

OPINION NO. 320

The supervisor of a branch of a department was responsible for making recommendations for travel arrangements for himself and certain other government employees who traveled on state business. This employee's spouse was an outside travel agent for a private travel company. He had in the past recommended that his spouse be the agent through whom the airline tickets for this travel should be purchased. The branch chief who ultimately approved such purchase orders had questioned the advisability of one such order covering approximately \$2,000 worth of tickets. After conversation with our staff resulted in the stoppage of that particular purchase order, the employee requested an advisory opinion concerning the application of the ethics code to this practice.

He posed the following specific questions:

1. Was it a violation of the ethics code for him to make government travel arrangements through his spouse and the agency which employed her?
2. Was it a violation of the ethics code for him to make government travel arrangements for representatives of other jurisdictions through his spouse and the agency which employed her?
3. Was it a violation of the ethics code for him to recommend his spouse as a travel agent to people who traveled on government funds?
4. Was it a violation of the ethics code for the agency which employed his spouse to handle his travel arrangements and those of his fellow employees who traveled on government funds if his spouse did not receive a commission?
5. Was it a violation of the ethics code for fellow employees to contact his spouse for travel arrangements if they used government funds for that travel?

The section of the ethics code which was most applicable to his questions was HRS §84-14(a) (Supp. 1975). That section states:

No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which he has a substantial financial interest....

First, we indicated that official action is defined by HRS §84-3(7) to include "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." Therefore, his recommendation of a travel agent on a purchase order was official action. Secondly, a business is defined by HRS §84-3(1) to include a "corporation ... or any other individual or organization carrying on a business" In addition we had construed the term "undertaking" to include an activity, concern or pursuit. (See Opinion Nos. 177 and 263.) Therefore, a travel agency and his spouse's position as an agent would fall within these two terms. Finally, a financial interest is defined by HRS §84-3(6) to mean "an interest held by an individual, his spouse, or minor children which is ... [a]n employment, or prospective employment for which negotiations have begun." Therefore, his spouse's employment interest in the travel agency was a financial interest of his.

The employee had recognized in his request, however, that before an employee must refrain from taking action affecting a financial interest, that interest must be substantial. We noted that a substantial interest had been defined by us to mean an interest which is sufficient in magnitude to influence one's official action. (See Opinion Nos. 2, 151, and 277.) In addition we had always found an employment interest to be substantial, including some instances of part-time employment. We referred the employee to Opinion No. 61 where we found that an hourly rate of \$4 for part-time work as a gatherer of information for tax preparation purposes was a substantial financial interest. And, in Opinion No. 146, we found that a rate of \$7.50 per hour was substantial even though the employee's yearly gross was \$500.00 or less. The point in each case was that there was a significant potential income and that fact had to be recognized at the outset.

In this employee's case, his spouse's employment interest had in fact influenced him in his official action in that he had recommended her as the travel agent not only in the one purchase order involving approximately \$2,000 in tickets but also in previous but smaller purchases of tickets. We pointed out that without this action on his part, however, we would still have found her interest to be substantial. While her percentage of commission might be small, the rate of hourly compensation was at least equal to those cited in Opinion Nos. 61 and 146. In addition, since she was working on a commissions-only basis, her receipt of referrals from the employee or his division became that much more important to her. Even without the action he had already taken, her interest would be sufficient in magnitude to influence his official action and was therefore substantial. Consequently, by making the recommendation that tickets be purchased through his spouse, we found that this employee had taken official action which directly affected a substantial financial interest of his and had thus violated HRS §84-14(a).

It followed then that the situations he posed in his questions 1, 2, and 3 were violations of HRS §84-14(a). In addition, and in response to question 4, since his spouse's interest was in her employer and therefore his interest was in her employer, it was also a violation of this section for him to recommend that the agency which employed his wife provide either his tickets or those of any person for whom it was his state responsibility to make and recommend travel arrangements.

In response to his fifth question, under normal circumstances, it would not have been improper for his fellow employees to purchase tickets through his spouse or her agency unless he or they had used his or their positions to give his spouse an unwarranted advantage over other agents. We stated that the grant of such an advantage was prohibited by HRS §84-13. We noted that if his fellow employees gave all of their ticketing business to his spouse because of his relationship to them, a strong inference of a use of position was present. While an employee might generally use one agent because of the service he or she might provide, if that agent had some familial relationship to him or a fellow employee of his, an inference of impropriety would arise. The Commission had stated in the past when discussing official action involving friendship that "[w]here it can reasonably be inferred that an individual may be biased or prejudiced for or against a particular case for any reason, even long-standing relationships, he should disqualify himself from taking official action upon the matter because it will give the appearance of unwarranted treatment under HRS §84-13." (Opinion No. 87.) To combat this inference, we stated that this employee's division should be careful if employees other than himself and those he supervised chose to use his spouse as a travel agent, to rotate this business among other agents as well.

With reference to our above exception of those persons he supervised, we pointed out that he should also be aware that HRS §84-13(4) specifically prohibited him from soliciting business for his spouse from persons he supervised in his state capacity. We recommended to his division chief

that all travel arrangements made through this employee's spouse or her agency by his fellow employees be closely monitored. We indicated that such business should not exclusively or predominantly be given to her or her agency as a matter of ultimate fairness.

In addition to those sections of the statute previously mentioned, we also pointed out to the employee that HRS §84-13(3) prohibited him from using any state time, facilities or equipment for his spouse's private business purposes. This meant that he could not solicit business for her on state time or use his phone in such solicitations.

And finally, we noted that if the contract involved in a purchase order was directly with this employee's spouse and not her employer, then HRS §84-15(a) would require that any such contract over \$1,000 be issued only as a result of a public competitive bidding process.

We understood from the staff that this employee had indicated a lack of understanding of the basic ethical principle involved in prohibiting a state employee from acting in his official capacity to further his private business interests. We were disturbed that such insensitivity existed. We pointed out that public service required a person to provide fair treatment to all members of the public because it was to that public that the employee's duties lay. While there might be aspects of the ethics code that were arguable, surely this was a principle that was, at that time, beyond debate. We urged that no employee in a position of responsibility should entertain the thought that his or her position could be used to private advantage without repercussions.

We forwarded a copy of this opinion to this employee's branch chief and division chief so that they would be aware of our decision with regard to the monitoring of the travel arrangements made through this employee's spouse and her employing agency.

Dated: Honolulu, Hawaii, November 1, 1977.

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