

OPINION NO. 430

This request came from an individual who held state responsibilities relating to the monitoring of measuring devices used by commercial establishments.

He also owned approximately five percent of the stock in a Hawaii corporation which held the patent rights to a measuring device. He indicated that he had spoken at conferences on the mainland in favor of further application of sophisticated measuring devices and of the need for stricter measurement controls. He wished to know if such activities, in light of his stock ownership, conflicted with his state duties.

As he was aware, this Commission had already issued an opinion to the inventor of the patented measuring device owned by the corporation in which he held stock. Pursuant to the advice given in that opinion, the inventor had given away the Hawaii rights to his measuring device. Accordingly, the company was in no position to profit, at least directly, from the sale of such devices in Hawaii.

As indicated, the requester of this opinion had spoken as a state official in other states on behalf of more accurate measurement. He had not been required to attend such meetings and had generally gone at his own expense. He had apparently received some criticism both in the department and from others because of his promotion of more sophisticated measurement devices.

In discussing his case, we made reference to the fair treatment and a portion of the conflicts-of-interests sections of the statute. HRS §84-14(a), the conflicts section, required that a state employee disqualify himself or herself from taking action which would affect a business in which the employee holds a substantial financial interest. His interest in the company was a substantial financial interest. While he owned somewhat less than six percent of the stock, if the company did become successful, his stock would be worth a large sum of money. However, we also noted that this company did not have rights to sell equipment in the State of Hawaii. It therefore appeared that, regardless of the action he might take in his state capacity or in his private capacity, he could not directly affect the interests of his company. It was only in Hawaii that he exercised official responsibilities.

At the same time, we recognized that the state action he took might have an indirect effect upon the company. If, for example, as a result of his efforts, progress was made toward requiring the installation of better measuring devices, it was possible that such action on the part of the State of Hawaii would influence other states to take similar action. Certainly such action could encourage consumer groups to step up demands for industry to take action on measurement questions.

While we saw that an indirect effect could be brought about by the action he took as a state official, he could not directly affect his company. Accordingly, his interest in the company did not conflict with his state duties.

The fair treatment section prohibited a state employee from using his position to grant himself an unwarranted advantage. This provision was not as clear in its application as was the conflicts section and required a judgment as to whether the actions an official takes may give him an advantage he would not otherwise obtain.

While we recognized the consumerist aspects of his campaign for the adoption of laws and regulations to require better measurement devices, he had pointed out to us that state officials both here and on the mainland, and representatives of private companies as well, had vigorously opposed his prior efforts in this regard. When he appeared as a state official at mainland conferences to argue on behalf of the efficacy of these devices, an appearance of misuse of position might well be created. Persons opposing his views might well argue that his attitude resulted from an intent to advantage his company. Accordingly, our advice was that, when he appeared at such conferences, he refrain from identifying his state position. We also believed that it would be best for him to avoid speaking at conferences where he was well known by the other participants. We surmised that this would be the usual case. However, we saw no evidence that he had used his position to grant an advantage to himself or to his company.

We commended him for bringing this matter to our attention and for discussing it so frankly with us.

Dated: Honolulu, Hawaii, November 21, 1980.

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

Note: Commissioners Dorothy K. Ching and Robert N. Mitcham were excused from the meeting at which this opinion was considered.