

OPINION NO. 277

We received a request for an advisory opinion from a state inspector. He addressed several questions to the Commission concerning (1) the limitations the ethics code might place on action he took involving his own and his relatives' financial and business interests and (2) the restrictions the ethics code might place on his acquisition of financial interests in the industry he had the responsibility to inspect.

His specific questions were as follows:

1. Could he inspect products owned by himself, his father, mother, brother, sister, wife, son, uncle, and other relatives?
2. Could he engage in the production of the product he inspected?
3. Could he engage in the business of retailing and wholesaling the product he inspected?
4. Could he operate a preparation plant in the business of wholesaling and retailing of the products he inspected?
5. If a company had in its possession products belonging to his father, could he inspect the products belonging to other people and businesses and have the products belonging to his father inspected by another inspector?
6. Could he own, operate, or lease a plant that prepared the type of product he was responsible for inspecting?
7. Could he inspect a processing plant that belonged to relatives?

HRS §§84-14(a) and (b) had most direct application to the questions he had raised. HRS §84-14(a) (Supp. 1975) provides:

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

HRS §84-14(b) (Supp. 1975) 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.

First, as a state employee he was subject to the requirements of the ethics statute and of the conflicts sections cited above. Then, a financial interest, for the purposes of the ethics code, includes, among other things, an ownership interest in a business. Under HRS §84-14(a), the statutory restriction does not come into effect unless the interest is substantial. A substantial interest had been defined by the Commission in past opinions to mean an interest that was sufficient to influence an employee in the course of his official duties. HRS §84-14(b) comes into effect upon the acquisition of any financial interest.

Official action is defined as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." This employee's position description indicated that he exercised a broad range of authority in the exercise of his inspection responsibilities. Very clearly, he was authorized to take discretionary action in the course of performing his duties. Therefore, we concluded that he did take official action in his capacity as an inspector. Accordingly, we stated that he should abstain from taking official action which would directly affect a business in which he had a substantial financial interest; we stated further that he should not acquire any financial interest in a business which he had reason to believe would be directly involved in official action to be taken by him in the future. We emphasized that the acquisition of financial interests after one becomes a state employee is subject to broader restrictions than are those interests which one had held prior to acquiring a state position.

To his specific questions we responded as follows:

1. He should abstain from inspecting products owned by himself, his wife, or his son, if his son was a minor, as such action would directly affect a business or undertaking in which he had a substantial financial interest.

Under the ethics code, the financial interest of a spouse or minor child is construed to be the financial interest of an employee. This construction, however, does not extend to the financial interests of other relatives or friends. Therefore, we stated that he might inspect cattle owned by any other members of his family. While he might take action affecting the interests of his relatives, we stated that he should be mindful of the language of HRS §84-13 (Supp. 1975) which states that "[n]o legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others" He had, therefore, to be careful in exercising official duties with respect to the interests of his relatives that he not grant them any unfair or unwarranted treatment. Further, if he and his supervisor determined that the taking of action affecting the interests of his relatives might tend to undermine public confidence, we stated that he should consider voluntary disqualification. The action to be taken, the closeness of the familial relationship, and whether he believed he could act without prejudice or bias were factors which he was advised to weigh in considering voluntary disqualification.

2. Because it was likely that he would take official action directly involving businesses engaged in the production of the products he inspected, it was our view that he should not acquire interests in such businesses.

3. For the reasons stated in our response number 2 above, we ruled that he should also refrain from acquiring interests in businesses that were engaged in the wholesale and retail sale of the products he inspected.

4. Again, for the reasons stated in our response number 2 above, he was advised that he should not operate a preparation plant which was in the business of wholesaling and retailing of the products he inspected.

5. Because the financial interests of a relative other than his spouse or minor child was not construed by the ethics code to be his own financial interest, he might inspect products belonging to his father or other relative.

However, as we had indicated earlier, he might wish to voluntarily refrain from taking such action if he and his supervisor determined that such action on his part would tend to undermine the integrity of the department and public confidence.

6. It was our view that he should not own, operate, or lease a plant that produced a product of the type he would inspect as a state employee as such financial interests would undoubtedly be involved in action he would take as an inspector.

7. For the reason stated in our response number 5 above, he was told that he might inspect a processing plant that belonged to relatives other than his spouse or minor children.

We stated the general principles that should guide his activities in the areas he had touched upon in his request:

1. He should not take action directly affecting his own substantial financial interests or those owned or controlled by his spouse or minor children; he might, however, take such action when it directly affected the interests of other of his relatives.

2. He might not acquire interests in businesses that were likely to be involved in official action he would take in his state capacity. He might acquire business interests that were not likely to be involved in action he took as a state employee. We emphasized, however, that the ability to disqualify himself from taking action directly involving such interests was not pertinent under HRS §84-14(b). We stated that he must not place himself in a position which would require him to abstain from taking official action.

3. In those circumstances in which he might take official action under HRS §84-14(a), he was advised that he should nevertheless guard against granting unwarranted advantages or treatment to either himself or others.

We noted that the statute did not frown upon employees holding or acquiring outside interests so long as those interests were kept distinct from and were not affected by the employee's functioning as a state employee. Because of the broad range of his duties as an inspector, however, he was advised to disclose to the Commission any financial interests that he did acquire in the industry he inspected. If at some point in the future he contemplated acquiring a specific business interest, he was advised that he might bring this to our attention for our further review.

We commended him for bringing his questions to the attention of the Commission and for the concern for ethics in government that his request had demonstrated.

Dated: Honolulu, Hawaii, October 20, 1976.

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

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