

DECISION NO. 1[†]

A member of a state board was charged by the State Ethics Commission on two counts:

- (1) He is in a situation in which his public office requires him to participate in official action directly affecting a private business in which he has a substantial financial interest, thereby placing him in violation of Section 8(a), Act 263, S.L.H. 1967, as amended, Act 21, S.L.H. 1968.
- (2) He has failed to file a disclosure of substantial financial or controlling interests which he believes may be affected by a state agency, thereby violating Section 12, Act 263, S.L.H. 1967.

The individual is chairman and a member of a state board which serves in an advisory capacity to a branch of state government on a particular state industry. He is also the president, a director, and owns more than half of the stock of a private company in the same industry and is manager of its local business.

After being notified of the charges against him, the individual filed a disclosure of his private interests. The Commission found that the charged violation of failure to file had been corrected by his filing and dismissed that charge.

The individual's board membership makes him an employee of the State. The definition of employee set forth in Section 4(4) of the Ethics Act includes "members of boards, commissions, and committees" without reference to compensation for such services or the lack thereof.

His interests in the private company are substantial financial interests. They include his full-time employment as manager of its local business and sizable stock ownership.

The state board of which he is chairman is responsible for making recommendations to and advising a branch of state government on the budgets, policies, standards, operation and proposed expenditures of a state system. While the state system provides, at least in part, services which do not compete with private members of the industry, it also provides services which overlap with the services provided by the private members and competes with these members. The amount of competition provided by the public system is a variable factor, determined in large part by the decisions of the board of which the individual here involved is a member.

As chairman and one of three members on the body with such broad powers over the state system, the employee is in a position where he will have to make many decisions affecting the strength and effectiveness of the system in the State and the direction of its development. In this highly competitive industry, these decisions will directly affect commercial members of the industry in the State.

While the Commission makes no finding of misuse of official position, the employee is in a situation where a decision made on the state board will directly affect his private interests. It is this

[†]"Decisions" are issued by the Commission after a charge of violation of the Act is made against an individual and a hearing is held thereon. An "opinion" is issued in response to a request as to whether the facts and circumstances of a particular case violate the Act.

existence of a situation giving rise to discordant loyalties which violates the Act. As we said in Opinion No. 2:

The Commission interprets Section 8(a) of the Act to prohibit the existence of a situation wherein a public employee's performance of his public office must inevitably affect his private interests. To serve in his position with the State while he owns the business can mean only participation in violation of the Act. This unavoidable clash of private interests and public duties may well impair his loyalty and judgment.

A complaint will issue to the disciplining agency for the state board in accordance with this decision.

Dated: Honolulu, Hawaii, December 17, 1968.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Mary George, Vice Chairman
James F. Morgan, Jr., Commissioner
S. Don Shimazu, Commissioner
July Simeona, Commissioner