

## OPINION NO. 87

A State employee has asked whether the State ethics law imposes restrictions upon him in the performance of his public duties involving: (1) civic organizations in which he holds memberships; and (2) transactions with his agency by personal or business friends or acquaintances.

His official duties include supervising others and participating in the gathering of information regarding these transactions. The data gathered is presented to a decision-making committee along with a staff recommendation.

This employee holds memberships and directorships in several professional and community nonprofit associations which have taken public positions with regard to various proposals under consideration by his agency. He has indicated that in the past he has not been involved in discussions in these organizations when positions were taken which attempted to influence the decisions of his agency.

He has further indicated that in one instance he actively attempted to dissuade the decision-making body from taking certain action. A nonprofit association of which he was a member also took a similar position without his knowledge and submitted a formal letter to his agency; his name appeared on the letterhead and the question of a possible conflict of interest arose for the first time.

Presently, the decision-making body is considering a matter which is opposed by an association of which he is a member. Because of the prior question as to a conflict of interest situation he has been instructed by his superiors to refrain from further participation on that case.

He has further indicated that a personal family friend also has a matter which will be probably processed by his agency.

He wishes to know whether the above situations constitute conflicts of interest and has requested guidelines as to his conduct at civic association and his State agency meetings, and as to his processing of transactions by friends and acquaintances, both personal and business.

### **I. Membership and participation in civic organizations.**

HRS, §84-14(1)(a) states that "No employee shall 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 ... ." A financial interest as defined by HRS, §84-3(6) includes an ownership interest in a business, a creditor interest in an insolvent business, an employment or prospective employment for which negotiations have begun or an ownership interest in real or personal property. Such interests would be substantial if they were large enough to have a possible influence on the judgment of the individual involved [Opinion No. 2].

Unless he is a salaried officer or director of an organization or unless the organization has a financial interest in the matter pending before his agency we find that his membership and participation in the organizations do not constitute conflicts of interest situations. Therefore, he would not be in violation of the State ethics law if he were to continue to carry out his normal duties; provided, however, that he acts within the limits of other provisions of the law.

For example, HRS, §84-13, relating to fair treatment, prohibits an employee from using or attempting to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for himself or others. In this case it would be improper, for example, to afford the civic organizations of which he is a member special treatment in the registration of their opinions before the decision-making committee. It would also be improper for him to be their spokesman or to attempt, in their behalf, to influence members of his staff who are responsible for formulating a staff recommendation.

HRS, §84-12, relating to confidential information, further prohibits an employee from disclosing information which by law or practice is not available to the public and which he acquires in the course of his official duties, or to use the information for his personal gain or for the benefit of anyone. In this case, the employee may have information which is not available to the public. He should refrain from disclosing such information to the organizations of which he is a member.

The State ethics law was not intended to discourage the participation by public servants in professional and civic organizations. His conduct in these various organizations on matters pending before his State agency, however, must be guided by the ethical restrictions relating to confidential information and unwarranted treatment as stated above.

## **II. Official action involving friendship.**

Any decision, recommendation, approval, disapproval, or other action involving the use of discretionary authority on the petition of a friend would be official action under HRS, §84-3(7). However, it would not be action affecting a business or matter in violation of HRS, §84-14, relating to conflicts of interest, unless the employee has a substantial financial interest in the application either by way of an ownership interest in the pending matter or a substantial business relationship with the individual applicant. If this is the case, he must disqualify himself from taking any action with respect to that matter.

Even if the situation did not constitute a conflict of interest situation, he must nevertheless be sensitive to the provisions of §84-12 relating to confidential information, and §84-13 relating to fair treatment of the State ethics law. As in the case of the professional and civic organizations of which he is a member, he should not disclose any confidential information to his friends which would normally be unavailable to others; and he should not use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages or treatment for his friends.

The ethics provision governing fair treatment would also prohibit official action which gives the appearance of securing or granting unwarranted privileges or treatment for another. In our judgment the appearance of unfair treatment would be easily avoided by treating each and every individual in accord with the rules and regulations governing the procedure of his agency and, where discretionary authority is involved, without extraordinary deviation from normal office procedure.

This Commission recognizes that much of the ethics law is self-enforcing. *Where it can be reasonably inferred that an individual may be biased or prejudiced for or against a particular case for any reason, even long-standing relationships, he should disqualify himself from taking official action upon the matter because it will give the appearance of unwarranted treatment under HRS, §84-13.*

Finally, he has indicated that his family and his friend's family occasionally exchange gifts. Such exchange based on friendship is not a violation of the ethics provisions relating to gifts, HRS, §84-11. That provision states that gifts should not be accepted where "it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part." The determinative criteria have been previously set forth by the Commission in Opinion Nos. 42, 45, and 47. When a gift is from a friend who has had some business with his agency, the timing of the gift and its value in relation to prior gifts would be particularly relevant.

Dated: Honolulu, Hawaii, October 19, 1970.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Chairman  
S. Don Shimazu, Vice Chairman  
Vernon F.L. Char, Commissioner

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. The vacancy left by the resignation of The Very Reverend John J. Morrett has not been filled.