

## OPINION NO. 473

A faculty member of a state institution requested an advisory opinion from this Commission concerning possible conflicts between his private financial interests and his state position. In his official position, the faculty member spent 100 percent of his state time on research. Twenty percent of his state time involved research on a commodity that his wife, in her private business, purchased from various local producers and subsequently resold.

Because the faculty member had solicited business from local producers on behalf of his wife, a trade association complained that the faculty member had misused his official position in acquiring or attempting to acquire business for his wife. Members of the trade association, it seemed, feared that local producers who were successfully solicited by the faculty member might have received confidential research information in exchange for their business. The faculty member therefore asked the Commission to determine whether his wife's business activities involved him in a conflict of interest. Since the faculty member had voluntarily decided to refrain from negotiating with the local producers on behalf of his wife in the future, and for the reasons stated below, the Commission was of the opinion that the business activities of the faculty member's wife did not involve him in a code violation.

In reaching its decision, the Commission considered the applicability of two provisions of the ethics code, HRS §84-14(b) and HRS §84-13. HRS §84-14(b) constitutes part of the conflicts-of-interest section of the code, while HRS §84-13 concerns fair treatment on the part of state employees when performing their official duties.

The first provision, HRS §84-14(b), states that employees shall not acquire financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. Since the financial interests of the faculty member's wife were imputed to him under HRS §84-3(6), HRS §84-14(b) was applicable to his situation. However, since all of his state time was devoted to research that did not involve the local producers, the Commission believed that it was not likely that he would be taking official action directly involving them.

The second provision, HRS §84-13, prohibits employees from using their official positions to secure unwarranted advantages for themselves or others. Since the faculty member stated that he would not be dealing with the local producers on behalf of his wife, the Commission was of the opinion that his wife's business interests would not involve him in a violation of HRS §84-13. Furthermore, both the faculty member and his department chairman stated that the information he had access to as a state employee and researcher was readily available to local producers as well. Therefore, the Commission believed that the possibility of a misuse of position was remote.

The Commission pointed out to the faculty member that since he could retain the above financial interest, another provision of the code, HRS §84-14(a), became applicable. HRS §84-14(a) states that employees shall not take any official action that directly affects businesses in which they have substantial financial interests. Thus, under HRS §84-14(a), the faculty member was prohibited from taking any official action as a researcher if that action

would directly affect his wife's business interests. This provision of the code also prohibited the faculty member from taking official action that affected his wife's competitors, since the Commission has determined that official action affecting a competitor directly affects one's own financial interests.

Finally, although the Commission did not believe that the faculty member's financial interest was in violation of the code, the Commission was of the opinion that he should continue to be sensitive to the impression that his state position and his wife's business interests might create. The Commission advised that he endeavor to keep his state position and private business interests as distinct as possible.

The Commission told the faculty member that it appreciated his taking voluntary measures to avoid the appearance of impropriety and appreciated his bringing this matter before the Commission 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, September 27, 1982.

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