

OPINION NO. 424

The acting chief of a branch in a state agency supervised employees who served an association of manufacturers. Because his spouse owned a business which was a member of that association, he wished to know if the ethics code would restrict him in carrying out his state duties.

The trade association had been organized to promote the sale of a class of products made in Hawaii. The department, because of its mandate to help industries promote their products, had provided varying assistance to the association. While at one time the department actually provided staff support to the association, the State's role had been reduced to assisting it in its various promotions and in helping to underwrite costs associated with those promotions. Such costs included expenses for advertising and for renting booths at trade fairs.

The employee had been with the department for approximately eight years and at one time had served as executive director of the association. At that time his spouse was not a member. After his spouse joined the association, he withdrew from duties that involved it. As acting branch chief, however, he did monitor employees of the division who provided services to the association.

A review of his responsibilities and of the State's assistance to the association and its members indicated to us that his situation did not create a conflict of interest.

The relevant section of the ethics code was HRS §84-14(a) which prohibits an employee from taking official action which directly affects a business in which the employee holds a financial interest. His spouse's business was a sole proprietorship, and his spouse was the sole owner. However, he did have a personal interest in the business and, for the purposes of the statute, his spouse's interest was imputed to him. While he did have a financial interest in his spouse's business, and the action he took in his capacity was official action, that action did not have a direct effect upon the business. The rules and regulations of the department prohibited employees from working with the individual members of an association. Rather, the department worked with the association itself; the association then dealt with its members.

This association, for example, might propose promotions to the department for its approval. If the department approved, then it provided a certain percentage of funding, generally fifty percent, to help underwrite the cost of advertising, of establishing trade booths, and certain other expenses related to the promotion of products. However, the monies were given directly to the association, which then distributed those funds to the businesses that participated in the trade promotions. Further, before a promotion would be accepted by the department, it had to have a broad benefit. We saw no evidence that his spouse's business had been treated differently from other businesses or had received any advantages because of the employee's position in the department.

We concluded that the action the employee took in his state capacity had at most a very indirect effect upon his spouse's business. He did not deal directly with the association. In addition, the employees who did work with the association did not have direct contact with its members. Since the action he took affected the association only indirectly, the conflicts-of-interests provision did not apply to his state duties. Further, we saw no evidence that his position in the department, which predated his spouse's membership in the association, had in any way benefitted the business.

The fair treatment section, HRS §84-13, also had application here. It provided that an employee may not use his position to grant an unwarranted advantage or treatment to himself or others. We advised him to separate himself from matters concerning the association so as to minimize any possible appearance of unfairness. It was our opinion that the department employees who made decisions concerning the association should not report to him on these matters but either to his superior or to another appropriate person in the department.

We commended him for his sensitivity to the ethics issue raised in this matter.

Dated: Honolulu, Hawaii, October 27, 1980.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairman
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Dorothy K. Ching, Commissioner
Gary B.K.T. Lee, Commissioner
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