

OPINION NO. 77

A member of a State committee has submitted the following facts to the Ethics Commission:

1. He is an officer of a firm which does business with the State, much of it involving contracts under \$4,000, and, therefore, not subject to bid requirements. He and his wife together own approximately 50% of the shares outstanding in that firm.

2. The State committee of which he is a member makes recommendations on matters of interest to this individual's business. This individual has informed the Commission that he is also a chairman of a subcommittee composed of members of the public appointed by him and that neither he nor the subcommittee members have access to confidential information.

The first question raised was whether the subcommittee members are "employees" within the purview of the ethics law.

The Commission advised him that under the circumstances outlined, the subcommittee members are not employees under the ethics law. The subcommittee appears to be the "idea trust" of the committee. Its function is to present ideas which will be presented to the committee which will sift, consolidate and unify suggestions, culminating in a recommendation for legislative action. As long as these subcommittee members do not have access to confidential information and as long as their function does not exceed the circumstances outlined here, we do not believe that they are "employees" within the purview of the ethics law.

The second question raised was whether his company would be allowed to continue to obtain State contracts.

The ethics law permits all contracts obtained through the bidding process because it is presumed that a contract obtained by that fair and impartial method is to the best advantage of the public.

Contracts obtained by other than the bidding process, however, are, first of all, subject to the restriction contained in HRS, §84-16(a), which the Commission has interpreted to mean that a State agency may not contract with an employee who has a controlling interest of a business when the services or property of the contract involve more than \$1,000, unless the contract is made after public notice and competitive bidding.

This employee and his wife together own 49 per cent of the stock in the company. The rest of the stock is owned by members of his family. We found that this constitutes a "controlling interest" in a business.

The Ethics Commission reserved the right to rule upon the applicability of HRS, §84-16(b), until such time as the corporation may enter into a contract with a State agency on a matter in which he may have participated as a member of the committee. The Commission indicated that its decision would depend upon the degree of involvement of the committee with the contracting agency.

This individual requested advice on the applicability of H.B. No. 111, C.D. 1[†], to his circumstances. The Commission advised him in accordance with its opinion contained in Opinion No. 76.

Dated: Honolulu, Hawaii, July 1, 1970.

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

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