

OPINION NO. 115

In Opinion No. 55, we advised a member of a state commission that his spouse may apply for and be awarded property administered by his commission if proper procedure were followed. We reserved for later consideration whether the award would necessitate his resignation from the commission for reasons of conflicts of interest.

The award was subsequently made; the commissioner disclosed that his spouse is now arranging for repayment of an indebtedness in excess of \$37,000.00 to the commission, which indebtedness arises from the property which was awarded. The commission had expected his spouse to pay the amount in full from personal funds; their inability to do so will now prevent the commission from relending the \$37,000 to other applicants until such time as the indebtedness is repaid.

The question raised was whether the spouse of this commissioner, having received a State lease upon certain conditions, may now approach the agency to modify the arrangement previously agreed to, without violating the ethics law.

Initially, we stated for the record, that subsequent to our issuance of Opinion No. 55, we issued several opinions in which we held that a state employee should not acquire financial interests which may be directly involved in official action to be taken by him irrespective of the ability to disqualify oneself. Ops. Nos. 100 and 108. Subsequent events and a better understanding of the spirit and intent of the ethics law led us to this conclusion. In our judgment, this application of HRS, §84-14(2), would have been applicable to his case under the facts submitted to us in Opinion No. 55, because the award was made by the commission of which this employee is a member, and it enforces the terms of the agreement, and makes many policy and administrative decisions which may affect this lease. We therefore stated that were the request for Advisory Opinion No. 55 made today, we would hold differently. Inasmuch as no material facts were omitted or misstated at the time that Opinion No. 55 was issued, we were bound by that opinion, pursuant to §84-31(a)(2). We therefore proceeded to answer the present question before us regarding the propriety of arranging for repayment of this indebtedness.

The spouse had already incurred the legal and moral obligation to repay the indebtedness of \$37,000. Since the spouse had indicated inability to repay it in the manner earlier agreed upon, she was further obligated to approach the commission with regard to this indebtedness. We assumed that the commission had the discretion to revoke the lease or arrange for some form of repayment. The nature and term of the arrangement was completely within its jurisdiction.

Our concern was that in dealing with the spouse of one of their commissioners, there was considerable danger that the spouse may have a better advantage and therefore receive more advantageous terms or more favorable treatment. The appearance of this occurring was even greater under circumstances where rules were not clearly spelled out or well publicized. It was our judgment that any arrangement to repay the indebtedness should be in accord with the law and rules and regulations; and should moreover be upon terms and conditions

generally afforded other awardees of commission property. Any terms or conditions which might deviate from the norm would, in our judgment, be prima facie evidence of a violation of §84-13, relating to the use of official position to obtain unwarranted treatment.

Finally, it was our understanding that the commission makes many policy and administrative decisions which could directly affect, beneficially or adversely, the financial interests of the spouse and this commissioner. Policy decisions, for example, relating to repayment of loans or other forms of indebtedness may directly affect the repayment of the indebtedness this spouse will have with the commission. Moreover, any policy decision regarding the administration or enforcement of lease agreements may directly affect the agreement made by this spouse, and any type of disciplinary action regarding loans and leases may also directly affect this spouse since loans and lease agreements with the commission tend to be uniform. Moreover, decisions relating to development projects may also require his disqualification depending upon whether his financial interests, including those of his spouse's, would be directly affected or not. Whether or not there would be a direct effect upon his financial interests is a factual issue to be determined by this Commission on a case-by-case basis. For example, improvement projects located near his spouse's lease would probably have a direct effect on his financial interest and he would, therefore, have to disqualify himself pursuant to HRS, §84-14.

Dated: Honolulu, Hawaii, September 29, 1971.

STATE ETHICS COMMISSION
Walters K. Eli, Acting Chairman
Gwendolyn B. Bailey, Commissioner
Fred S. Ida, Commissioner

Note: The vacancy created by the resignation of James F. Morgan, Jr. has not been filled. Chairman Vernon F.L. Char disqualified himself and did not participate in the discussion or preparation of this opinion.