

OPINION NO. 292

An employee of a department had recently been appointed to a new position within his department. The new position entailed administrative and policy-making duties within a special services division. The employee also was the principal investor in a private company which offered courses to help develop certain basic skills. The persons for whom these courses were developed might also be persons who were served by the state programs this employee administered although the areas of concern of the private courses and the state programs were different. The employee asked the Commission to determine whether a conflict existed between his new position in the department and this private interest.

In two previous opinions issued to this employee by the Commission we had stated that we found no conflict in his acquiring this interest in the company subject to certain restrictions. (See Opinion Nos. 169 and 184). Because his change in position had altered the responsibilities of his state position, it was necessary for the Commission to consider whether his private interest in the company would conflict with his new duties. We noted that the section most applicable to that question was HRS §84-14(a) (Supp. 1975). It states that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest."

We pointed out that official action is defined by the statute to include any action that involves the use of discretionary authority; a financial interest is defined to include an ownership interest in a business. We explained to the employee that because he was the principal investor in and a member of the board of directors of the company and because he also acted in a managerial role there, his interest in the company was clearly substantial. Therefore, he could not take any action in his new position which would directly affect the company.

From our review of his position description, it did not appear that he would take any action in administering the special services programs of his division that would affect his private company. We told the employee that he should, however, discuss this opinion with his supervisor to determine if a conflict situation might arise that we could not anticipate on the basis of the facts he had provided to us. We noted that, generally, he should avoid taking part in any discussion concerning whether the department should contract for outside services or courses of the type provided by his company, if that issue arose, and he should also abstain from participating in the administration of any resultant contract whether or not it involved his company. In addition, we reminded him that he should continue to adhere to the holdings of the previous opinions issued to him and to operate in the same cautious manner as he had in the past.

We commended the employee for wishing to maintain an ethical posture.

Dated: Honolulu, Hawaii, March 24, 1977.

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

Note: Chairman Paul C.T. Loo and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.