

INFORMAL ADVISORY OPINION NO. 2001-10

The Hawaii State Ethics Commission ("Commission"), received a formal charge filed against a state official by an organization. The organization's charge was prompted by media reports that the state official awarded non-bid contracts to companies that either employed, or were owned by, members of his family. The charge also alleged that the state official's financial interests disclosure forms filed with the Commission were incomplete. The charge, in essence, alleged numerous violations of provisions of the State Ethics Code. The State Ethics Code is set forth in chapter 84 of the Hawaii Revised Statutes ("HRS"). Pursuant to the Commission's procedures, a copy of the charge was sent to the state official for his response. The state official filed, in due time, an "answer" to the charge with the Commission. The Commission has reviewed this matter and has issued this informal advisory opinion, pursuant to HRS section 84-31.

The Charge

The state official served as the Director of a state agency. The charge alleged that, according to news reports, the state official awarded non-bid contracts to firms employing his spouse, a son, and a stepson. The charge also alleged that, according to news reports, the state official's financial interests disclosure report did not include his spouse's directorships on the boards of two subsidiary companies of her employer.

According to information reported in the media, the state official's spouse was employed by Company A as an administrative assistant during the period of time the state official served as the Director of his state agency. The state official selected Company A for two non-bid contracts while he served as the Director of his state agency.

Also according to information reported in the media, the state official's spouse served as an officer and director on the boards of Company B and Company C. These companies were subsidiaries of Company D, the parent company of Company A. The state official's spouse's officerships and directorships were not included, as is required by law, in financial interests disclosure reports he filed with the Commission's office.

According to information reported in the media, the state official's son owned Company E. While the state official served as the Director of his state agency, his son's company received three non-bid contracts from the state official's agency. Another state official in the agency selected Company E for the first two non-bid contracts. The state official himself selected Company E for the third non-bid contract. This contract was subsequently rescinded by the Attorney General because the Attorney General believed a "conflict of interest" existed by virtue of the state official's son's ownership of Company E.

According to information reported in the media, the state official's stepson was employed by Company F during the time the state official participated, in his capacity as Director of his agency, in non-bid contract awards to Company F.

Answer to the Charge

The state official promptly filed an answer to the charge. In his answer, the state official specifically addressed each allegation in the charge. In addition, the Commission's Executive Director interviewed the state official to obtain further information.

First Allegation

The charge alleged that the state official awarded non-bid contracts to firms employing his spouse, son, and stepson. The state official did not dispute these allegations in his answer. Nor did the state official dispute these allegations in the interview with the Commission's Executive Director. The state official stated in his answer that he would recuse himself from any future selection process regarding any non-bid contracts involving these

firms. The state official reiterated this position in his interview with the Commission's Executive Director.

With respect to the state official's spouse's employer, Company A, the state official's answer stated that all contracts awarded to the company were awarded based upon merit only, and did not relate to his spouse's employment with the company. The state official stated that Company A was a long-standing, large kamaaina firm with a fine reputation both in Hawaii and around the world. Besides having an excellent reputation, Company A also had special and sought-after expertise in many areas. The state official stated that his association with this company began many years prior to the state official's spouse's employment with the company.

Further, in the interview with the Commission's Executive Director, the state official stated that because his spouse was an employee of Company A, with no decision-making powers, it did not occur to him that there would be any ethical problem in selecting her employer for contracts. The state official said that at the time he selected Company A for agency contracts, he was unaware of his spouse's stock ownership in its parent company, Company D. The state official also asserted that he was not aware of his spouse's officerships and directorships on the boards of corporations that were subsidiaries of Company D, namely, Companies B and C.

With respect to the state official's son's company, the state official stated in his answer that his son's company had special expertise. The state official stated that his son had a master's degree in this area of expertise from a prominent university, and had worked for five years on the mainland in his area of expertise. The state official stated that his son was selected by a prominent professional association to assist in the assessment of two serious calamities because of his high level of expertise.

The state official acknowledged that his son's company, Company E, was a relatively young firm. However, the state official maintained that Company E had a unique and strong expertise. The state official stated that Company E employed ten professionals, and was one of the largest firms of its kind in Hawaii.

Prior to Company E receiving any agency contracts, the state official contacted the Commission's Executive Director for advice. The state official stated that he was advised by the Executive Director that the State Ethics Code would not require his recusal, so long as his son was not his dependent, and provided that the state official had no financial interest in the firm. The state official maintained that his son was not a dependent child. The state official also stated, in the interview with the Commission's Executive Director, that prior to starting Company E, his son worked for other companies located in Hawaii. The state official provided this information to demonstrate his son's background and qualifications.

