

OPINION NO. 290

An administrator in a certain agency was responsible for handling negotiations and plans with contractor/developers for new state projects and for monitoring projects which were under construction. He had been with this agency since 1972 and this position since 1974.

In 1975, Mr. K of Company K had approached this agency with a proposal for a certain project. The individual was a member of a partnership which owned the land which was the proposed site of the project. Along with other employees of the agency this employee had entered into the initial negotiations concerning the project and the state had subsequently committed itself to the project by purchasing the land. Company K, a construction company, was also authorized to begin one phase of the construction of the project.

In late 1975 or early 1976 the employee had solicited bids from two companies for the construction of his private residence. The low bidder was Company K. In March 1976 he had entered into a contract with that company to construct his home. Because he had been unable to obtain the necessary building permits, construction had not begun.

The agency had recently been the object of some adverse publicity. Because of that, the present director had asked all agency employees to abstain from involving themselves in any possible conflict or appearance of such. The employee indicated to his agency that he had entered into the aforementioned contract and thereafter abstained from participation in any meetings relating to the project initiated by Mr. K. He then asked this Commission whether this contract violated the code of ethics. We found that it did and that he should not do business in a private capacity with this company.

We stated to the employee that HRS §84-13 (Supp. 1975) of the ethics code states that an employee may not use his position to secure an unwarranted advantage for himself or for others. We explained that because the drafters of that section were aware that it was sometimes difficult to determine if one had used his state position for unwarranted advantages, they listed four representative types of activities which if engaged in would be per se violations of this section. One of those, stated in part (4), was "[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."

We indicated to the employee that his contract with a construction company to build his home was a substantial financial transaction. Although he indicated that a project coordinator and a project manager directly inspected agency projects in progress, he stated that he met with those individuals concerning the results of their work and then made recommendations to the executive director. His policy actions with regard to the projects had at least as much affect on the developer as those direct inspections of the project coordinator for it was his decision that directed that coordinator in his or her actions with regard to the project. Clearly, he would have some responsibility for the inspection and supervision of Company K's participation in the subject project. Therefore, because a contract for the construction of the employee's home which he executed with any company with which he dealt in his official capacity would be a violation of the ethics code, he could not engage Company K to perform this work.

The employee stated that when this situation was first questioned he thereafter refrained from participating in any meetings dealing with the subject project and that he would continue to

do so in the future so as not to jeopardize his personal contract with Company K or raise any questions with regard to the project. While we commended him for taking this step, we stated that his abstention was not the answer. We noted that it had been the Commission's long-standing position that an employee should not place himself in a situation which would require him to abstain from participating in those very duties which he had been hired to perform. Such abstention diminished this employee's effectiveness as a public employee and denied to the public the full benefit of his services.

We realized that the contract he had with Company K placed him under some obligation to that company. However, we pointed out that he should have been aware that dealing in a private capacity with a company which had a substantial contract with his agency and with regard to which he personally took official action created a conflict.

We thanked the employee and the executive director of his agency for coming to present the facts to us. We indicated to the employee that he should advise the director of our decision in this matter and advise the Commission in writing of action he took to comply with this opinion.

Dated: Honolulu, Hawaii, February 1, 1977.

STATE ETHICS COMMISSION
Paul C.T. Loo, Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner
Gary B.K.T. Lee, Commissioner

Note: Vice Chairman I.B. Peterson was excused from the meeting at which this opinion was considered.