

OPINION NO. 422

We received a request from a state employee who served as the administrator of two state facilities. He also had research duties in conjunction with his position. For a number of years, his spouse had run a part-time home-based business, but she had decided to expand her business and produce goods in a newly leased location. In his request, the employee noted that his spouse would utilize practices which were commonly known and used by the industry. The employee further stated that he did not intend to be actively involved in his spouse's business, except to occasionally help as a laborer during the weekends and, perhaps, to act as an unpaid consultant to the business. He wished to know, however, if, under the ethics code, the acquisition of this new business interest could result in a conflict of interest.

The applicable section of the ethics code was HRS §84-14(b) which prohibits an employee from acquiring 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. Under HRS §84-3(6)(A), a spouse's ownership interest in a business is considered to be a financial interest of the employee.

As the administrator of facility A, he was responsible for overseeing its operation. The purpose of the facility was to provide informal education to the community on a one-to-one basis or in special meetings organized by the facility. Assistance from facility A was available to all members of the public and, at that time, the facility had been able to handle all such requests.

Facility B conducted research in a particular area and disseminated all information derived from such research to the public. The employee's responsibility as administrator of the facility was to coordinate its operations pursuant to the facility's general policies. The employee did not, however, exercise any discretion with respect to setting those policies; that responsibility belonged to others. For example, it was the governor, on the advice of a coordinating committee, who determined the kinds of research conducted at facility B. Finally, we noted that all research conducted at the facility was available to the public.

In our view, the employee was not in a position, as the administrator of either facility, to take official action which would affect his spouse's business. In both cases, the facilities he served existed to assist the public by making available all information at their disposal upon request. Further, the employee's spouse planned to utilize practices already commonly known and used by the industry in the newly expanded business. We found, therefore, that the spouse's acquisition of a new enterprise would not create a conflict of interest with the employee's state position. We cautioned him, however, to be aware of the provisions of HRS §84-13, the fair treatment section of the code, which prohibited him from using his state position to secure or grant an unwarranted advantage or treatment for this new business. Although this Commission concluded that it was unlikely that the spouse's business could receive an unwarranted advantage as a consequence of the employee's state position, we brought this section to his attention so that he would avoid such possibilities in the future.

We commended him for bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, October 22, 1980.

STATE ETHICS COMMISSION

Gary B.K.T. Lee, Chairman

Paul C.T. Loo, Vice Chairman

Dorothy K. Ching, Commissioner

Edith K. Kleinjans, Commissioner

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.