

OPINION NO. 196

A state employee filed a disclosure of financial interests with the State Ethics Commission. Pursuant to Rule 3.5 of the Commission's Rules and Regulations, we proceeded as though this disclosure were a request for an advisory opinion.

At the outset, we pointed out that the ethics law applied to state employees only. Thus, actions that the individual took previously as an employee of a private corporation were not subject to our review.

The Employee's Consultant Contract.

The state employee had a consultant contract running for several years with a private corporation which would be doing business with the employee's agency. Under this contract, the individual would receive compensation in excess of \$20,000 per year.

HRS §84-14(a) (Supp. 1973) states, in part, the following:

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

Under HRS §84-3(6)(C), a financial interest includes "[a]n employment."

We stated that because of the employee's consultant relationship with the private corporation, he had a substantial financial interest in this corporation. Thus, under HRS §84-14(a), he was required to disqualify himself on matters requiring official action directly affecting the firm. Official action is defined in HRS §84-7 as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." The employee indicated to us that he would be able to delegate matters directly affecting this corporation to another employee of the agency.

We said that when the employee's consultant relationship with the corporation ended, he would no longer be precluded from taking official action directly affecting this firm or any of its activities.

The Employee's Ownership Interest in a Business.

The employee disclosed to us his ownership of stock in another firm that would be doing business with his agency. We held that this interest was a substantial financial interest. Thus, we stated that HRS §84-14(a) required the employee to abstain from taking official action directly affecting this firm. We said that we recognized that the employee's participation in and affiliation with this organization probably resulted in part from his desire to make a public service contribution. Nevertheless, we concluded that the employee's ownership of stock in the corporation gave him a financial interest in the organization, and, under the ethics law, he might not take official action directly affecting it.

We said that if he should divest himself of his ownership interest in the corporation, then the ethics law would no longer preclude him from taking official action directly affecting this organization. Because this corporation would have many contracts and business negotiations with the employee's state agency, we stated that it might be prudent for him to divest himself of his ownership interest in the corporation. The employee indicated to us that he might donate his stock to a charitable organization. We commended the employee for considering such action.

We thanked the employee for meeting with us and expressed appreciation for the concern for ethics in government that he had shown us.

Dated: Honolulu, Hawaii, November 6, 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.