With respect to the state official's stepson's employer, Company F, the state official stated in his answer that his stepson was a young professional with this firm. The state official stated that his stepson did not market or negotiate contracts for his company. The state official stated that his stepson was not his dependent, and therefore the state official did not believe that there were any ethics violations associated with his stepson's employment. The state official stated that Company F was a long-standing, large kamaaina firm that provided outstanding work in its areas of expertise, and that the state official had done business with this firm for many years. The state official explained that in the past, when he was the director of another government agency, Company F had done major projects for his agency. The state official stated that since then, he had continuously used this company's professional services.

In the interview with the Commission's Executive Director, the state official stated that his stepson was a member of his household following his graduation from college, but he was

not a dependent. To the state official's recollection, Company F hired the stepson as a professional immediately following his graduation from college. During the state official's interview with the Commission's Executive Director, the state official could not specifically recall being involved in the awarding of any of his agency's contracts to Company F. The state official stated, however, that by the time contracts were awarded to Company F, the stepson had a home of his own.

In the interview with the Commission's Executive Director, the state official also provided information about the procurement process regarding the award of his agency's contracts. The state official said that after the State Legislature appropriates money for state projects for a particular fiscal year, the State Department of Accounting and General Services places notices in the newspaper announcing all State projects for the upcoming fiscal year. Generally, companies interested in being considered for agency projects submit a letter or letters of interest identifying the projects they are interested in. The agency's Contracts Office groups and categorizes these companies according to their areas of expertise, and a list is then generated according to the areas of expertise. When, for example, an agency division is interested in procuring the services of a firm with certain expertise for a project, the division establishes a committee that selects the ten most qualified firms from the list of firms with expertise in that area. From the list of ten, a departmental committee is established to select the three most qualified firms, and the list is reduced to three firms. This list of three firms was submitted to the state official, with the companies listed in alphabetical order. In his role as his agency's chief procurement officer, the state official selected one company at his discretion from this list.

The state official stated that based on his years of experience, he was familiar with certain firms and their areas of expertise. Sometimes the state official consulted with the procuring division of his agency for its input, but he stated that that was not always the case. In any event, the state official made his selection from the list, and negotiations with the selected firm began. If the state official was not able to negotiate a mutually agreeable contract, another firm was selected, and the process continued until a firm was selected.

Second Allegation

The charge also alleged that the state official's financial interests disclosure report did not include his spouse's directorships on the boards of two subsidiary companies of her employer. The state official's answer stated that these omissions were entirely inadvertent, and were due to a lack of communication between the state official and his spouse. The state official stated that he was not aware of his spouse's positions with the two subsidiary companies.

In his answer, the state official stated that he previously only reported on his financial interests disclosure forms his spouse's employment with Company A because his spouse informed him that she had no ownership, directorship, or officership positions in Company A. The state official was not aware of the complex organizational structure of Company A's group of companies, which were held together by the parent company, Company D. Second, the state official maintained in his answer that his spouse received no fees, benefits, commissions or compensation of any kind for the positions she held as an officer or member of these boards. Third, the state official maintained in his answer that as soon as he received information about the parent company and his spouse's positions in the two subsidiary companies, he immediately filed an amended financial interests disclosure report with the Commission. Finally, the state official stated in his answer that in the future he would rectify this situation by having his spouse review all financial interests disclosure reports prior to submission of the reports by him to the Commission.

Neither the information the state official provided during his interview with the Commission's Executive Director, nor information provided by him in a follow-up letter to the Commission's Executive Director, contradicted the information he provided in his answer.

Other Issues

Information reported in the media indicated that the state official's spouse owned stock in Company D, the parent company of Company A. Although the state official began filing financial interests disclosure reports with the Commission when he began serving as Director of his agency, he did not report his spouse's stock interests until he filed his amended financial report a few days before he was charged. At that time, the state official reported that his spouse owned a significant value of stock in Company D.

The charge filed by the organization against the state official made no claim about the stock omission. Consequently, the state official did not address this issue in his answer. However, in the interview with the Commission's Executive Director, the state official provided information on this matter, and stated that he did not know how his spouse acquired shares in Company D. The state official was uncertain as to whether the shares were acquired as bonuses, or through a retirement plan, or stock option plan. In his letter to the Commission's Executive Director, the state official addressed this matter and stated that beginning a number of years back, his spouse purchased stock in Company D through payroll deductions. The information the state official provided in his letter indicated that his spouse's acquisition of stock in the company resulted in some instances because of a stock option plan, and in some instances because of bonuses. Over the years, a significant value of stock was acquired each year.

