

## OPINION NO. 227

A state employee requested an advisory opinion on whether he had a "controlling interest" in a certain corporation.

He informed us that he owned about 9.5% of the outstanding shares of the company. He indicated that he was a member and the chairman of the board of directors of the company. The state employee stated that the "chairman has no duties whatsoever." He further indicated that he was the president of the company.

The state employee stated that because he was not active in the day-to-day management of the company, the position of president which he held was "mostly an honorary position." He also stated that the vice president was the chief executive officer. We noted, however, that the by-laws of the company stated the following:

The President shall preside at all meetings of the stockholders and of the Board of Directors. He shall be the chief executive officer of the corporation. He shall, together with the Secretary, sign certificates of stock, and all instruments relating to real estate and other instruments to be recorded.

Finally, the state employee indicated that he provided technical consultation to the company to the extent of two or three days a month. This consultation work involved using his skills to help solve problems and occasionally soliciting business for the company.

HRS §84-15(a) (Supp. 1974) states:

A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

HRS §84-3(3) defines a "controlling interest" as "an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent."

We stated that in determining whether a state employee has a controlling interest in a business, the Commission looked at ownership interest in the corporation and management control. Based on the facts that were set forth *supra*, we ruled that the state employee had a "controlling interest" in the corporation.

The state employee also asked us whether he would have a controlling interest in the company if he should resign from the board of directors. It was our opinion that he would still have a controlling interest in the company. As president, he was, as stated in the by-laws, the chief executive officer of the company. We said that if he should resign his membership on the board of directors and not serve as an officer of the company, it was our opinion that he would then not have a controlling interest in the company.

We expressed appreciation for the state employee's concern for ethics of public servants.

Dated: Honolulu, Hawaii, August 4, 1975.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
Audrey P. Bliss, Commissioner  
I.B. Peterson, Commissioner

Note: Vice Chairman Gwendolyn B. Bailey and Commissioner Paul C.T. Loo were excused from the meeting at which this opinion was considered.