

OPINION NO. 131

The question was raised whether a state commission could award a lease of property administered by that commission to the spouse of one of the commissioners without violating the State ethics law.

It was indicated that the state commission had broad discretion in establishing the terms and conditions of a particular lease, that is, the term of the lease, the upset rental price, the required improvements, etc., and that after such a lease was awarded on bid, the commission enforced the terms of the agreement and made policy and administrative decisions affecting the lease.

It was our understanding that the state commission made many policy and administrative decisions which could directly affect, beneficially or adversely, the financial interests of a lessee. For example, it made decisions with regard to capital improvement projects, including the planned use and development of properties which might be located near the specific property under lease. It would make policy decisions regarding the administration or enforcement of leases. Since the leases with the commission are uniform, any such policy decisions would directly affect any lessee of the property in question.

HRS, §84-14(2), provides that no employee shall acquire financial interests in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

"Financial interest" is defined in HRS, §84-3(6) as including an ownership interest in real property held by an individual, spouse or minor children. (Emphasis added.) Under this provision, the financial interest of the spouse in the leased property would be considered that of the commissioner also. (See Opinions Nos. 9, 11, 13, 18, 25, 32, 39, 46, 49, 55, and 69.)

From our understanding of the duties, powers, and responsibilities of the state commission, some representative examples of which we have set forth above, we concluded that there was reason to believe that a lease of the subject property would likely be directly involved in commission action.

We have interpreted HRS, §84-14(2), to mean that a state employee should not acquire financial interests which may be directly involved in official action to be taken by him. The prohibition of this particular section applies regardless of the ability to disqualify one's self from participation. It was our opinion that a public employee should not voluntarily enter into a position in which disqualification becomes necessary as we have permitted in §84-14(1) circumstances. (See Opinions Nos. 100, 108, and 115.)

We therefore found that HRS, §84-14(2), prohibited the commissioner, the spouse, or a corporate entity in which they have a financial interest from acquiring new leases of the subject property.

Dated: Honolulu, Hawaii, April 13, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
Walters K. Eli, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Audrey P. Bliss, Commissioner

Note: Commissioner Fred S. Ida was excused from the meeting in which this opinion was considered.