

OPINION NO. 155

The director of a state division inquired whether an enforcement officer for the division may obtain a license issued by the division without being in violation of the State ethics law. The particular individual was assigned to a specific district. He had informed us that he wanted to obtain a license for personal and various tax reasons.

As an enforcement officer in the division, the employee performed functions relating to the enforcement of the type of license for which he wished to apply. His responsibilities included patrol and surveillance, inspection, investigation, and apprehension of alleged violators; checking for possession of current licenses, following up on delinquent reports by licensees and making recommendations with respect to fines. This employee was the only permanently assigned enforcement officer in the district; temporary assignments were made to provide augmentation when required or to relieve the employee when he was on sick leave or vacation.

We initially noted that in an earlier opinion, the Commission ruled that an employee within the division was permitted to obtain a license subject to certain caveats. We noted, however, that in that particular case the individual's responsibilities did not include the sale or enforcement of licenses.

In this employee's case, we ruled that he would be in violation of HRS, §84-14(b), prohibiting the acquisition of certain financial interests, if he were to obtain a license. That section states that:

No employee shall acquire financial interest 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 financial interest in this case was an ownership interest in a business enterprise, that is, all the rights and interests which accrue to him by virtue of the license and all other properties involved in the exercise of the rights therein. This financial interest may be directly involved in official action by the employee in two ways. First, the employee would have responsibility to take enforcement action with respect to the license itself; that is, ascertaining whether or not the licensee had complied with the laws and regulations relating to the licenses. Secondly, he would have to take enforcement action vis-a-vis his prospective customers. As the only enforcement officer normally in the area, the practical aspects in the case indicated that the employee would be responsible for the enforcement duties as to his own license and enforcement responsibilities as to all of his potential or prospective customers. This type of action, being discretionary, was official action within the meaning of the ethics law. We therefore advised that the employee should not apply for and obtain a license.

Dated: Honolulu, Hawaii, January 17, 1973.

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

Note: There was one vacancy on the Commission.