

OPINION NO. 22

An employee of the State Department of Taxation has requested advisory opinions on three situations.

First, he asks whether a state real property appraiser may obtain information from the Tax Office for compensation from a third party. The information, names and addresses of the owners of real property surrounding a particular piece of property, and data about recently sold pieces of real property, is a matter of public record and can be obtained by anyone without charge from the Tax Office.

He asks whether he may do this work during vacations, at lunch hour or after 4:30. These are not state working times. [See section 5-70, R.L.H. 1955, *as amended*.]

This outside employment does not violate the provisions of Act 263, SLH 1967. If the information were confidential, if his official action directly affected this work, if he used his position to obtain access to the state office or records during hours when the office was closed, if the work were carried on during state time, or if he used his position as leverage to obtain this employment, our answer would be otherwise. However, we find no violation if a real property appraiser gathers information from public records of the Tax Office on his own time for compensation.

In the second situation, the employee asks whether he, as a real property appraiser, is in a conflict of interests situation if he participates as one of 15 members in an investment club which invests in common stocks. The club meets monthly to discuss and purchase stocks, each member investing \$10 a month as his share for purchases. The club portfolio is presently composed of shares of nine companies, presently valued at \$4,500. Thus, his share would be approximately \$300, or on an average, \$33 per company. In the future the club may buy and sell real estate, some of which he may be called upon to appraise and assess.

The Act does not preclude investment by state employees in the stock of most corporations. However, he has stated that a small part of the club's portfolio is made up of shares in local corporations having substantial land on Maui. He has also stated that there are other appraisers in the division in favor of whom he could disqualify himself when it became necessary to take official action on the property of these corporations.

We have defined "substantial" to mean an interest of sufficient magnitude to possibly influence an employee's official action. His average, pro rata share in each corporation is presently \$33. We hold that in this instance \$33 is not a substantial financial interest within the meaning of section 8 of the Ethics Act; so he is not presently prohibited by section 8(a) from participation in official action directly affecting these corporations. However, through additional investment and a rising market, it is possible that in the future his interest might well become substantial. At such time as his interest does become "substantial," we suggest that he request an additional opinion on the appropriateness of disqualification or other possible measures to prevent a violation of the Act.

Under the prohibition of section 8(b), an employee may not acquire a financial interest which he has reason to believe may be directly involved in official action to be taken by him. Real estate purchased by the club could well be directly involved in the employee's official action. Thus, he would have to refrain from investments either individually or as a club member in real estate which he has reason to believe may be directly affected by his official action, or provide before acquiring the property for complete disqualification from such official action prior to its acquisition.

We further note that the Department of Taxation has laid down departmental guidelines regarding what outside employment is incompatible with public service under section 3-83, RLH 1955. In its Policy Manual it states: "The following activities are considered contrary to the best interests of the Department: ... (B) Engaging in the promotion or selling of stocks, bonds and like securities or real estate." [See Policy Manual, Administrative I-I, issued by Department of Taxation, 11/18/59.] Any state department is free to adopt stricter standards of conduct which do not bind that State Ethics Commission on ethical questions. We do, however, bring it to the attention of the employee as the departmental rule in the case.

Finally, the employee asks if appraisers, clerks, examiners, and possibly other members of the Tax Department may join together and purchase raw land for development, rental and possible sale.

"Official action," that which an employee may not take if it directly affects his substantial financial interests, is defined by the Act as action involving discretionary authority. Thus, it is possible that some members of the department whose duties are ministerial in nature could, under the Ethics Act, join together for real estate investment purposes so long as they did not use their official positions to obtain unwarranted privileges in violation of section 7 of the Act.

However, because our decision depends upon the duties of the individuals involved, we are unable to render a general opinion governing all possible combination of Tax Department employees. We can only suggest that at such time as the joint venture is in the offing, the employee ask for an opinion with specific reference to the individuals involved.

Dated: Honolulu, Hawaii, March 7, 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.