Analysis of the Charge

First Allegation: Awarding Non-Bid Contracts to Certain Firms

The first allegation in the charge contended that the state official awarded non-bid contracts to firms employing his spouse, his son, and his stepson. This allegation appeared to assert that the state official violated two sections of the State Ethics Code. These sections were HRS section 84-14, the State Ethics Code's "conflicts of interests law," and HRS section 84-13, the State Ethics Code's "fair treatment" law.

1. Application of Conflicts of Interests Law to the First Allegation

HRS section 84-14(a) is one of the key provisions of the conflicts of interests law of the State Ethics Code. In pertinent part, this section reads as follows:

§84-14 Conflicts of interests. (a) 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.

A department head who is unable to disqualify himself on any matter described in items (1) and (2) above will not be in violation of this subsection if he has complied with the disclosure requirements of section 84-17; [Emphasis added.]

. . . .

HRS section 84-14(a) prohibits a state official or employee from taking any official state action directly affecting a business or undertaking in which the official or employee has a substantial financial interest. The term "official action" is defined in HRS section 84-3 as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." The term "financial interest" is defined in HRS section 84-3 as follows:

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

- (1) An ownership interest in a business.
- (2) A creditor interest in an insolvent business.
- (3) An employment, or prospective employment for which negotiations have begun.
- (4) An ownership interest in real or personal property.
- (5) A loan or other debtor interest.
- (6) A directorship or officership in a business.

[Emphasis added.]

As noted above, HRS section 84-14(a) prohibits a state official or employee from taking discretionary action that directly affects a business or other undertaking in which the official or employee has a substantial financial interest. This law is intended to prevent situations where a state official's or employee's ability to properly carry out his or her state duties and responsibilities may be compromised, or appear to be compromised, due to conflicting loyalties. In order to avoid having a conflict of interests under HRS section 84-14(a), a state official or employee must disqualify himself or herself from taking official action that directly affects a business or undertaking in which he or she has a substantial financial interest. In a situation involving a conflict of interests, another state official or employee without a conflict must take the necessary official action.

HRS section 84-14(a) also contains an exception for department heads who may be in a conflict of interests situation. This exception allows department heads who are unable to recuse themselves to participate even in a conflict of interests situation, so long as the department head has complied with HRS section 84-17, which sets forth the requirements for filing financial interests disclosure statements with the Commission. Thus, to take advantage of the exception for department heads, a department head must be unable to disqualify himself or herself, and must be in compliance with the financial disclosure law during the period of time that official action is taken.

Non-Bid Contract Awards to Company A

At the time the state official selected Company A for two non-bid contracts, his spouse was employed as a full-time employee of Company A. Also during that time, the state official's spouse owned a significant value of stock in Company D, the parent company of Company A. Furthermore, during that time, the state official's spouse served as an officer and director for two subsidiaries of Company D. These interests created a substantial financial interest for the state official in Company A. HRS section 84-14(a) therefore prohibited the state official from taking official action directly affecting Company A, unless the exception for department heads were to apply.

In order for the department head exception in HRS section 84-14(a) to apply, a department head must be unable to disqualify himself or herself from taking official action, and must be in compliance with HRS section 84-17 (the "financial interests disclosure law") during the period of time that official action is taken. The Commission noted that to date, no department head, to the Commission's knowledge, has availed himself or herself of the exception for department heads set forth in the State Ethics Code.

The state official's spouse's employment interest in Company A alone would have constituted a "substantial financial interest" for purposes of the State Ethics Code's conflicts law. The Commission thus found that there was reason to believe that the state official violated HRS section 84-14(a) twice by awarding two contracts to Company A.

The state official had stated that his spouse's employment interest in Company A did not appear to create a conflict of interest in his mind because he believed that an employment interest alone was insufficient to create a conflict of interest. With respect to this assertion on his part, the Commission found the state official credible, since he did in fact contact the Commission's Executive Director for advice regarding his awarding contracts to the company his son owned. It was obvious to the state official that a conflict might exist with regard to a company owned by his son.

