in mind. Sections 6, 7, and 8 closely regulate his action vis-a-vis the corporation, and section 10 regulates the corporation's freedom to contract with the state agency by which he is employed. The effect of these sections should be carefully considered before a decision to accept the directorship of the corporation is made.

In the event that official action must be taken by him regarding or directly affecting the corporation, he must then choose between public employment and his private interests. This employee is not one of a number of board or commission members who can abstain from public action when the interest of a private concern is affected and still retain public employment. To take public action directly affecting the corporation while serving on the corporation's board would be a violation of Act 263.

Dated: Honolulu, Hawaii, May 23, 1968.

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