

## OPINION NO. 252

An employee of a department of the State was head of and principal investigator for a program of that department. In his role as principal investigator, he had requisitioned a private organization to perform certain services. His wife, whose occupation was within the organization's field, had been employed with the organization since January of 1976. The office responsible for reviewing contracts before approval had indicated to his department that his actions in securing these services may have been in violation of the ethics law and he accordingly asked the Commission to make a determination of the application of ch. 84 to this matter.

The private organization had for some years been active in planning and program development in its field. It had developed contacts with approximately 170 different neighborhood organizations and because of its close contact with those groups and the expertise of its staff in its field, the employee had requested that the organization prepare a handbook for use in educational courses in the field. This handbook was to be used as a vehicle for instruction in particular courses at the department where he was employed. The major portion of the material in the handbook appeared to be concerned with a description of organizations similar to that of the preparing organization and it was with this area that the organization had been most concerned in the years of its work. The employee had indicated that no other organization or business could provide this service. The value of the contract was \$10,800.

The employee's wife was employed with the organization on a temporary, though full-time basis. The proposed contract indicated that she would be one of several staff members to work on this project. The employee was at one time a member of the board of directors of the organization and was at the time he requested the opinion a volunteer member of a committee. He had also indicated that a number of the staff members of this organization had past affiliations with his department and that he had maintained close contact with the individuals themselves and the organization.

We noted that the reviewing office was concerned that the contract might be in conflict with HRS §84-15(a). That section prohibits a state agency from contracting with a business in which an employee has a controlling interest when the value of the contract is in excess of \$1,000 without public notice and competitive bidding. However, as neither this employee nor his wife had any management or ownership position in the organization, his interest was not controlling; accordingly, HRS §84-15(a) did not have application to this matter.

It was our view that HRS §§4-14(a) (Supp. 1975) had the most direct application to this matter. That section states:

No employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest ....

First, under HRS §84-3(6) the financial interest of a spouse is construed to be the interest of the employee. Further, an employment interest is a substantial financial interest. Accordingly, his wife's employment was a substantial financial interest to him. Then, official action is defined to mean "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." His position as principal investigator and program head indicated that he had decision-making authority; his action in drawing up the specifications for the handbook and in suggesting that the organization perform the work was clearly the exercise of discretionary authority. Accordingly, we found that in this matter he had taken official action in his

state capacity. Finally, it is clear that the action he took would, if this contract was finally executed, have a direct effect upon the private organization.

We concluded that his actions in this matter were in violation of HRS §84-14(a). We recognized that the services contracted for might have been necessary and in the best interest of the State and, additionally, that the private organization might have been the only group available to perform the necessary services. Nevertheless, his wife's employment interest with this organization, as well as his own close contacts with it, would serve to cause an observer to question whether his need had been determined because of the actual requirements of the department or because of his relationship with the organization. Such a situation, of necessity, undermined the position of the public employee and of the agency with which he was employed.

It was our suggestion that the head of the employee's department and the director of the office which reviewed the contract together determine the need for the handbook and the unique capability of the organization to prepare it. If, as it appeared, these individuals confirmed the employee's judgment, then, in our view, it would be proper for the employee's department to enter into the contract. We stated, however, that if the department decided to execute the contract, the organization should not assign the employee's wife to work on the project. We also believed that it might be advisable for her to consider voluntarily relinquishing her position with the organization.

While we recognized that the employee may not have been specifically aware of the requirements of HRS §84-14(a), we believed that his wife's position and his own close association with the organization should have alerted him to the fact that an ethics question was raised; the matter should have been independently reviewed before he took action. We stated that we were very concerned when matters such as this were brought to our attention after the fact.

In the event the employee had future dealings with the organization, we brought to his attention the provisions of HRS §84-13. That section prohibits an employee from using his official position to grant unwarranted advantages, contracts, or treatment for himself or others. Because of his close relationship with the organization, we stated that he must be careful to avoid granting this organization favored treatment. We noted that HRS §84-13 applies even where the employee has no financial interest in the matter of concern.

In accordance with this opinion, we advised the head of the employee's department and the director of the office responsible for approving the contract of the action we had taken.

While we were critical of the employee's posture in this matter, we also recognized that he had taken the important step of requesting our review and had frankly disclosed the facts to us; we commended him for this action.

Dated: Honolulu, Hawaii, May 17, 1976.

STATE ETHICS COMMISSION  
Audrey P. Bliss, Chairman  
Dorothy K. Ching, Commissioner  
Gary B.K.T. Lee, Commissioner  
I.B. Peterson, Commissioner

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.