

## OPINION NO. 337

A state employee was asked by a private corporation to serve as a consultant on a project which it hoped would be funded through a grant from a federal agency. The grant was being sought by four companies. The employee had a state relationship with the corporation that sought to hire him. He asked the Commission to determine if he might accept this outside employment should this corporation be successful in securing the grant.

HRS §84-14(b) had most direct application to his question. That section states:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

We noted that an employment interest is a financial interest for purposes of the ethics code and official action is defined as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." (See HRS §84-3(7)). Therefore, we stated that he could not become employed by a corporation which was then, or which he believed might in the foreseeable future be, directly involved in any discretionary action he took on behalf of the State.

We indicated that whether he was involved in such action necessitated that we look to not only what he was required to do by his job description but also to what he actually did for the State. He had indicated to the staff that the State was to become involved in a joint project with this corporation and another smaller company. This project would be the first proof of a concept demonstrating the feasibility of using a specific process to produce a certain product. The State and the corporation would each contribute a very substantial amount of money and the smaller company a lesser, though significant amount to the project. It was hoped that this joint project would be operational by early next year. The corporation would operate the project for approximately six months and thereafter donate its investment to the State. The State would acquire the equipment while the venture itself would establish Hawaii as a proven location for similar large-scale projects. For its participation the corporation would gain practical experience in developing such a project and probably hoped to gain an advantage in seeking funding from the federal government for similar large-scale operations.

While there were no written directives to this employee as far as his involvement in the State's participation in this joint project, he stated to the staff that he had already acted as the liaison between the State and the corporation in the initial stages. This fact was confirmed by his supervisor. The supervisor stated that as the project developed further, he and the head of a state department who served as the State's official project head, would be relying heavily upon this employee's observations and recommendations with regard to the corporation's activities while they directed the State's participation in the project. We pointed out to the employee that the recommendations and observations he made to his supervisor and the department head were official actions. And the corporation was obviously directly involved in that action. Therefore, we stated that it would be a violation of the statute for the employee to become privately employed by the corporation during that time in which he was involved as a state employee with the joint private/state project.

We understood that the action this employee would take with regard to the corporation and the joint project would have no effect on the corporation's success as a recipient of the federal grant for the large project. Likewise, the consultation work the corporation wished the employee to provide for the federal project would not affect the joint private/ state project. We explained, however, that an interdependence of projects was not necessary to create a conflict. While we understood from the employee's supervisor that the employee had a good working relationship with the corporation's personnel and that was in part why he was serving in this liaison position, we pointed out to him that he did have what was in essence a supervisory position for the State in the joint project. He should therefore not place himself in a position where he would be paid in a private capacity by the company he was dealing with in that state capacity.

We appreciated the employee's openness to the questions posed by the staff and his cooperation with them. His interest in clearing this potential employment with the Commission was commended.

Dated: Honolulu, Hawaii, May 22, 1978.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Chairman  
I.B. Peterson, Vice Chairman  
Dorothy K. Ching, Commissioner  
Gary B.K.T. Lee, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered.