

## OPINION NO. 58

An employee asks whether certain stock interests he and members of his family hold make necessary his disqualification, under the ethics law, from official action involving those companies.

The net assets of the employee, his wife and minor children, hereinafter referred to as "net family assets," include:

1. Stocks held by the employee in a large Hawaii corporation, which comprise 4% of the net family assets.
2. Stocks in the same corporation, held by his wife, which comprise 2.5% of the net family assets.
3. Stocks in the same corporation, held in trust for his children, which comprise 1% of the net family assets.
4. Stocks in another corporation, held by his wife, which comprise 1/3 of 1% of the net family assets.
5. Children's beneficial interest in a large national corporation, which comprise 1.5% of the net family assets.

The state ethics law, HRS, §84-14, states that an employee shall not "participate, as an agent or representative of a state agency; in any official action directly affecting a business or matter in which he has a substantial financial interest ...."

In determining whether official action "directly affects a business or matter the Commission considers how great an effect the action will have on the corporation (e.g., whether the action affects only one case or sets broad regulation for the industry, or whether it affects only one local subsidiary of a large national corporation). The action taken by this employee will affect the individual companies, but rarely an industry.

In determining whether the interest is substantial, however, we said in Opinion No. 30:

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.

Taking each interest enumerated above, we find that his separate interest in the large Hawaii corporation valued at 4% of his net family assets is substantial. We further find that

the dollar amount in this case is sizable. If he retains that interest, he must disqualify himself from all official action involving that corporation and its subsidiaries.

We further hold that his wife's interest alone, which comprises 2.5% of the net family assets is also a substantial financial interest. Should he sell the shares in his name, her continued possession of the shares held in her name would, nonetheless, bar him from participation in official action affecting that corporation. [HRS, §84-3(6).]

Finally, should he and his wife divest themselves of this stock, his children's beneficial interest in the shares held in trust for them of some 1% in value of his net family assets would not constitute a substantial financial interest so as to necessitate his disqualification from action affecting that corporation. While there is no set percentage of net worth below which an interest is no longer "substantial" within the meaning of section 84-14, when an interest constitutes less than 1 per cent of an individual's net worth, it is likely that it may be considered insubstantial by the Commission. However, in instances where an asset's value is very large, the fact that it is less than 1 per cent of the individual's net worth will not render it insubstantial for purposes of the ethics law. Thus, an interest will probably be considered "substantial" by the Commission if it is sizable as considered against the individual's other interests, or if it is very sizable, regardless of the individual's net worth.

The employee's wife has shares worth approximately 1/3 of 1% of the net family assets in another corporation. This interest is likewise not of sufficient magnitude to make necessary his disqualification from matters before the board involving the corporation.

Finally, his children's beneficial interest in a large national corporation stock is valued at approximately 1.5% of the net family assets. The employee's decisions will affect only a small part of the corporation. It is a national one, and only one of its subsidiaries will be subject to his official action. We note that the subsidiary comprises only approximately 5 per cent of the corporation. For these reasons, this interest would likewise not require disqualification from matters involving this corporation.

Dated: Honolulu, Hawaii, February 5, 1970.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Chairman  
S. Don Shimazu, Vice Chairman  
Vernon F.L. Char, Commissioner  
July Simeona, Commissioner  
Margaret W. Smalley, Commissioner