

## OPINION NO. 98

A state employee has inquired whether he may bid on surplus state property which has been under the management of his department. His responsibilities within the department include the review of appraisal reports and inspection of real property to establish fair market rent; preparation of rental agreements, leases, and other documents; periodical inspection of various premises to ascertain whether conditions of the lease are observed; and the auction of improvements which must be removed from state public works sites.

Since another state agency conducts the disposition of surplus property, he will not be taking part in conducting auctions or making preliminary arrangements involving surplus property. He has further stated that he is not privy to any confidential information that would give him an advantage in the bidding.

Recently, he was required to inspect the surplus property in question to see if it was being properly maintained by the tenant. He found that it was not and reported this to his supervisor.

He has described the procedure for selling surplus land under the management of his department as follows: A recommendation by another section of his department that the land be classified "surplus" is forwarded by his section to the Department of Land and Natural Resources, which decides whether or not the land should be offered for sale. If that department so decides, a public auction is held after the prescribed public notice.

Although the section by which he is employed does not have the final authority regarding the sale of surplus land, it does have responsibility for the administration of the property while it remains under the control of his department. In this case, he is directly responsible for inspecting the property and seeing if the conditions of the lease are met by the tenant. To a substantial extent, the decision to return the surplus land to the Department of Land and Natural Resources for disposition or to have his department continue administering it under a revocable permit, may be influenced by the findings and recommendations made through this employee's inspections and reports. Moreover, he is in a position to know which lands may be declared surplus and to know their peculiar value or usefulness.

Because of these conditions the Commission found that for him to bid on this or any other land or improvements which he has been officially concerned with as an employee of the department would be a violation of §84-16(b), HRS. This section prohibits a State agency from entering into a contract with any person "who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned."

The Ethics Commission opinions relating to bidding are Nos. 14, 15, 29, 33, 37, 39, 40, 44, and 60. The general holding in these opinions was that a public employee may have a contract with the State involving more than \$1,000 as long as the contract is made after public notice and competitive bidding. That general rule is, however, inapplicable in situations

involving a public employee making a contract with (a) his employing agency and (b) involving a matter in which he has participated. See HRS, §84-16(b).

Since this employee has been involved with the management of this property and its improvements, and since the proposed contract will involve his employing agency, he must be excluded from purchasing or in any way acquiring ownership, control or any personal interest in this property.

Dated: Honolulu, Hawaii, February 11, 1971.

STATE ETHICS COMMISSION  
James F. Morgan, Jr., Chairman  
Vernon F.L. Char, Vice Chairman  
Gwendolyn B. Bailey, Commissioner

Note: Commissioners Walters K. Eli and S. Don Shimazu were excused from the meeting at which this opinion was considered. This opinion was reconsidered in Opinion No. 119.