

OPINION NO. 452

The Commission received a request for an advisory opinion from a state employee who was the deputy to the chairman of a state board. The employee stated that he performed his duties under the direction of the chairman, and that when the chairman was absent he served as acting chairman. The employee stated that his spouse ran a business that was subject to regulation by the state board for which he worked. In regard to these facts, the employee asked the Commission to determine if official action taken by him vis-a-vis his spouse's business interests would violate the ethics code.

The conflicts-of-interests section of the ethics code, HRS §84-14, provides, in pertinent part, that "[n]o employee shall take any official action directly affecting ... a business or other undertaking in which he has a substantial financial interest." Since a spouse's financial interests are imputed to the state employee under HRS §84-3(6), the Commission informed the employee that he was prohibited from taking any official action that would directly affect his spouse's business. HRS §84-3(7) defines "official action" as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."

The Commission thus informed the employee that, when official action taken by him would directly affect his spouse's business, he had to disqualify himself from acting on the matter and refer the matter to the chairman. The Commission noted that disqualification was appropriate when the particular financial interest in question was acquired before state employment began.

The Commission also informed the employee that when he served as acting chairman, and thus could not disqualify himself, he could take official action in regard to his spouse's business even through such action directly affected the business. This was so since another provision of the conflicts section of the ethics code, HRS §84-14(a), states that "[a] department head who is unable to disqualify himself ... will not be in violation ... if he has complied with the disclosure requirements of section 84-17." The Commission's records indicated that the employee had already complied with HRS §84-17.

The Commission also drew the employee's attention to two other pertinent provisions of the ethics code, HRS §84-14(b) and HRS §84-13. HRS §84-14(b) states that "[n]o 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 Commission explained to the employee that, since financial interests acquired by a spouse are imputed to the state employee under the ethics code, he might wish to consult the Commission again in the future should he have any questions in regard to the acquisition of such financial interests. The Commission also explained to the employee that HRS §84-13, the fair treatment section of the code, would prohibit him from granting any unwarranted or unfair advantages to his spouse's business. The Commission noted that the employee had, however, already indicated his sensitivity with regard to this point.

We commended the employee for bringing these matters before us. We told the employee that it has been our experience that this kind of attention to matters of ethics has contributed to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, January 5, 1982.

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

Note: Commissioners Dorothy K. Ching and Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.