

## OPINION NO. 345

An investigator in a state agency wished to utilize his skills in a certain craft to earn additional income.

His plan was to become a partner in a company that produced the product of this craft commercially. He wished to know if the ethics code would prohibit him from acquiring an ownership interest in this business.

The relevant portion of the statute was HRS §84-14(b), a provision of the conflicts of interest section of the ethics code. 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.

As defined by HRS §84-3(6) his ownership interest in this business or an employment relationship he might establish with it would have constituted financial interests for the purposes of the statute. Further, the action he would take as an investigator involved the exercise of discretion or the taking of official action and would therefore be covered by the language of this section. The question for our decision then was to determine if the company was likely to become directly involved in official action he was expected to take in his state capacity. The state agency that employed him had responsibilities in matters concerning complaints about retail practices.

The company produced commercial products for retail sales through fine stores. These sales were handled by a factory representative; the company itself did not have direct contact with its retailers. Sales were made both on the west coast and in Hawaii. While he was to be involved in this phase of the operation, his greater concern was to be the production of hand pieces which would sell for prices in excess of \$200 and would generally be sold to galleries rather than to individuals.

He had stated that the retail outlets for this company's products were not the kind of businesses that were generally complained against at his agency. In addition, in the event a complaint should be filed with that office involving one of this company's products, the matter would directly involve the retailer and then the manufacturer's representative and then the company. Therefore, there seemed to be little likelihood that the company would be directly involved in a complaint.

We had said in the past that HRS §84-14(b) would be invoked to restrict an individual from acquiring an interest in a business only where there was a strong likelihood that the business would become involved in action the employee took in a state capacity. Because we saw little chance of such an involvement in this matter, it was our determination that the employee might acquire an ownership interest in his friend's business.

We discussed this matter with the director of the agency. He indicated that there was always some possibility that the company could be involved in a matter before the office but did not disagree that the likelihood of such an incident was small.

We advised the employee, however, that another conflicts provision, HRS §84-14(a), also had application to this matter. It provides that an employee may not take action directly affecting a business in which he has a substantial financial interest. We stated, therefore, that in the event the company should at some time become involved in a matter before the agency, he should disqualify himself from taking any action concerning the matter. Further, if the situation of the company should change with respect to the marketing of its products such that there would be a greater likelihood that it would be involved in matters before the agency, he would be required to raise the matter with us for further determination.

We commended him for bringing this matter to the Commission's attention prior to the time he actually acquired the business interest. A copy of this opinion was forwarded to the director of the employing agency.

Dated: Honolulu, Hawaii, August 8, 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.