

## ADVISORY OPINION NO. 552

We received a request for an advisory opinion on whether a state office could purchase supplies from a particular corporation. Two volunteers to the office had acquired ownership of the corporation; accordingly, an employee of the office wished to know if it would be permissible for the office to purchase equipment from the company while these two individuals served as volunteers.

The Commission first reviewed whether the volunteers were employees subject to the State Ethics Code. The Commission noted that HRS §84-3(4) includes any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State. The Commission affirmed that the philosophy underlying this broad definition of "employee" was that all individuals who take discretionary action on behalf of the State and with the authority of the State should be subject to the provisions of the state ethics law. The Commission noted that though they were unpaid, the volunteers were required to participate in a rigorous training program, had to serve at least sixteen hours a month, and were subject to the rules and regulations of the office. In addition, the employee stated that the volunteers also took an oath of loyalty and an oath of office. The Commission noted that the State was also legally responsible for any actions taken by the volunteers in the conduct of their responsibilities. Given those circumstances, the Commission determined that the volunteers were appointed officials included in the definition of "employee" and were, therefore, subject to the State Ethics Code.

The Commission commented that the ethics code did not prohibit transactions between the State and businesses in which employees had financial interests but noted that there were some restrictions. First, HRS §84-15(a) required state agencies to follow an open, public process prior to awarding a contract for goods or services in excess of \$1,000 to an employee or to a business in which an employee has an controlling interest. The Commission stated that an open, public process may be less than a formal competitive bidding procedure but must be one that ensures that all private businesses interested in bidding or submitting proposals to provide the goods or service have an equal opportunity to do so. The employee commented that most of the purchases of equipment made by the office were between \$1,000 and \$4,000. The employee also stated that to his knowledge there were only two other retail outlets located in Hawaii that might serve as sources of the supplies the office required. The Commission concluded that the ownership interests of the two volunteers in the corporation were clearly controlling interests; thus, the office was mandated by HRS §84-15(a) to follow an open, public process prior to purchasing any equipment from the corporation. The Commission advised, because of the relationship of the volunteers to the office, that it would also be appropriate for the office to notify the other two retail outlets when considering purchases of less than \$1,000.

Because the employee had stated that volunteers to the office had absolutely no input into decisions on appropriate equipment for the office, the Commission concluded that HRS §84-14(a), requiring disqualification, and HRS §84-14(b), on prohibited acquisitions, were inapplicable to the two volunteers. However, the Commission determined that another portion of the conflicts-of-interests section, HRS §84-14(d), did apply. This section states in part as follows:

No legislator or employee shall ... 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 Commission stated that this subsection prohibits employees from assisting or representing a person or business before the department to which they are attached. The Commission also noted that the rationale for this restriction is clear and reasonable. In the Commission's view, the drafters of this section believed that representation and assistance of persons before the department to which an individual was attached created an appearance of impropriety and gave an unwarranted advantage to the person assisted or represented. Therefore, the Commission decided that the office would be permitted to purchase equipment from the corporation so long as the two volunteers were not involved in the transactions in either their state or private capacities. The Commission noted that the employee had represented that it was his understanding that other individuals in the corporation were available and would be able to conduct all transactions with the office without the assistance of the two volunteers.

Finally, the Commission noted that HRS §84-13, the fair treatment section, prohibits employees from using their official positions to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others. The Commission recognized that the office was aware of the ethical considerations that could arise out of this situation and was sensitive to them.

Because this request for an advisory opinion dealt specifically with the two volunteers, the Commission determined that a copy of this opinion should be forwarded to them.

The Commission appreciated the employee's cooperation in this matter and commended him for seeking its advice at an early time.

Dated: Honolulu, Hawaii, March 19, 1985.

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

Note: Commissioner Tim S. Farr was excused from the meeting at which this opinion was considered. There was a vacancy on the Commission.