

OPINION NO. 145

On October 23, 1971, a commissioner participated in approval of a contract between the commission of which he was a member and a local corporation for a particular project. On January 4, 1972, the firm in which he was a partner entered into an informal arrangement with the corporation whereby services were furnished on a piecework basis. His firm has performed such services since that time. Two of the requests for services involved the particular project.

The agreement between the commission and the local corporation remains in existence. Although no commission action on the agreement appears necessary at this time, the Ethics Commission indicated that it is possible such action or some other action involving the company will be required in the future.

Under these facts and circumstances, he requested guidelines from this Commission.

HRS, §84-14(b) (amended 1972) provides that, "No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him." The local corporation was a business in which he had a substantial financial interest by virtue of the informal arrangement entered into between that company and his firm on January 4, 1972. Since the contract between the commission and the local corporation was approved on October 23, 1971, there was reason to believe at the commencement of the service agreement that the local corporation might be directly involved in later commission action. We believe that §84-14(b) (amended 1972) is intended to preclude this situation. The prohibition of this particular subsection of the ethics law applies regardless of the ability to disqualify one's self from participation. It was our opinion that a public employee should not voluntarily place himself in a position in which disqualification becomes necessary. This violation occurred at the moment of his acquisition of the financial interest in the local corporation on January 4, 1972. We advised that he should divest himself of this interest as soon as practicable and should not hereafter acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

To be contrasted with the situation described above is that wherein his firm performs services for a business which later becomes directly involved in commission action. In this situation, he would be permitted to disqualify himself from taking any official action directly affecting such firm, thus avoiding a violation of §84-14(a) (amended 1972) which provides that, "No employee shall take any official action directly affecting (1) a business or other undertaking in which he has a substantial financial interest; or (2) a private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity"

With respect to the matter of disqualification in general, we called his attention to the guidelines contained in Opinions Nos. 4 and 40.

We called his attention also to HRS, §84-12, relating to confidential information, and §84-13 (amended 1972), relating to fair treatment. We advised that if, in the course of his participation on the commission, he acquired information which by law or practice was not available to the public, he was prohibited under §84-12 from using such information for his personal gain or the benefit of others, such as clients of his firm. We further advised that under §84-13 (amended 1972), he should not use his position on the commission to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for his firm's clients.

Finally, we called his attention to HRS, §84-15(b) (amended 1972), which is applicable up to two years after his commission appointment is terminated. This section of the ethics law prohibits a state agency from entering into a contract with a client which he represents or assists *personally* involving a matter in which he participated while in state office. (Emphasis added.)

We limited our opinion to an application of HRS, chapter 84 (amended 1972), to the facts and circumstances presented to us.

We expressed our appreciation for his concern on matters of ethics and the hope that we had set forth sufficient guidelines for him to follow in this situation. We requested that he advise us of his actions in compliance with this opinion.

Dated: Honolulu, Hawaii, June 23, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
Walters K. Eli, Vice Chairman
Fred S. Ida, Commissioner

Note: Commissioners Gwendolyn B. Bailey and Audrey P. Bliss were excused from the meeting at which this opinion was considered.