

ADVISORY OPINION NO. 549

The Commission received a request for an advisory opinion from an employee working on a special project. One of the employee's responsibilities had been to draft the preliminary bidding specifications for a private vendor to provide a product to the department. There were only two companies in Hawaii that were licensed to sell this product. Because the employee was the vice president and a director of one of the companies, Company A, he had requested advice on the application of the State Ethics Code to his involvement in the bidding process.

A portion of the conflicts-of-interests section of the ethics law, HRS §84-14(a), states as follows:

No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which he has a substantial financial interest; or
- (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

This section prohibits employees from taking discretionary action that affects their private business interests. The Commission determined, therefore, that the employee would not be able to make recommendations, assist, or participate in any discussions or decisions affecting Company A. The Commission noted, however, that the section did not prohibit the employee from performing ministerial tasks that might have an effect on Company A.

The employee began his state employment at the end of the summer and noted that it was understood that he would take a sabbatical from all involvement with Company A during the term of his state employment. He emphasized that he had strictly avoided active contact with the company. Furthermore, he commented that the decision to acquire the product had been made prior to his employment with the State and that he had been hired in part because of his familiarity with the product. Finally, the employee had stated that his work on the bid specifications only covered certain details of the department's requirements. Because it would not be necessary for a vendor to provide a modified product to the department, it was the employee's view that both local vendors of the product could satisfy the requirements. Given those factors, the Commission believed that the employee's participation in the formal bid process was not discretionary action but was wholly ministerial. Accordingly, the Commission concluded that a violation of HRS §84-14(a) had not occurred.

Another portion of the conflicts-of-interests section, HRS §84-14(d), provides as follows:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he

has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

The employee represented, and this was confirmed by his supervisor, that when the employee was hired, he was told that he would not be involved in the formal bid review or the selection of the vendor of the product. Furthermore, the employee had represented that he had refrained from contact with Company A's business since he had started his employment with the State. In the Commission's view, there was no evidence that the employee had participated in this process in his private capacity; accordingly, the Commission determined that HRS §84-14(d) also had not been violated.

The Commission advised the employee to be sensitive to the ethical requirements of disqualification from discretionary action affecting his private business interests in the future. Thus, the Commission stated that in the event that Company A became the successful bidder, the employee would be required to continue his nonparticipation in all official action, including recommendations or contract fulfillment review, with respect to the company.

The Commission appreciated the employee's immediately seeking its advice once the potential ethical issues had been brought to his attention and the employee's candor in discussing his situation.

Dated: Honolulu, Hawaii, January 21, 1985.

STATE ETHICS COMMISSION
Allen K. Hoe, Chairperson
Edith K. Kleinjans, Vice Chairperson
Tim S. Farr, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: There was a vacancy on the Commission.