OPINION NO. 76

A member of a State committee inquired whether the following facts constitute any probable violation under chapter 84, HRS, relating to the ethics of public employees:

1. His State committee studies and makes recommendations on matters of interest to his private employment. This individual also owns a few shares in the parent company of his employer.

2. He indicated that his private employer will want to participate in State projects and programs recommended by his committee.

3. He informed the Ethics Commission that as a member of this State committee he does not have access to any information not generally available to the public.

The Ethics Commission found that his position with this private employer and his shares in its parent company do not give him a "controlling interest" in the business, and advised him that HRS, §84-16(a) is inapplicable in this case.

He must refrain, however, from otherwise using or attempting to use his position as a member of the committee to secure contracts or business for himself or others, and in this case, of his employer where he has a substantial financial interest by virtue of employment. (See HRS, §§84-13 and 14.) For example, he should not attempt to influence the bid specifications to his company's ability to perform, to obtain favorable action on the bids, or to otherwise influence the bid. (Opinion No. 60.) Should he gain any confidential information which is not by law or practice available to the public, he should not disclose or use such information for the benefit of his employer.

The applicability of section 84-16(b) shall be reserved for determination until such time as the employer is about to enter into a specific contract. In general, however, it is the opinion of the Commission that the applicability of the subsection will depend upon the degree of involvement of the committee on which he serves in any specific project administered by any State agency.

He was advised that H.B. No. 111, C.D.1[†] ,which was before the Governor for signature, would apply, should the bill become effective. As a State employee, he would not be permitted to appear on behalf of private interests before any State agency for a contingent compensation. In addition, he may not, where it can be reasonably inferred that his status as an employee will give him an undue advantage, 1) assist any person on matters in which he has participated as an employee, and 2) assist any person in a representative capacity for a fee or other consideration on any matter before the State agency of which he is an employee.

For example, should the committee take on a recommendatory role to more than one agency, he would be in such a situation where it may be inferred that he would have an undue advantage, should he make appearances before both agencies for his firm. However, we believe he and his employer may participate in all formal bidding proposals where he has not participated

[†]The text of H.B. No. 111, which was vetoed by the Governor, is Attachment A to Opinion No. 72.

in any way in the drawing up of the bid specifications or other contract documents and will not participate in the process of awarding said bids.

He is also advised that H.B. No. 111, C.D. 1, further prohibits former employees within one year of termination of service, from appearing on behalf of private interests for a fee or other consideration in a matter where it can be inferred that his status as a former employee would give him an undue advantage. In Opinion No. 72 we stated that each case had to be determined individually; but the primary considerations will be: 1) the State position held by the former employee; 2) the extent of his involvement and discretionary action or ministerial action; 3) the extend and nature of his relationship to the particular agency; 4) whether the appearance is to effect discretionary action or ministerial action; 5) the magnitude of the interest he represents; and 6) the basis or method of compensation. As further held in Opinion No. 72, the substantive provisions of H.B. No. 111 applies to acts done after July 1 by any individual who has terminated within a year, as of July 1, 1970.

This opinion was predicated upon the facts of this disclosure. He was advised to request supplemental opinions upon material changes of circumstances or facts.

Dated: Honolulu, Hawaii, July 1, 1970.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
S. Don Shimazu, Vice Chairman
Vernon F.L. Char, Commissioner
Walters K. Eli, Commissioner
The Very Reverend John J. Morrett, Commissioner