

## OPINION NO. 19

A neighbor island real property tax assessor asks whether he is in conflict in assessing or directing an assessment on his own property. He has appraisers and clerks under him whose work he closely supervises.

In assessment, unit values and cost factors are applied to the area of the building and/or land. This assessor actively participates in setting unit values for all parcels of land, including his own, on the island. The unit values he sets are entered upon valuation maps and then entered by appraisers from valuation maps onto field books. Thereafter, the computation of assessed value is routinely done by appraisers or clerks.

The Ethics Act, Act 263, SLH 1967, as amended, prohibits employee participation in official action directly affecting a business or matter in which the employee has a substantial financial interest. Section 4(7) defines "official action" as that involving the use of discretionary authority.

The action of a real property tax assessor clearly involves the application of independent judgment to the situation and is thus "discretionary."

Furthermore, assessment "directly affects" his real property, a substantial financial interest.

Thus, we hold that in assessing and/or directing an assessment on his own property, a tax assessor is participating in official action in violation of section 8(a) of the Act.

However, the Commission does not intend to foreclose persons serving the public in the area of real property taxation from owning homes or other property for their own use. The public interest is preserved by declaration of such interests to the State Ethics Commission and selective disqualification from official action directly affecting the assessor's interests in favor of others in the department.

The assessor has stated that he has an immediate supervisor, a district tax administrator, and that the Property Technical Office of the Department of Taxation makes several trips a year to that island and is available to appraise individual parcels of a complex nature on request. Thus, he could avoid violation of section 8(a) by disqualifying himself from all discretionary action directly affecting his property in favor of either that district tax administrator or the Property Technical Office. Or, disqualification could be in favor of one of the appraisers under his jurisdiction, subjecting him to the direct review of the district tax administrator or the Property Technical Office, whichever is administratively most appropriate, in the limited case of official action directly affecting his property.

Dated: Honolulu, Hawaii, February 25, 1969.

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

Note: All members of the Commission concur in this opinion. The vacancy left by Commissioner George's resignation in favor of public office has not been filled.