

OPINION NO. 186

A state employee inquired whether his election as an officer of a corporation constituted a conflict of interest. He indicated that he was also an investor in this corporation.

The employee stated that his involvement as an officer in the corporation would be to attend periodic meetings to establish pay schedules for employees and policies. The manager of the corporation would be responsible for normal business operations and management, estimations and bidding for jobs, and installations and maintenance.

HRS §84-14(b) states that "[n]o 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." Under HRS §84-3(6), an ownership interest in a business and an officership interest in a business are financial interests. Official action is defined in HRS §84-3(7) as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." We stated that because he had ownership and officership interests in the corporation, we had to determine whether there was reason to believe that the corporation would be involved in official action to be taken by him.

The employee furnished us a copy of the job description for his position. As a state employee, he was responsible for the supervision of personnel and for the conduct of his agency's work. His functions included the coordination of the various segments of his agency's program and to guide and counsel agency workers to effectively discharge program responsibilities.

He indicated that information on pending job opportunities that the corporation would be interested in were not a function of his agency. He pointed out that commercial jobs were submitted through the normal trade system; government jobs were through the State Department of Accounting and General Services and the Federal General Services Administration.

He further indicated that information on the type of business in which the corporation would be engaged was provided by his agency's staff and another state agency on an equal basis to all individuals. We said that this information would be of interest to his corporation and it was probable that the corporation would request this information. We stated, however, that providing of this service by his agency did not involve regulatory or other discretionary action; thus, providing of this service did not involve official action.

We were cognizant that he had stated that the information was provided on an equal basis to all interested persons. We said that any decision on his part to provide this information on a selective basis would involve official action.

It was our opinion, therefore, that the ethics law did not prohibit the state employee's investment in and service as an officer of the corporation. There was no reason to believe that his corporation would be directly involved in official action to be taken by him.

We commended the employee for seeking this opinion and for his concern for ethics in government.

Dated: Honolulu, Hawaii, June 24, 1974.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.