

## OPINION NO. 276

We received a request for an advisory opinion from a director of accounting in a large state agency. His request concerned the employment of an individual as the project manager of an agency program. This employee was responsible for the logistics of the program and was expected to supply divisions of the department with various materials and equipment; we were advised that this employee would also have occasion to purchase certain printed materials.

The employee indicated that he was the owner of 1,500 shares of a corporation. These shares constituted approximately 30% of the outstanding stock of the company. One division of that company, hereinafter "Division A", was engaged in the printing business and had done substantial business with the State in the past. Although Division A had not been engaged in printing contracts for the agency program, it was our understanding that it was possible that Division A would be involved in such contracts in the future. The employee and the director wished to know how he and the department should proceed so that the conduct of each would be in conformance with the requirements of ch. 84.

As an employee of the State, he was subject to the requirements of the state ethics code. Our review of the facts that had been presented to the Commission indicated that several sections of the ethics law had application to his employment.

HRS §84-12 prohibits the disclosure or use, for personal gain, of information which is not available to the public and which is acquired in the course of one's official duties. Accordingly, the employee was advised that he should be careful that he not use such information for the benefit of his private business.

HRS §84-13 prohibits the use of position to grant unwarranted advantages to either one's self or others. In this regard, the employee was advised that he should be careful that he not use his position to grant any advantages to his company. While he advised us that he had turned over the day-to-day management of Division A to the printing manager, we were aware that he nevertheless retained a substantial interest in the operation of Division A of his company. Accordingly, we stated that he should be particularly careful that he not use either state time, equipment, or facilities for the conduct of any of his private business.

HRS §§84-14(a) and 84-15(a) and (b) had most direct application to this matter. HRS §84-14(a), the conflicts section, prohibits an employee from taking official action directly affecting a business in which he has a substantial financial interest. While this individual was no longer a full-time employee of his company, he was the president of the corporation, was paid \$500 per month, and received certain substantial perquisites from the corporation. These interests, along with his 30% ownership interest, clearly constituted a substantial financial interest. Accordingly, the conflicts section had application to his employment with the department, and he was therefore required to abstain from taking any official action directly affecting the corporation or any of its subsidiaries, including, of course, Division A. This meant, for example, that should the corporation receive, in the future, a contract with the department to produce program materials this employee could not take any official action concerning that contract. We emphasized that official action was not restricted to decision-making but included all input involving discretionary action.

HRS §84-14(d), another section of the conflicts portion of the code, also had application here. That section prohibits an individual from assisting a private business in obtaining a contract

on a matter in which he has participated as a state employee. Accordingly, the employee was advised that he might not assist Division A in obtaining business from either the department program or any other state program if he had participated in the subject matter of such business as a state employee.

HRS §84-15 is concerned with contracts between a state agency and a state employee or his business interests. HRS §84-15(a) provides:

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.

In our discussion of the application of HRS §84-14(a), we had noted that the employee's interest in the corporation was a substantial one. We also believed that the substance of his ownership interest as well as his position as president of the company constituted a controlling as well as a substantial financial interest in the company. Therefore, we held that HRS §84-15(a) would apply to all state agency contracts with the corporation that were entered into during his tenure as a state employee and that were in excess of \$1,000 in value.

Further, we noted that the effect of this section on state agencies that might deal with the corporation was not diminished by the fact that he would not be involved in the day-to-day operation of his company or by the fact that he would have no input in the recommending of companies for printing contracts with the program. Despite these commendable safeguards, we stated that a state agency might not enter into contracts with the corporation without competitive bidding and public notice. We stated, however, that the Commission had recognized in the past that in some circumstances the cost of a competitive bidding process was so prohibitive that in small contracts departments generally did not follow such bidding procedures but rather sought bids on an informal basis. Accordingly, we held that it might be permissible, in limited circumstances, for the corporation to receive a printing contract for program or other state agency work if competitors of that company had been given an equal chance at the business. However, we stated that in those situations in which an agency did not deem it advisable to follow formal bidding requirements, a contract might not be granted to the corporation or any of its subsidiaries without the approval of the Commission.

Additionally, we noted 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. This section, similar to HRS §84-14(d), described above, prohibited the employee from assisting his company on a matter in which he had worked as a state employee. Further, neither the department nor any other agency might enter into a contract with the corporation if within two years of the contract date the employee had participated in the matter as a state employee. We emphasized that "participation" was a broad term and would include any employee contact with the subject matter of a contract as well as discretionary or official action with regard to that subject matter.

The foregoing sections established the guidelines which both the agency and the employee were required to follow while he was a state employee. However, for the employee's guidance, we drew his attention to the potential application of the post-employment section of the code to his

private business interests. HRS §84-18(b) provides that no former employee, within twelve months of his termination date, shall assist a business or act as a representative of a business for a fee or other consideration on a matter in which he participated as an employee. This meant, for example, that should the employee participate in drawing up specifications for a particular contract and then leave state employment, he might not assist the corporation on that matter for a period of twelve months following termination. HRS §84-18(c) would prohibit him from assisting any business or acting in a representative capacity for any business for a fee or other consideration on any matter requiring official action by the program. This restriction was also limited to the twelve months following termination from state employment.

The information we had gathered indicated that the employee should be able to fulfill his obligations to the state agency and should be able to be an effective employee despite the restrictions that the ethics code would place on some of his activities. We stated that if a situation arose in the future that had not been anticipated by the guidelines we had set forth in our opinion, that he should contact us for further advice.

We noted that we held as a prime goal of the Commission the encouragement of state employees to come to the Commission at the beginning of state employment to determine the effect of the ethics code on their private business interests. The concern of both the division and the employee that all activities be in conformance with the ethics code was most encouraging to us, and we commended the director and the employee for the action they had taken.

Dated: Honolulu, Hawaii, October 5, 1976.

STATE ETHICS COMMISSION  
Audrey P. Bliss, Chairman  
Paul C.T. Loo, Vice Chairman  
Dorothy K. Ching, Commissioner  
I.B. Peterson, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.