Although the state official stated that he was unaware that a spouse's employment interest constituted a "financial interest" for purposes of the State Ethics Code's conflicts of interests law, this information was conveyed to the state official in an "acknowledgment letter" he received from the Commission after he filed his financial interests disclosure statement each year.

After reviewing the "acknowledgment letter" together with the Commission's Executive Director, the state official stated that the acknowledgment letter was not clear to him because, although the letter indicated that a spouse's financial interests were treated for conflicts purposes in the same manner as that of a state official or employee, the specific list of financial interests that could create a conflict accompanied the acknowledgment letter in the form of an attachment, thus making it somewhat difficult (in the state official's opinion) to bring one's attention to the financial interests of a spouse that would create a conflict of interests.

However, the Commission believed that (1) it had issued to the state official sufficient information about the fact that his spouse's financial interests would be construed under the law as the same as his in accordance with HRS section 84-14(a), and (2) had provided to him a list of financial interests that would create a conflict of interests.

Without any clear or specific evidence to the contrary, the Commission accepted the state official's statements that he was unaware of his spouse's stock interest, and positions as an officer and director on the boards of the subsidiary companies. Because the stock was acquired gradually by his spouse as part of her employment compensation, as opposed to purchasing stock in companies for investment purposes, the Commission could understand that the acquisition of the stock by the spouse might not have been mentioned to the state official. Because stock was acquired by the spouse each year and over a period of many years, the Commission believed that the state official's not being aware of his spouse's stock ownership appeared unusual, but accepted his statement and his spouse's statement, made to the Executive Director, that he had no knowledge of his spouse's stock ownership. Again, the Commission noted that the stock ownership arose in the context of employment compensation, rather than through the purchase of stock for investment purposes.

With respect to the two subsidiary companies on which the state official's spouse served in the capacities of officer and director, the Commission noted that both of these companies were created to handle specific aspects of Company A's work, and, for all intents and purposes, could have been viewed as hardly distinct from Company A. Further, the state official stated that one of these companies was defunct from the start. Because these companies were part and parcel of Company A, the Commission believed that it was quite possible that the state official's spouse never informed him of her affiliations with these two companies, since her roles with these two companies were merely, it appeared, an extension of her employment with Company A. Again, for the record, the state official and his spouse informed the Commission's Executive Director that the state official had no knowledge of his spouse's positions with these two companies.

Company E

This firm was owned by the state official's son. To reiterate, HRS section 84-14(a) requires state officials and employees to recuse themselves from taking official action directly affecting a business or undertaking in which they, their spouses, or their dependent children have a substantial financial interest. The state official maintained that his son was not a dependent. Thus, the Commission found that HRS section 84-14(a) was not violated when the state official selected Company E for an agency contract worth a significant amount of money.

Although HRS section 84-14(a) does not currently require a state official or employee to recuse himself or herself from taking official action directly affecting a business or undertaking in which the state official's or employee's emancipated child has a substantial financial interest, the State Ethics Commission had legislation introduced to amend HRS section 84-14(a) to require recusal in such situations. However, in two consecutive legislative sessions, the Legislature declined to pass legislation to amend HRS section 84-14(a) to bar state officials and employees from taking action affecting businesses in which their emancipated children have substantial financial interests.

Company F

The state official informed the Commission that his stepson graduated from college with a bachelor's degree in a certain profession. Company F hired him immediately following graduation. At that time, the state official's stepson was a member of his household, but was not his dependent child. The state official's stepson eventually moved out of the state official's home. The state official stated that although his stepson lived with him and his spouse for some time after graduating from college, any official action the state official might have taken concerning Company F occurred only after his stepson moved out of his home. Based on the state official's statements that his stepson was not a dependent at the time the state official may have taken official action affecting Company F, the Commission found that HRS section 84-14(a) was not violated when the state official participated in contract awards to this company.

2. Application of the Fair Treatment Law to the First Allegation

The first allegation in the charge also raised issues under HRS section 84-13, the State Ethics Code's "fair treatment" law, which reads, in relevant part, as follows:

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

. . . .

HRS section 84-13 in general prohibits a state official or employee from using or attempting to use his or her official position to obtain unwarranted privileges, advantages, or contracts for himself or herself or others. The subsections of HRS section 84-13 refer to specific actions that violate the fair treatment law.

HRS section 84-13 prohibited the state official from using or attempting to use his official position to give any companies any preferential treatment or any unwarranted advantages or contracts.

Company A

The state official awarded two non-bid contracts to Company A during his term as the Director of his agency.

