

## OPINION NO. 11

We have received a request for an opinion from a state division head as to whether it is in violation of Act 263, SLH 1967, for an inspector within the division to be a director of and hold a corporate office in, a corporation which is one of the types inspected by the division. His wife is employed by the corporation and owns shares in it.

Inspectors in the division are responsible for inspecting many different measuring devices in various industries to assure accuracy in these industries' dealings with the public.

Section 8(a) of the Act prohibits action directly affecting a business in which the employee has a substantial financial interest. A "financial interest" is defined in section 4(6)(c) as "an interest held by an individual, [or] his spouse ... which is ... an employment." Thus, his wife's employment is a financial interest, as are her stock ownership and his employment with the corporation. (The Act defines employment as "any rendering of services for compensation." Section 4(5).) This bundle of interests is certainly a "substantial financial interest."

We have held that section 8 of the Act prohibits the existence of a situation where a public employee may be put in the position of taking official action directly affecting his private interests. In this instance the employee may well be assigned, as he has been in the past, to inspect the measuring equipment of the company of which he is a director, as well as rival companies in the industry. This would be taking official action directly affecting a business in which he has a substantial financial interest. Thus, this situation is a conflict of interests situation, in violation of section 8(a) of the Act.

The employee has failed to file a disclosure of these private interests under section 12(a) of the Act. While such filing is a condition of continuing in public employment, this violation would be simply cured by a prompt filing of a disclosure of these interests to the Commission by the employee involved.

However, the section 8(a) violation is not so easily resolved, as resolution involves either a divestiture of his private interests, or transfer within the public employment to a position in which his official action cannot affect his private interests. The employee must decide with reasonable and deliberate haste which master he wishes to serve and take the necessary steps in accordance with his decision. Otherwise, this Commission will have to proceed in the manner provided in Act 263 to safeguard the public interest.

Dated: Honolulu, Hawaii, October 16, 1968.

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

Note: Commissioner July Simeona was excused from the meeting at which this opinion was considered.