

OPINION NO. 468

A state employee requested an advisory opinion from this Commission as to whether his private business interests conflicted with his position as an auditor with a certain state division. In regard to his private business interests, he stated that he had approximately \$1,000 worth of stock in a local company and approximately \$8,700 worth of stock in another local company's parent corporation. These stock interests were acquired some years before the employee began his work as a state auditor. In regard to the employee's official duties, the Commission learned that the employee would be called upon to take official action that would directly affect the two local companies, and that, because of the nature of his duties, he would not be able to disqualify himself from taking official action.

Because the employee was a state employee, he was subject to the restrictions set forth in the State Ethics Code. Since he had acquired his stock interests prior to assuming his position with the State, the relevant section of the code was HRS §84-14(a). This section provides that employees shall not take any official action that directly affects businesses in which they have substantial financial interests. For purposes of the ethics code, a stock interest is considered a financial interest since it is an ownership interest in a business. Thus, in accordance with the code's definition of financial interests, the employee's \$1,000 stock interest in the first local company clearly constituted a financial interest. The Commission was also of the opinion that the employee had a financial interest in the other local company because of his stock interest in that company's parent corporation. The Commission has long recognized the essential identity between a subsidiary and its parent company. Recently, in Advisory Opinion No. 434, the Commission explicitly stated that, for the purposes of the ethics code, the interests of a subsidiary and its parent company were identical. The Commission pointed out in Opinion No. 434 that while a parent company and its subsidiary may be separate legal entities, the benefits gained by a subsidiary ultimately flow to the parent company.

The Commission was further of the opinion that both of the employee's stock interests constituted substantial financial interests. The Commission has determined in the past that a substantial financial interest is an interest of sufficient magnitude to possibly influence the judgment of an employee in the course of his official duties. The Commission was of the opinion that financial interests in stock worth \$1,000 or more would be sufficient to influence an employee's judgment in regard to the discretionary action he takes.

The Commission explained to the employee that when an employee has substantial financial interests in businesses that would be directly affected by any official action he might take, the ethics code requires the employee to abstain from taking any official action in regard to those businesses. When an employee thus disqualifies himself and refrains from taking official action, another employee in the same office who has no conflict of interest takes the necessary official action. However, when an employee, because of the nature of his duties, is unable to disqualify himself from taking the requisite official action, the Commission has determined that the employee should divest himself of his conflicting financial interest. Thus, in accordance with the above, the Commission informed the employee that he should divest

himself of his financial interests in the two local companies as soon as was practicable in order to avoid a conflict of interest with his duties as a state auditor.

The Commission also drew the employee's attention to HRS §84-3(6), which states that "'[f]inancial interests' means an interest held by an individual, his or her spouse, or dependent children" Under this provision of the ethics code, financial interests acquired by the employee's spouse were imputed to the employee. Thus, the employee's spouse would not be able to acquire financial interests if they would be affected by official action taken by the employee.

The Commission recognized and appreciated the employee's cooperation in resolving this ethical matter. The Commission also commended him for bringing this matter to the Commission's attention at an early time. The Commission has found that this kind of attention to ethical matters furthers public confidence in state employees and thus contributes to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, June 14, 1982.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairperson
Gary B.K.T. Lee, Commissioner
Robert N. Mitcham, Commissioner

Note: Chairperson Edith K. Kleinjans and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.