The Commission did not have sufficient evidence to base a finding that the state official accorded special consideration to Company A in the award of the two non-bid contracts. The state official informed the Commission that, in general, when a division in his agency was interested in procuring the services of a company for work in a particular area, the division convened a committee that selected the ten most qualified firms from a pre-established list. Thereafter, a departmental committee convened to reduce the list to a "short list" of the top three firms. The short list was presented to the state official in alphabetical order, from which list the state official made his selection. The state official informed the Commission that he would generally consider Company A for consultant work in the areas of its expertise, because of its strengths in these areas. The Commission noted that the contracts to Company A were in two areas of its expertise, which the state official stated were among its areas of expertise.

The state official maintained that all contracts awarded to Company A were based on merit only, and did not relate to his spouse's employment. The state official also stated that Company A is a large, long-standing kamaaina firm with a fine reputation in Hawaii and around the world, and that his association with this company began

many years ago when he was employed by another government agency. The state official also stated that his spouse's employment with Company A predated his employment as the Director of his state agency.

The Commission did not receive any information indicating that Company A was unqualified to perform the contracts awarded to it. Nor was there any specific evidence that the state official accorded the company any special treatment because of the fact that his spouse worked at Company A.

Company E

Company E, which was formed in 1995, was owned by the state official's son. Although the company was a relatively young firm, it was selected for three non-bid contracts. Although the state official refrained from participating in the first two contract awards to the company, and deferred the award of these contracts to the agency's deputy director, the state official himself awarded a third contract to the company. This contract was worth a substantial amount of money. As stated above, this contract was subsequently rescinded by the Attorney General. That the state official voluntarily recused himself from the first two contract awards, but participated in the award of the third contract, raised an issue as to whether the state official had "misused" his position.

However, in order to establish a violation of the fair treatment law, there must be sufficient evidence that the state official had misused his state position to grant an unwarranted advantage to his son's company.

In this situation, there was insufficient specific evidence indicating that the state official had misused his position to benefit his son's company in an unwarranted manner. The Commission received no evidence indicating that the company was not qualified to perform the contract, or that another company was clearly superior to the company.

Company F

Company F employed the state official's stepson during the time relevant to the charge. The state official stated that he may have participated in contract awards to this company during his term as the Director of his state agency. The state official stated that Company F is a long-standing, large kamaaina firm that provides outstanding work in its areas of expertise. The state official stated that he had done business with this firm for many years. Although this company employed his stepson, the Commission did not have, nor had received, any specific evidence to base a finding that the state official accorded special or preferential treatment to this company in the award of contracts to the company.

Second Allegation: Non-Disclosure of Spouse's Directorships on Two Subsidiary Companies of Her Employer

The second allegation in the charge was that the state official failed to disclose his spouse's directorships on two boards of two subsidiary companies of her employer. In addition, the Commission noted that the state official failed to disclose his spouse's stock ownership in Company D, the parent company of Company A. The applicable law was HRS section 84-17, the "financial interests disclosure law" in the State Ethics Code, which requires various state officials and employees to annually file a financial interests disclosure report with the Commission. HRS section 84-17(c) requires certain persons, including directors of state departments, to file initial and annual financial interests disclosure reports, and HRS section 84-17(d) provides that the reports of certain filers, such as department heads, are public records and are thus available for public review.

HRS section 84-17(f) lists the items that must be disclosed on a financial interests disclosure report. HRS section 84-17(f) further mandates that financial interests disclosure reports must include the financial interests of a filer's spouse and dependent children.

HRS section 84-17(f)(3) was relevant to the second allegation in the charge against the state official. HRS section 84-17(f)(3) requires state officials and employees who must file financial interests disclosure reports to disclose every officership, directorship, trusteeship, or other fiduciary relationship held in a business by state officials and employees, their spouses, or dependent children, during the disclosure period, as well as the term of office and any annual compensation relevant to these positions.

The state official's spouse had become an officer and a member of the board of directors of Company B, and an officer and a member of the board of directors of Company C. She remained an officer and a member of these boards since her initial appointment.

Pursuant to HRS section 84-17(f)(3), this information should have been reported on the state official's financial interests disclosure reports. However, it was not until the state official filed an amended report shortly before being charged that he disclosed this information.

