

OPINION NO. 9

A state employee asks whether his wife's and minor child's ownership of \$9,000 worth of stock in a large corporation in the industry regulated by his agency violates the Ethics Act (Act 263, SLH 1967, as amended).

This employee is chief administrative officer for an agency which has very broad and restrictive supervisory powers over businesses in an industry. He is primarily responsible for the staff of the agency and directly responsible for formulating and preparing for the decision-making body of the agency recommendations based on his staff's findings, whenever a request or complaint concerning industry members is before the agency. As such, he is not in a position to disqualify himself from action when a matter in which he has an interest comes before the agency.

When he originally joined the agency, the employee received an opinion from the Attorney General that the stock ownership was permitted under the law governing that agency, which provides that no agency employee may have any interest in an agency-regulated business. It may well be that, had the shares been in the employee's name when the opinion was issued, a different conclusion would have been reached.

The Ethics Act recognizes in its definition of a "financial interest" that the relationship of a state employee's spouse or minor child to the employee is such a close one that their interest must be considered the same. [Section 4(6).]

Section 8(a) of the Act prohibits participation in "official action" by a state officer or employee which may directly affect "a business or matter in which he has a substantial financial interest."

We have earlier said that an interest is "substantial" if it is of sufficient magnitude to have a possible influence on the judgment of the individual involved. [Opinion No. 2.] Thus, "substantial" in this section refers to the magnitude of the interest to the individual, and not to whether it is considered "substantial" when measured against the corporation's worth. We hold that \$9,000 worth of stock is a substantial interest in this instance.

"Official action" is defined by section 4(7) of the Act as a "decision, recommendation, approval, disapproval, or other action which involves the use of discretionary authority." Discretionary authority is that requiring the exercise of the employee's independent judgment. Fashioning recommendations to the agency based on his staff's findings clearly involves the use of discretionary authority.

"Direct effect" depends solely upon whether the official action has an actual and real effect on the "business or matter" in which the employee has a substantial interest, and not whether it affects this employee's interest in it. This is true regardless of whether the official action is one of recommendation or of ultimate decision, and regardless of whether the effect is to the public advantage or to the private advantage of the employee.

In his position this employee directs staff inquiry, reviews the reports of the staff and from the total decides what is important and prepares a recommendation. The decision-making body of this agency, to whom the recommendations go, is composed of part-time individuals who, because they are not specialists and because they do not have the time or means to gather independent information, must rely in large part upon the staff recommendations. Thus, in reality, this employee's actions have a very real and direct effect upon the industries regulated.

Because this employee, in the course of his duties, will have to take official action which will directly affect a corporation in which his family owns an interest, continued ownership of the interest places him in violation of section 8(a).

We wish to emphasize that this opinion is based on the facts set forth above, and that we do not hereby rule on any other case in which the facts may substantially differ.

Dated: Honolulu, Hawaii, September 24, 1968.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
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James F. Morgan, Jr., Commissioner
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