

OPINION NO. 420

An employee of a state department was in the process of buying an undeveloped piece of real property and wished to finance this purchase with a loan from a financial institution. One institution, perhaps the only one at that time, which made this type of loan was a state-chartered savings and loan association. Because of his position, the employee asked this Commission if it was permissible under the ethics code for him to enter into a loan agreement with the savings and loan association. The applicable section of the code was HRS §84-14(b) which 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.

The department, through one of its divisions, exercised complete regulatory power over financial institutions, and, therefore, the employee was in a position where action he took would affect most such institutions. Consequently, he would normally have been prohibited from acquiring a loan interest.

In the past, when a loan had been sought for the purchase of an employee's residence, the Commission had allowed an exception to the rule prohibiting acquisition. In the Commission's view, a personal residence could not reasonably be treated as a financial interest in a strict sense, since requirements for personal home loan mortgages were fairly standard, and, therefore, the potential for receiving an unwarranted advantage was limited.

While the Commission was cognizant of the fact that financial institutions exercise more flexibility and discretion in making an investment loan and that, in fact, this type of investment loan was rarely granted, we nevertheless concluded that the employee could proceed to apply for the loan. We were able to reach this conclusion because the employee had, after considering advice from this Commission, decided to disqualify himself from participating in any action taken by the division.

Upon his appointment as an employee of the department, he had filed a financial disclosure with this Commission. In response, we had advised him to disqualify himself from taking any official action which would directly affect any of his financial interests. This advice included a prohibition against taking action that would affect a financial institution in which he held stock. After considering this Commission's advice, the employee decided that a better course for him to take would be to separate himself entirely from the division and to refrain from taking official action with respect to any financial institution. He had, therefore, with the approval of his department head, voluntarily refrained from any activity with respect to the division.

Because the employee had disqualified himself and would continue to disqualify himself from taking any official action affecting financial institutions, the restriction of HRS §84-14(b) did not apply, and he was therefore allowed to proceed with his loan request. We did, however, caution him to be aware of the restrictions of HRS §84-13 which, among other

things, prohibit an employee from using his position to seek an unwarranted advantage. We recognized that the employee had removed himself from any position whereby he might take official action which affected financial institutions. We suggested, however, that when he sought this loan, he should emphasize that he was making a request for the loan in his private rather than his official capacity. By doing so, the employee would neutralize any real or imagined advantage which may have accrued to him.

We commended him for his sensitivity to the ethical considerations in this matter.

Dated: Honolulu, Hawaii, October 3, 1980.

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

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