

OPINION NO. 377

An employee of a state commission was asked by his brother-in-law to work on a part-time basis for his company and run a cost analysis for him. The company was regulated by the commission. The employee requested an advisory opinion from the Ethics Commission concerning this work and appeared before the Commission to discuss his request.

The section of the ethics code which applied to his question was HRS §84-14(b). It 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 explained that a financial interest includes an employment (see HRS §84-3(6)(C)). Therefore, if he became employed by a business, in this case his brother-in-law's company, he acquired a financial interest in it. This section of the code then prohibited him from becoming employed by the company if it was or might be directly involved in official action he took. Official action is defined by the statute to mean "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."

The employee indicated to the Commission and his position description reflected that he did review financial statements of regulated companies, initially when they applied for a license and then later when an application for a rate change was submitted by them. In addition, financial statements of regulated companies were required by the commission to be filed on an annual or semiannual basis depending upon the size of the company's business. These statements were filed with a division of another department and were not normally reviewed by this employee although technically the commission, through him, did retain review authority. While in practice these reviews were not being made because of lack of staff time, it remained a commission responsibility.

In addition, this company was a member of an association that represented its members before the commission on matters relating to rate changes. Any decisions secured by the association directly affected all of its members. When the association presented a rate change request to the commission it provided financial data from a sampling of its members. The employee stated that he reviewed this information and made a report or recommendation to the commission. We pointed out that this action on his part was official action.

In reviewing these facts, we found that the company was directly involved in action this employee took in his official capacity. The review he made of the information presented by the association was an integral part of any rate change request made by it. And, any action the association secured from the commission *directly* affected all of its members. Therefore, we stated that he could not be employed by the company as long as he remained in his present position and the company was regulated by the commission.

We understood that the regulated portion of the company's business represented only a small portion of the company's gross income. However, we pointed out that the section of the statute dealing with this employee's question did not speak in quantitative terms. It did not prohibit, for instance, an employee's acquisition of a "substantial" financial interest or the acquisition of a financial interest in a business whose operations are "substantially" involved in action an employee

takes. Therefore, the size of the regulated portion of the company's business was not important in this case, but only the fact that it was regulated.

We commended this employee for requesting this opinion, and we indicated our appreciation for his cooperation with the staff and his candidness when appearing before us.

Dated: Honolulu, Hawaii, March 29, 1979.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.