

## OPINION NO. 325

A state employee who anticipated that he might be asked to take action involving a company that was about to hire a former business associate of his asked the Commission if the ethics code would require him to disqualify himself should the situation actually materialize.

He and his former associate had provided certain bookkeeping as well as supervisory and management functions to a parking lot operation. Because this venture was requiring an excessive amount of his non-state time, he had terminated this association. His associate in this venture had recently been terminated from his full-time place of employment and was presently seeking a position with a company that might be doing business with the employee's division. He wished to know if any section of the ethics code would be applicable to him in his role as a state employee should this company actually become involved with his division.

As a state employee the conflicts of interest section had application to him. That provision states that:

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(a) (Supp. 1975))

The division was in the process of soliciting bids to establish a program that would provide increased public services. Because he had some background in this area he had been called upon as a technical resource person to provide information in the preparation of the bid specifications though he did not actually draft them. The decision to be made on the final award of the contract lay with his superior and not himself. However, once the low bidder was determined, he would be inspecting that business' facilities.

The facts of this case did not constitute a conflict of interest under the ethics code. We pointed out that such a conflict can arise only when an employee takes action which directly affects a business in which he or she holds a substantial financial interest. This employee held no financial interest of any kind in the businesses that had submitted bids. Accordingly, the conflicts of interest section would not prohibit him from taking any action affecting the companies that were bidding on this project. Additionally, he had no financial relationship with his former associate.

Because the division was a very public agency, it was conceivable, as he had noted in his request for an opinion, that certain members of the public might criticize the fact that a business employing a former associate of his was engaged in a contract with his division. However, our review of the facts indicated that he had taken no action favoring his friend's business. Further, while HRS §84-13 prohibits an employee from using his position to grant an unwarranted advantage, treatment or contract to himself or anyone else, we did not see that he had taken any unwarranted action to favor either his friend or the potential employer. Of course, if his friend and the business were to become involved with the division he was advised that he should be careful not to grant any unwarranted advantage to either the company or his former associate.

We recognized that in a community of this size, it was not unusual for a state employee to take action affecting a business in which an acquaintance holds an employment or ownership interest. Unless the relationship was of such a nature that the employee's judgment would be affected, there should be no need for disqualification. For this employee to have disqualified

himself in this matter would have deprived the division of assistance that would be helpful to it in making an important judgment.

We commended him for bringing this matter to the attention of the Commission at an early time so that it could be resolved before any difficulties arose.

Dated: Honolulu, Hawaii, December 28, 1977.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Chairman  
I.B. Peterson, Vice Chairman  
Audrey P. Bliss, Commissioner  
Dorothy K. Ching, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.