

OPINION NO. 402

A member of the legislature requested an opinion which concerned a business owned by him and his wife and children. He wished to know if the ethics code would prohibit him from applying for a loan for the company from a state department.

He had stated that he and his wife had raised the capital to finance this business but that it was operated by his children. He had also indicated that, in order for the business to continue on a sound basis, recapitalization was in order. A local bank and the Small Business Administration were also involved in the loan. He had indicated that he and his wife did not derive income from this business and that it was operated for the benefit of their children.

The fair treatment section of the ethics code, HRS §84-13, had the most direct application to his request. While that section specifically exempted from its coverage the conduct of legislators that was related to their state functions, it did have application to actions a legislator takes in a private capacity. Accordingly, his application for a loan from the state department was subject to the fair treatment section. However, we stated that, unless he had used his official position to advantage his loan application, he would not be in violation of this section.

It was well known that he was and had for a number of years been a member of the state legislature. In discussing the application for his loan with department personnel, we had learned that he had made no attempt to exert any pressure upon the department to facilitate his loan. In addition, the department had advised us that the number of applications for such loans by legislators and other high-ranking public officials in recent years had been few in number. It did not appear to this Commission, therefore, that the department was under any particular pressure to act positively on such loan applications. Accordingly, it was the opinion of the Commission that he had not to that point violated the fair treatment section in proceeding with this loan application. So long as no pressure was applied to any state employee he might deal with as this loan was being processed, there would be no impropriety in his continuing to proceed with the application. He was advised that he should, of course, continue to conduct himself in such a way as to avoid the coloring of this matter by the high office he held.

We did bring the contracts section to his attention, however, as we saw that this section might have application to the business in the future. That provision, HRS §84-15(a), provided that a state agency, including the legislature, may not enter into contracts with businesses in which state employees or legislators hold a controlling interest unless the contract is awarded through an open, public process. We advised the legislator that if the business should be interested in obtaining state business, the company and the agencies it dealt with must adhere to this requirement.

We commended him for making an effort to neutralize the possible effect of his legislative position by seeking this opinion.

Dated: Honolulu, Hawaii, January 2, 1980.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Chairman
Paul C.T. Loo, Vice Chairman
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner
Robert N. Mitcham, Commissioner