

OPINION NO. 49

A licensed real estate broker, notary public, and owner and manager of a realty service asks whether he may take the position of a property agent with a state department. The position involves property management of state property in one limited area. It includes such duties as negotiating and recommending the letting of such of these properties as are available for business purposes on a short-term lease basis, inspecting lessee operations and reporting on compliance with lease agreements, gathering and compiling data on leases, and recommending rates.

The question is whether he may retain his private interests and accept the state position under the state ethics law, chapter 84, HRS.

The position as a notary public does not present any problem under the ethics law. It does not relate to the work the employee will be doing in a public capacity. He should, however, refrain from notary work for, or seeking it from, lessees of the limited state lands he manages. Such solicitation would constitute a violation of section 84-13.

Similarly, while retaining his general lines insurance interest does not give rise to a *per se* violation of the ethics law, he must conduct his insurance business very carefully in the future to avoid violation of the law. He sells types of insurance which are used by the state land lessees he will regulate in his public capacity. This creates a natural situation of implicit pressure on lessees to purchase their insurance requirements from the person regulating them in the hopes of better treatment. Such purchase, with intent to influence, would be a violation of section 11. Any solicitation by him of their insurance business would also involve a violation of section 13, because of the implicit regulatory power of the position.

In addition, he will continuously be required to take official action affecting all of these lessees. Should they become his insurance clients, even through action on their part alone, he would be prohibited by section 14 from taking any official action directly affecting those clients. Thus, while we hold that he may retain his insurance license, he may not sell insurance to any present or potential lessees of the state lands he regulates. Nor may he refer such persons to other agents or to the firm for which he sells insurance.

His real estate interests present the greatest danger of a violation of the ethics law in that there is a substantial chance of a conflict of his private business interest and the state interest. The property management business is, for the purposes of the ethics law, a substantial financial interest. [Section 84-3(6).] Because the law defines a substantial financial interest as that belonging to an employee or his spouse, the fact that his wife operated or even was given the business would change nothing. While his private property management business is concerned with residences, apartments and small businesses, these clients could possibly apply for and lease property over which he has jurisdiction as a state employee.

To avoid such a violation of section 84-14, we hold that, while he may retain his property management business, neither he nor his spouse may become involved in any private

transaction with any person connected with the state land which he manages, and if any of his present private clients decide to apply for a lease of the state property, he must terminate his manager-client relationship with him immediately. Only by such careful and meticulous action on his part can he maintain his present business and occupy the state position.

Finally, if he decides to retain his present interests and takes the state position, he should disclose these private business interests immediately to his superior.

Dated: Honolulu, Hawaii, December 9, 1969.

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