

OPINION NO. 301

We received a request for an advisory opinion from a state employee who provided field engineering and maintenance for a certain piece of equipment as well as technical services support for a laboratory in his division. He was also engaged in a private business providing repair services of electronic instrumentation devices, implementation of small dedicated applications of data systems, and production of applications software. In his private capacity he had been in the past expected to be in the future approached by other divisions of the department to provide certain of these services on a contract basis. Most of his business came from that department because very few private companies used the type of equipment or systems he serviced or designed. He asked the Commission whether he might enter into contracts with divisions of that department including the division in which he was employed.

We first stated to the employee that the Commission had never construed the ethics statute so as to prohibit an employee from holding all outside interests. We explained that the code does prescribe certain courses of conduct an employee should follow with regard to those interests the employee holds at the time he or she enters state service.

We indicated to the employee that in his case, he would need to follow the guidelines set forth in the contracts section of the statute. That section, HRS §§84-15(a) and (b) (Supp. 1975) states:

(a) A state agency shall not enter into a contract with ... an employee or with a business in which ... 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.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

Subsection (a) was most applicable to contracts he entered into with a state agency, including his department. We understood that his business was a sole proprietorship; his interest then was, of course, controlling for purposes of this section of the statute. Therefore, we indicated that he could enter into contracts with state agencies, including his department, so long as those contracts in excess of \$1,000 were entered into after public notice and competitive bidding. He could not enter into state contracts for over \$1,000 if that process was not followed.

We pointed out that in addition to this general requirement, there was a specific prohibition in the contracting area found in subsection (b). The essence of that subsection is that a state employee may not enter into a contract with his or her employing agency if the employee had participated in his or her state capacity in the matter with which the contract is directly concerned. In this employee's case this meant that he could not enter into any contracts with his department concerning any matter in which he had participated as a department employee. He had indicated to the staff that although his job description did not show it, practically speaking he made all the recommendations to his division as to which electronic services and repairs were required and which vendors should be contacted. If this were the case, he should not enter into any

contracts for electronic services or designs with his division. We stated that this prohibition applied even if the contracts were put out for competitive bid.

Although it appeared that for practical purposes this prohibition applied to only those contracts he entered into with his division, we pointed out to the employee that it also applied to joint projects between his division and any other division of the department if he participated as a state employee in the matter with which the contract was concerned. The crucial determinate was not what division of the department was involved, but whether in his department position he had been involved in the subject matter of the contract.

We also pointed out two other sections of the statute that concern state employees with private businesses. First we noted that HRS §84-13 states that a state employee may not use his official position to secure unwarranted advantages for himself including such things as using state time, facilities and equipment for private business purposes. The employee had mentioned to the staff that he was waiting to install some equipment under the terms of a contract he had entered into with another division of the department before he recently became an employee of his division. While the contract did not create a conflict because he was not a state employee when he entered into it and it did not concern a matter in which he had participated previously as a state employee, we warned him that he should be careful to complete the work on his own time.

Secondly, we brought to his attention HRS §84-14(a). We indicated that pursuant to that section he should abstain from taking any action in his state capacity that directly affected his private company. This included his supervising, in any way, a contract between his department and his business even if the contract was awarded through competitive bidding.

We commended him for his concern to maintain an ethical posture in his private business arrangements with state agencies.

Dated: Honolulu, Hawaii, April 26, 1977.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Acting Vice Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner

Note: Chairman Paul C.T. Loo and Vice Chairman I.B. Peterson were excused from the meeting at which this opinion was considered.