

OPINION NO. 176

An employee inquired whether the following circumstances constituted a conflict of interest and whether he should disqualify himself from assignment to a particular project.

He was a professional with supervision and administration over contracts awarded by his department. In a specific project, the officers, shareholders and directors of a subcontractor were close relatives of this employee. The employee informed us, and it was clear from his job description, that he would have supervision of all facets of the work performed under the contract and that he would have the general power to accept and reject the work performed.

The circumstance described did not present a prohibited conflict of interest. The economic interest of this employee's close relatives in the subcontracting firm was not attributable to him because the ethics law defines a "financial interest" to mean only those employment, ownership or officership interests in a business held by an individual, his spouse or minor children. We concluded, therefore, that this employee had no financial interest in the contracting firm which he would be inspecting; therefore, he would not be in violation of HRS §84-14, relating to conflict of interests.

We called his attention, however, to HRS §84-13 which states that "[n]o legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others" For example, it would be improper for him to grant unreasonable extensions of time or to permit deviation from the contract terms or permit other privileges not usually allowed other contractors or subcontractors.

Although the ethics law did not require disqualification of this employee, in some circumstances, we believed the employee and the department should consider voluntary disqualification. This would be appropriate where the circumstances were such that a reasonable man might infer a violation of the provision. Some of the factors which might be weighed after full disclosure would be the size of the contract, the closeness of the familial relationship or friendship, the burden to the department and the public if a reassignment were made due to voluntary disqualification, whether the employee believed he could act without prejudice or bias, the degree of public controversy related to the project, and the danger of undermining public confidence.

Accordingly, we deferred to the discretion of the agency on the matter of disqualification.

Dated: Honolulu, Hawaii, February 4, 1974.

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

Note: There was one vacancy on the Commission.