

OPINION NO. 29

The chairman of a University department requested an opinion upon the propriety of the department's purchasing certain equipment from a corporation composed of three members of the staff of that department if, after statutory open bidding, its bid is most favorable. The contract will amount to approximately \$12,000.

The corporation has sold many completed units to mainland schools and organizations and has received government contracts for research and development totaling approximately \$10,000. All of its manufacturing is done in Hawaii with raw materials, 75 per cent of which are purchased on the mainland and 25 per cent of which are purchased in Hawaii.

The chairman and another member of the department's staff who has a personal interest in the corporation participated in writing the specifications for the equipment. It will be used by the department to supplement a lecture course. The specifications were subsequently reviewed and approved by two other professors in the department, who are not affiliated with the corporation. The chairman further stated that, in the future, persons other than faculty members interested in the corporation will participate in writing the specifications for the equipment the department will use.

Of the three staff members involved in the corporation, one participated in writing the specifications and the other two will be involved in teaching the laboratory course.

When the bids come in, the chairman of the department will make the ultimate decision on which bid to accept, in conjunction with the University office which handles the bidding. However, the chairman has stated that department professors, including the three corporation-owning professors, will be consulted in the process of making the decision.

Two sections of the Ethics Act pertain to this situation.

Section 10, which covers contracts between state agencies and employees, provides that such contracts involving amounts in excess of \$1,000 may be entered into only after public notice and competitive bidding. The chairman indicated that this procedure would be followed, and thus a contract with the corporation would not be in violation of section 10 of the Act.

Section 8(a) prohibits employee participation in official action directly affecting a business in which the employee has a substantial financial interest. The decision on which bid to accept will be official action directly affecting the corporation, whatever the decision may be. To avoid violation of section 8(a) of the Act, the three departmental employees having an interest in the corporation should refrain from participating in the decision and from participation in any future departmental negotiations or decisions regarding the corporation.

Finally, because these three staff members have controlling interests in a matter which may be affected by the state agency by which they are employed, they must file disclosures of these interests with the State Ethics Commission, pursuant to section 12 of the Act. That

section makes the filing of such confidential disclosures a condition of remaining in public employment.

Dated: Honolulu, Hawaii, May 19, 1969.

STATE ETHICS COMMISSION
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