

## OPINION NO. 266

Two enforcement officers of a state department were interested in establishing a business of importing and marketing a certain product. In their state positions they were taking official action with regard to similar types of products. Because of this relationship they had requested an advisory opinion as to whether this proposed business would place them in conflict with the ethics code.

From the information that they presented, we found that they would not be in conflict with the ethics code if they undertook their business as they had proposed.

The section of the ethics code which was applicable to their question was HRS §84-14(b) (Supp. 1975). It states that:

No 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.

As enforcement officers their duties included enforcing all state laws and regulations in certain areas. Their actions in carrying out those duties were all official actions for purposes of the statute. Therefore if they were to have had any enforcement or regulatory duties in regard to the importation of the product they wanted to sell, they would not have been able to engage in their proposed business. They stated, however, that the regulations that they enforced covered only those products which were found locally regardless of whether they were actually taken from the local area or imported. Since the product in question was only found in areas other than Hawaii, it was not regulated by their department nor was it probable that it would be in the future. It appeared to be highly unlikely that their proposed business would be subject to official action that they would take as state employees.

Their inspection duties, however, raised an additional question under HRS §84-14(b). The Commission had stated in a past opinion that an inspector may not inspect a business that competes with a business he acquired before entering government service; that inspection would directly affect that business by regulating the existence and extent of competition. (Opinion No. 20.) It followed that an employee should not acquire a business after entering government service if such action would limit the performance of his duties. Therefore, we stated that an employee should not acquire a business that would place him in the position of inspecting his competition unless it was clear from the particular circumstances that the regulatory powers held by the inspector could not directly involve the business area in which he and the inspected business competed.

In the employees' positions they had the power to inspect markets and restaurants which sold the local types of these products. If they found a violation in a market or restaurant, their choices of action included warning the seller and requiring him to remove the offending product, citing the seller and removing the product, or arresting the seller and removing the product. The latter sanction was rarely used. They could not close a seller's operation for violating the regulations. They stated that their inspections of markets and restaurants happened infrequently, averaging about four times a month for one employee, and somewhat less than that for the other. Their inspections generally occurred as the result of a complaint rather than at their own instigation. Neither of them knew if any of the markets they inspected also imported the product

these employees intended to sell; they did indicate that some of these markets would probably sell this product.

It was clear that they might inspect markets which might import the product. Such inspection constituted the taking of official action in regard to a competitor. However, because of their limited sanction powers, we found that this action would have only a minimal effect on those businesses that would compete with them. Accordingly, we found that this action would not directly involve their proposed business and, therefore, would not be in violation of HRS §84-14(b).

They stated that their market for the product would be military installations on Oahu. Because these are federal enclaves they did not have regulatory authority or inspection duties over the food preparation facilities on these bases, and thus they took no official action in regard to them. They stated that they selected these bases as their prospective markets because they did not deal with them in any official capacity and because through friends they had some contact with the bases' purchasing agents. These proposed markets posed no problems with the statute. We warned them that if they planned to expand their sales, they should be aware of the provisions of HRS §84-13(4) which states that no employee should attempt to secure an unwarranted advantage, contract, or treatment for himself by "[s]oliciting, selling or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity." To avoid violating this section, we stated that they should not solicit or sell to any person or business which they presently inspect or had the power to inspect.

Finally, we warned them that they should be careful to avoid using state time and facilities in conducting their business.

We commended them for recognizing the existence of a possible issue under the state ethics law and thanked them for their cooperation in providing us with complete information.

Dated: Honolulu, Hawaii, August 6, 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.