

OPINION NO. 436

A branch chief in a state department requested an advisory opinion with respect to one of the emergency hire employees in his branch. At that time, the employee was the only person within the branch who inspected a certain type of vehicle for the State of Hawaii. Because the employee was also the owner of a franchise and a distributor for an organization which sold that type of vehicle and other vehicles of that class, the branch chief wished to know whether a conflict of interest existed under the State Ethics Code.

The most relevant section of the code was HRS §84-14(a), which prohibits an employee from taking any official action directly affecting a business or other undertaking in which he had a substantial financial interest. Although the employee was employed by the department on an emergency hire status, he was an employee for purposes of the ethics code. Further, official action is defined as a "decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." Finally, a financial interest, as defined in HRS §84-3(6)(A), includes an ownership interest in a business.

Since the employee was an inspector of certain vehicles for their continued licensure, in our view, a substantial part of his responsibilities involved official action which affected that industry. As the sole inspector of the vehicles for licensing, the employee exercised his discretion by determining whether the vehicles continued to meet the minimum standards. In carrying out his duties, therefore, the employee was in a position to take action which directly affected his own private interest as an owner and distributor for a private company by passing judgment upon the adequacy of vehicles purchased by others from that company. As a consequence, a clear conflict of interest between the employee's state position as an inspector and his private interest as a vendor did exist under the code, and the Commission found that the employee should not continue in his capacity as an inspector while he retained a substantial financial interest in the private company.

The Commission stated that if it were possible for another department employee to assume the employee's responsibilities, the employee should then be removed immediately, or, if this was not possible, as soon as the department hired a replacement for the position. If, however, the department chose to keep the employee in his position until a new employee was hired, the Commission asked that it be kept apprised of the progress and nature of the search for the new employee.

If the employee did continue temporarily in his position as a state inspector, the Commission advised that he carry out his state responsibilities in a sensitive and scrupulous manner to avoid additional concerns arising from that conflict in his positions, since the Commission had found that the employee was in a position to take official action which affected his private business interests. Further, the Commission noted that the employee ought to be aware that HRS §84-13(4) prohibits employees from "[s]oliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate, or a person or business whom he inspects or supervises in his official capacity." As a consequence, the

employee was directed to refrain from conducting business with any person, business, or agency whose vehicles he might inspect, if he continued temporarily in the inspector position.

We commended the branch chief for his interest in the ethical question presented in this matter.

Dated: Honolulu, Hawaii, May 11, 1981.

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