

OPINION NO. 46

The director of a state department asks whether one of his employees may serve as administrator of the new temporary disability insurance program, created by Act 148, SLH 1969.

The employee has interests as follows, which give rise to a question of possible conflict of interests, should she be appointed to this position:

1. Her husband's job is that of an insurance solicitor, and he serves as director of a general insurance agency.
2. Her husband services accounts which include life and casualty insurance, and perhaps temporary disability insurance.
3. The employee, her husband and child own stock investments in various insurance companies, including those which underwrite casualty insurance.

In order to determine whether possessing these interests while serving as temporary disability insurance administrator constitutes a violation of the ethics law (chapter 84, HRS), we must consider the interests in light of the responsibilities and duties of the state position. As program administrator of this new division, the employee would be delegated substantial authority vested in the director to administer this program. This would include planning, directing and coordinating the administration and enforcement of the temporary disability insurance law and rules and regulations.

Act 148 is concerned with providing temporary disability benefits to individuals suffering non-occupational disability. Employers may provide for such benefits through insurance, by deposit of security with the department, by proof of ability to pay or by other approved plan to provide benefits. The division would be responsible for assuring that employer's plans meet legal requirements, for determining whether self-insurance or proof of ability are sufficient, for assuring prompt payment of benefits, for evaluating the performance of carriers and self-insurers, for processing applications for approval of insurance plans and self-insurance plans, and also would review, approve and process such plans to assure conformity with statutory requirements.

The Act covers, with few exceptions, all employers in the State, who must in some manner provide for these disability benefits. It will mean a new area of compulsory insurance coverage, and greatly increased insurance volume.

We hold that placing a person with the close insurance ties enumerated above in a position of administering this new division would violate section 84-14 of the ethics law.

A "financial interest," as defined by section 84-3(a), includes an employee's interests (insurance solicitation, director of an insurance agency, insurance company shares) and her minor child's interests (additional insurance company shares). While we have no specific

information on the extent of her stock interests in the companies in which she has an interest, or on her husband's clients, we feel that these interests as a whole are substantial.

Section 84-14 prohibits an employee from taking official action directly affecting a business or matter in which he has a substantial financial interest. As the administrator in charge of the division responsible for administering the temporary disability insurance law with the specific duties enumerated above, this employee could not avoid taking official action directly affecting all carriers of temporary disability insurance, including companies in which she had stock or which her husband represented. Furthermore, she may be required to take official action affecting her husband's clients or clients of insurance companies in which she has an interest. For instance, should these clients decide to become self-insurers, their plans would have to be cleared through this employee.

Because her position would be one of such general and all-pervading administration, the employee could not disqualify herself from action affecting these companies. Thus, appointing her to this position could only mean violation of the ethics law.

Dated: Honolulu, Hawaii, November 25, 1969.

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