

## OPINION NO. 233

A state employee requested an advisory opinion as to whether his private business interests violated provisions of the state ethics code. He also asked the Commission to advise him as to whether his company might validly enter into contracts with his department and other state agencies.

He indicated that he was employed by a division within a state agency as a specialist in materials of the kind that his company produced. He supervised the production of his unit and developed project specifications, requirements, deadlines, and costs, among other duties. He also indicated that he wrote up most of the specifications for the bidding out of jobs to private companies. He was the president and owned 50 per cent of the stock of his company. His spouse was the manager of the company.

During the fiscal year 1973-74, the company did business with the employee's agency in the amount of \$3,103.12. One contract was in the amount of \$2,148 while the balance of work was in much smaller amounts. In all cases the company was asked to submit informal bids by the division requiring the materials. During the same period the company entered into contracts with several state agencies. The majority of these contracts were for amounts well under \$1,000 and were obtained by the company after having submitted the lowest of three or more written bids.

We indicated that as an employee of the State he was subject to the requirements of the state ethics code. In reviewing the facts he presented to the Commission we concluded that several sections of the ethics law applied to his situation.

HRS §84-12 prohibits the disclosure or use of information for personal gain which is not available to the public and which is acquired in the course of official duties. We advised him that he was not to use such information gained in his employment for the benefit of his business.

HRS §84-14(a) prohibits the taking of official action directly affecting a business in which the employee has a substantial financial interest. An ownership interest, an officership interest, and an employment interest in a business may each be sufficient to constitute a financial interest under the definition of this term found in HRS §84-3(6). We believed that the ownership of a 50 per cent interest in the business, his position as president of the company, and his spouse's position as manager comprised a substantial interest in the business. We found, however, that his company had not come before him for official action in his state capacity. Accordingly, we found that there had been no violation of HRS §84-14(a). We advised him to continue to guard against taking any official action in his position with regard to his private business.

We also brought to his attention HRS §84-14(d) which prohibits an individual from assisting a private business in obtaining a contract on a matter in which he has participated as a state employee. Further, we indicated that under HRS §84-15(b), a state agency is prohibited from entering into a contract with a business represented or assisted by a person who has been employed by the agency within the preceding two years and who participated in his employment in the subject matter of the contract. We said that the meaning of these sections was that he could not assist the company in a matter in which he had worked as a state employee; nor could his agency enter into a valid contract with the company on such a matter. We emphasized that this latter prohibition would also apply for a two-year period following his termination of employment with this agency.

HRS §84-15(a), which had most direct application to the question he had specifically raised in his request, provides as follows:

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.

The information he provided indicated that the large majority of his company's contracts involved amounts considerably below the \$1,000 figure noted in the statute; in those instances this section would have no application.<sup>†</sup> When the job offered involves more than \$1,000, however, the contract may not be validly entered into without public notice and competitive bidding. The Commission had previously taken note of an informal procedure for the awarding of contracts by state agencies where the amount involved is under \$4,000. In such instances the particular agency requests informal bids from at least three businesses it expects from past experience will show interest in the particular project. As this procedure was adhered to for the contracts which the employee's company had obtained, we found no violation of HRS §84-15(a).

It was our finding that his private business pursuits did not present a conflict of interest with his state employment at that time; nor did we find any other violation of the state ethics code. In addition, subject to the restrictions we had outlined, we advised him that his private business could validly enter into contracts with his and other state agencies. We recommended, however, that the company refrain from submitting bids to his division because it was our impression from the facts presented to us that he would almost certainly have had involvement with the subject matter of such a bid in his state employment. We advised him that this decision was restricted solely to the facts presented by him and that any change in the nature of the business of the company or in his state employment might require him to seek an additional advisory opinion.

We commended him for bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, October 3, 1975.

STATE ETHICS COMMISSION  
Gwendolyn B. Bailey, Vice Chairman  
Audrey P. Bliss, Commissioner  
Paul C.T. Loo, Commissioner  
I.B. Peterson, Commissioner

Note: Chairman Vernon F.L. Char was excused from the meeting at which this opinion was considered.

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<sup>†</sup>We have stated that separate contracts involving the same subject matter will be viewed as one contract if the separate contracts were a method of evading the intent of HRS §84-15(a).