

OPINION NO. 135

An employee asked the Commission for an advisory opinion as to whether his financial interests in two local businesses conflicted with his state employment.

The job description and supplemental information he submitted indicated that he inspected and investigated businesses to determine compliance with a specific state program, recommended penalties for noncompliance, and exercised other discretion in the performance of his duties.

In one of the businesses, he indicated part-time employment and other interests as follows: capital stock--30% ownership; notes receivable--\$10,000, payable on demand; director (with fee of \$100); vice-president and treasurer; accountant (\$150 monthly).

In the other business, he indicated the following interests: notes receivable--\$10,000, payable on demand; director (no fee); vice-president; accountant (no compensation).

He further stated that his state duties covered the above firms and that in the event his inspection or investigation revealed noncompliance he would be in a position to recommend penalties. He indicated that he could disqualify himself in any action involving either of the two firms and would recommend that another specialist handle such action.

With regard to the second firm mentioned above, he further indicated that it was a wholesale firm with approximately thirty-five regular retail store clients. Consideration of these factors led us to conclude that his financial interest in this firm had a greater, more far-reaching impact on his state duties than that of his financial interest in the first firm mentioned above.

HRS, §84-14(1)(A), relating to conflicts of interest, prohibits an employee from participating in any official action directly affecting a business in which he has a substantial financial interest. Clearly, the combination of his financial interests in each of the two firms constituted a substantial financial interest. Inspection, investigation, or recommendation concerning penalties are official actions. Any official action he took involving the two firms would directly affect them. Therefore, we advised that any official action he took involving the two firms would be a violation of HRS, §84-14(1)(A).

It appeared that he had four alternatives to avoid a violation of HRS, §84-14(1) with regard to the first firm:

1. Disqualification from any discretionary-enforcement duties involving the firm.
2. Transfer to a position within state employment in which official action could not affect his private interests.
3. Divestiture of his private interests, to include terminating his part-time employment.
4. Termination from state employment.

The first and second alternatives were dependent upon his department. The administrator of his division indicated that he considered disqualification feasible and would cooperate with the employee in establishing a procedure whereby it could be done. If disqualification became

burdensome to the department, we advised that he should consider the other alternatives. The second alternative would, of course, depend on his qualifications and the needs of his department.

We noted additionally that his financial interests in the second firm were acquired after he entered public service. HRS, §84-14(2) provides 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 an 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. (See Opinion No. 108.) The prohibitions of HRS, §84-14(2) apply regardless of the ability to disqualify one's self from such participation. It was our opinion that a public employee should not voluntarily place himself in a position in which disqualification becomes necessary. (See Opinion No. 100.) This situation was made more complex since the second firm dealt with a number of customers he would have to inspect. Therefore, we found that the acquisition of his financial interests in the second firm was a violation of HRS, §84-14(2). This violation occurred at the moment of the acquisition of financial interests. We advised him to divest himself of these interests as soon as practicable and that he should not hereafter acquire interests which may be involved in official action to be taken by him.

In summary, we found that his financial interests, including his employment, in the first firm presented a possible violation of §84-14(1), which could be resolved by any of the four alternatives listed above. We further found that the acquisition of his financial interests in the second firm was prohibited by §84-14(2) and that he should divest himself of those interests as soon as practicable.

We requested that he advise us of his actions in compliance with this opinion.

Dated: Honolulu, Hawaii, April 20, 1972.

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