

OPINION NO. 108

An employee who inspects certain businesses and enforces certain laws and regulations has inquired whether he may engage on a limited scale in a business involving sales to businesses, some of which he inspects to enforce his department regulations. He expects to further develop his private business and has stated that his gross sales for 1970 was approximately \$700.

The sections of the State ethics law which apply to his situation are §84-13 dealing with fair treatment and §84-14 concerning conflicts of interests.

In his present position as a trainee he exercises little or no discretionary power and his work is performed under the constant supervision of a higher level inspector. However, once he becomes responsible for performing these inspections himself, he will be in a discretionary capacity of enforcing various State laws. If he were assigned to inspect a business that was an important source of sales for his private business, he would be in a conflicting situation. He might be placed in the position of having to make an unfavorable report on a business that he depended on for sales.

Official contact with the businesses with whom he has a financial relationship which pre-existed his public employment is prohibited under HRS, §84-14(1). Although his actual sales have been modest, we considered his intention to seriously develop his private business to be a substantial one of sufficient magnitude to have a possible influence on his official action (See Opinion No. 2).

Therefore, in the event that as an inspector or higher ranking member of the department he is asked to perform discretionary duties involving a business with whom he has a financial relationship which pre-existed his entering into state employment, he should be excused from such assignments to avoid violation of HRS, §84-14(1)(A). He should submit a list of clients who are regulated by his department to the supervisor of the division to which he is assigned. This list should be kept up to date to facilitate his assignments. If disqualification becomes burdensome to his department, he should either curtail his private activities or leave state employment.

We called his attention to §84-14(2) which states that "No employee shall ... acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him." We interpreted this section to mean that the employee should not, while in public employment, establish or acquire new business relationships with business enterprises which are subject to the laws which he enforces and are therefore likely to be involved in official action to be taken by him. The prohibitions of §84-14(2) apply regardless of his ability to disqualify himself from such participation. It was our opinion that a public employee should not voluntarily place himself in a position in which disqualification became a necessity; therefore, he was advised that he should not hereafter acquire a business relationship which would require such disqualification (See Opinion No. 100).

We further called his attention to HRS, §84-13, relating to fair treatment. Pursuant to that section, he should not solicit business during his normal State working hours nor should he at any time use his State position to solicit business.

Dated: Honolulu, Hawaii, April 22, 1971.

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

Note: Commissioner Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered.