

## **OPINION NO. 40**

May a state corporation, one of whose directors owns a substantial financial interest in a business, contract with that business for services?

We hold that it may, if precautions are taken to avoid violation of Sections 14, 16, and 18 of the ethics law, chapter 84, HRS.

### **Section 14**

Section 14 prohibits employee participation in official action directly affecting a business in which the employee has a substantial financial interest. In this case, directors of the state corporation do not make decisions on the awarding of contracts, thus, this director's position on the board does not violate section 14. If, for any reason, the board were ever called upon to discuss or decide the corporation's action toward the business, the director must excuse himself from all participation in such discussion and action in order to prevent a violation of section 14.

The director should also keep section 13 of the code in mind when dealing with the staff of the corporation. That section prohibits use of position to obtain unwarranted treatment, and would prohibit any instruction or hint to the staff on corporate behavior. While there has been no indication of such action, the director's contacts with the staff, such as in informal conversation, should be carefully measured in light of this section to prevent even the appearance of such use of position.

### **Section 16**

Section 16(a) of the code provides:

A state agency shall not enter into any contract with a legislator or employee or with a business in which a legislator or employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

This is an advisory opinion and is based on the facts presented. The director has stated that he does not have a controlling interest in the business, and we make no determination on whether or not the interest is controlling. If he did have a controlling interest, section 16 would apply, and the bid provisions of that section would have to be followed, as the legislation creating the state corporation does not specifically exempt the corporation from this section.

### **Section 18**

Finally, section 18 makes the filing of a disclosure by a state employee who believes that his private interests may be affected by his agency a condition of remaining in public

employment. Here, the state corporation will affect the director's business by this contract. The filing by the director of a disclosure, as provided by section 18 would cure this violation.

If the above procedures are followed, that is, disqualification from participation in any board consideration of the matter, putting the contract out for bid if the director has a controlling interest in the business, and the filing of a disclosure, then there is no reason that this individual cannot continue to serve the public while having his extensive private interests.

Dated: Honolulu, Hawaii, September 25, 1969.

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