

## OPINION NO. 15

A member of the Legislature has filed an extensive list of his holdings in land and corporate stock with the State Ethics Commission and has requested an opinion as to whether these private interests place him in violation of the Ethics Act (Act 263, SLH 1967, *as amended*).

The Legislature, under Hawaii's State Constitution, has the sole power to regulate its members. As we said in our first opinion:

The Commission is aware that conflicting interests may occur in the conduct of government, especially in the case of part-time officials. Our special concern is that when anyone in the public service of the State of Hawaii has a private interest which may conflict with the public interest, action be taken in behalf of the public interest. However, this Commission may only act to forward this concern within the framework of the laws of this state and the Standards of Conduct set forth in Act 263.

The Legislative Article of Hawaii's Constitution, Article III, provides that a member of the Legislature cannot be held to answer before any tribunal other than the Legislature for action taken in the exercise of his legislative functions. [Section 8.] Each house of the Legislature has the power to discipline its own members and has its own procedural rules governing the legislative functions a member may exercise which affect his private interests. [Section 13.] We therefore cannot rule on the propriety of the procedural rules of the Legislature concerning the legislator's participation.

The Legislature can delegate this power of regulation, as it did to this Commission in sections 6, 7, and 10 of the standards of conduct. Thus, if a legislator were to disclose or use confidential information for his or another's benefit, he would violate section 6. If he were to use or attempt to use his official position as a legislator to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others, he would be in violation of section 7, the fair treatment section of the Act. And if he or a business in which he has a controlling interest should desire to enter into a contract with a state agency involving services or property of a value in excess of \$1,000, such contract could, under section 10, only be made after competitive bidding.

However, the power to regulate members of the Legislature was not delegated to the State Ethics Commission in sections 8 and 9 of the Act. The Legislature omitted the application of these sections to its members. Thus, this Commission is not empowered to regulate a legislator's taking official action directly affecting his private interests or appearing on behalf of private interests before a state agency for compensation contingent upon the action of the agency (unless in so doing he uses his official position to obtain unwarranted treatment in violation of section 7).

In his request for an opinion, the legislator sets forth the nature and extent of his interests, but does not indicate how they might be affected by action of a state agency. The mere possession of these interests does not place him in violation of the Act. Nor does official

action directly affecting them, as legislators are not governed by section 8 of the Act. A legislator falls under the purview of the Ethics Commission only if he violates one of the other sections of the Ethics Act.

Finally, the Ethics Act in section 12 requires legislators to file disclosures with the Commission, if they believe their interests may be affected by actions of a state agency. The purpose of this section is to place a public servant's private interests on record so the Commission can view the action he takes in light of these interests. Section 12(c) of the Act makes the filing of such disclosures a condition of public employment. However, the Act provides no sanction against legislators who do not file.

The letter-disclosure filed by the legislator contains the information required in Rule 6 of the State Ethics Commission's Rules and Regulations, and thus complies with section 12 of the Act.

Dated: Honolulu, Hawaii, December 17, 1968.

STATE ETHICS COMMISSION  
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