

OPINION NO. 23

An income tax assessor asks whether the following interests present a violation of the Ethics Act (Act 263, SLH 1967):

- (a) A family corporation formed to run an old neighborhood general merchandise and liquor store.
- (b) The reactivation of a real estate salesman's license in contemplation of pending retirement, to use to obtain commissions from the sale of family estate lands through a broker and to use in his own time to qualify for a broker's license in two years.
- (c) Ownership of four lots requiring business development.

While it is true that the nonworking hours of employees in state government are their own, concomitant with the privileges of public employment are the duties imposed by the public trust. Thus, a state employee is not as free in his choices of private interests as are other citizens. Some of the limits placed by the Legislature on public employees to insure the fulfilling of this trust are spelled out in the Ethics Act.

We do not, however, find that the interests set forth above present, *per se*, a violation of this Act.

In his position the employee supervises income and miscellaneous tax assessment operations for a taxation district, including activities relating to the examination of filed returns and the auditing of business entities to determine correct tax liabilities and adjustments in assessments. He is not, however, involved in the taxation or assessment of real property.

Further, he has stated that it is the administrative policy of his office that tax auditors and examiners do not audit their own or their families' tax returns, such auditing being done by a different examiner.

Any official action that he should take directly affecting the family corporation or that taxes to be paid by it would be participation in violation of section 8(a) of the Act. However, complete disqualification from all such official action, in line with departmental policy, would prevent such violation.

The employee's real estate activities are not in violation of the Ethics Act, so long as they are conducted at other than office hours and are not directly affected by his official action as income tax assessor. In so holding we assume that, as in the above situation, auditing of the taxes to be paid by him would be done by another examiner and that the employee will not use his official position to effect the sale of real property.

We mention for the assessor's information the Tax Department policy on dealing in real estate: "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, 11/19/59.]

Finally, the employee wishes to develop three houselots and build on one store site for rental income. Again, so long as he disqualifies himself from all official action as county income tax assessor directly affecting these properties or his interests therein, he will not place himself in violation of the Ethics Act.

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.