

OPINION NO. 30

The director of a state department requests an opinion on the propriety under the Ethics Act (Act 263, SLH 1967, *as amended*) of certain interests and activities of one of the members of his staff.

This staff member holds a full-time position which involves the planning and implementation of programs designed to provide emergency communications capability of a certain quality and the development of procedures and effectuation of policies and practices governing the establishment, operation and maintenance of electrical communications systems and networks.

The employee's outside interests are in the nature of employment. He is:

1. Vice president of and technical consultant to a corporation having radio facilities for rent;
2. Radio announcer at a commercial station, 24 hours per month; and
3. News correspondent to a broadcasting company, for which he is compensated on a per-story basis.

The director has stated that he believes that the employee uses his office telephone in connection with his corporation work.

The corporation has done some business with this department. The department has a contract with the corporation for \$624 a year, under which contract the corporation provides mobile radio service to two volunteers under a department program.

Also, the corporation, through its president, has made several formal requests to locate radio equipment on state land under control of the department. These requests have been repeatedly denied on the grounds that the proposed communications facilities would not provide a "distinct and necessary" service to the department. The most recent application was for permission to locate the equipment at his residence which the employee rents from the department.

Act 263, SLH 1967, governs the outside interests of state employees insofar as these interests may conflict with, or relate to, the employee's public service. In the situation he has presented to us, sections 7, 8, and 12 of the standards of conduct of that Act are pertinent.

The question of the effect of the employee's accumulative activities and interests on satisfactory performance of his state job is not an ethical question. It is one for his superiors, who, if they decide that these activities interfere with the proper performance of his duties, can take appropriate action under section 3-83, RLH 1955.

Section 7 of the Act prohibits an employee from using, or attempting to use, his official position to obtain unwarranted treatment for himself or others. In this case, should the employee use his position to influence the decision on the corporation's request or the department's contract with the corporation, he would be violating section 7.

The director has also stated that he believes that the employee has been using his state telephone in connection with his private business, and has used state personnel to answer it. We are aware that all employees, including those in the public service, make occasional personal calls on their office telephones. However, in the case of the use of public telephones in one's private business, an employee who "makes a practice of using public equipment for private profit" appropriates for himself the perquisite of free telephone service, and not only "inconveniences the public by tying up the telephone," but "misappropriates the time of other state employees" as well, in violation of section 7 of the Act. [Opinion No. 12.]

Section 8 prohibits employee participation in official action directly affecting a business or matter in which an employee has a substantial financial interest. This employee is an officer, director and technical consultant to a corporation, for which he received \$200 monthly.

We have defined "substantial" as an interest sufficient in magnitude to be reasonably likely in the circumstances to influence the official action of the employee possessing the interest. In deciding the question of substantiality, many factors are considered, including: (1) other income and assets of the individual; (2) any other action regarding that interest the individual may have taken; and (3) the position of the individual and his place in the decision-making process.

The employee has other regular monthly income of approximately \$1,000. He has apparently cooperated with the corporation in its attempts to obtain permission to place its equipment on state land controlled by the department, including agreeing to allow its placement at his home. In view of these facts, in this instance, the interest is substantial.

Because his interest in the corporation is a substantial financial interest, any official action the employee may take directly affecting that interest, such as advising on its request or the decision on the lease to the corporation, would constitute action in violation of section 8(a). Disqualification from participation in all such action would prevent violation of this section. However, if to perform his job as staff member he is unable to disqualify himself from such participation, it would be necessary for him to divest himself of one of these conflicting interests.

Section 12 of the Act requires, as a condition of remaining in public employment, that employees file a declaration with the State Ethics Commission of their interests which may be affected by the agency for which they work. No such disclosure has been filed with the Commission, and if it is not filed within a reasonable time, further action will have to be taken.

Dated: Honolulu, Hawaii, May 19, 1969.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Vice Chairman
S. Don Shimazu, Commissioner
Margaret W. Smalley, Commissioner

Note: Chairman Vernon F.L. Char and Commissioner July Simeona disqualified themselves from consideration and preparation of this opinion.