The state official attributed these omissions to a lack of communication between himself and his spouse. He stated that the boards that his spouse served on were affiliated with Company A. The state official maintained that prior to 1999, he was not aware that his spouse served on these boards. He believed that his spouse's duties at Company A consisted mainly of administrative work, and he was unaware that her duties were so broad as to include service on two boards affiliated with her employer. The state official maintained that these omissions on his financial interests disclosure report were thus due to an oversight on his part, and were inadvertent rather than intentional. Further, the state official stated that Company C had never been active and remained an inactive corporation. The state official also informed the Commission that he would remedy the situation by having his spouse review all financial interests disclosure reports prior to future submittal to the Commission.

The second allegation in the charge made no claim regarding the omission of the state official's spouse's stock ownership in Company D, the parent company of Company A. HRS section 84-17(f)(2) requires financial interests disclosure reports to include the "amount and identity of every ownership or beneficial interest held during the disclosure period in any business incorporated, regulated, or licensed to carry on business in the State having a value of \$5,000 or more"

The state official and his spouse were married a number of years ago, and long before his assuming his state employment relevant to the charge. Approximately two years after the marriage, his spouse became employed by Company A. Her employment package gave her the option to purchase stock in the parent company. The state official's spouse began purchasing stock in the parent company soon after joining the company. The stock had substantial value early on. Although the charge made no claim about this omission, this information should have been reported to the Commission pursuant to HRS section 84-17(f)(2), while the state official was employed by his agency. In an amended report filed shortly before the charge was filed, the state official disclosed that his spouse owned a significant value of stock in the parent company. The state official's disclosure amendment was made after the media raised ethics concerns regarding the state official's financial interests disclosure statements in the context of questionable non-bid contract awards.

The state official stated that a lack of knowledge of his spouse's financial interests prevented him from disclosing them. However, the Commission believed it provided the state official with sufficient information regarding compliance with the financial interests disclosure law. The state official was provided with ample notice and opportunity to meet the requirements of the financial interests disclosure law. When the state official was first appointed, the Commission's staff notified the state official in writing that he was required

under HRS section 84-17 to file a disclosure of his financial interests with the Commission. Attached to the notice were two enclosures--the Commission's disclosure form with instructions, and a brochure describing the State Ethics Code. The Commission's instructions explicitly stated that ownership or beneficial interests in a business having a value of \$5,000 or more needed to be disclosed. The Commission's instructions also explicitly stated that fiduciary relationships, and officerships and directorships, held in a business needed to be disclosed. Finally, the Commission's instructions also unequivocally stated that "the disclosure of financial interests shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children." [Emphasis added.]

The Commission has consistently regarded the financial disclosure law as one of the keystones of the State Ethics Code. The requirement of disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Constitution requires that the State Ethics Code include provisions on financial disclosure. In relevant part, Article XIV states:

The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The financial interests disclosure law allows the public the opportunity to evaluate situations that might cause conflicts of interests between public employment and private financial interests. The Commission has recognized that, while some state officials may view the financial disclosure requirement as an unwelcomed chore, nevertheless, individuals who accept appointment to state government service also accept the legal responsibilities that accompany government service. These responsibilities include complying with the State Ethics Code.

In this case, the State Ethics Commission found that there was reason to believe that the state official had violated the financial interests disclosure law by not disclosing his spouse's positions as a member of the board of directors and officer of two corporations. Further, the State Ethics Commission found that there was reason to believe that the state official had violated the financial interests disclosure law by not listing his spouse's stock interest in the parent company of her employer.

Summary

The Commission found that there was reason to believe that the state official had violated the State Ethics Code by awarding two non-bid contracts to Company A, a company in which the state official had a substantial financial interest by virtue, at a minimum, of his spouse's employment with the company. There was no doubt that the state official was aware of his spouse's employment with Company A.

The Commission believed that the state official did not violate HRS section 84-14(a) of the State Ethics Code by awarding a non-bid contract to a firm owned by his adult son, or awarding non-bid contracts to a firm employing his adult stepson. However, the State Ethics Commission believed that there is little doubt that when state officials take action directly affecting a business in which an emancipated child has a financial interest, though such action is currently allowed by law, public confidence in state government is likely to be diminished. The State Ethics Code was created to further the public's confidence in legislators and state

officials and employees. While state officials are allowed under the current law to take action affecting a business in which an emancipated child has a financial interest, it is not to be unexpected that members of the public may believe that state officials in these circumstances cannot perform their state duties in an unbiased fashion. Until this problem is effectively addressed by appropriate legislation, state officials, the public, and the State Ethics Commission will likely again have to deal with the type of allegations raised in cases such as this.

The Commission also found that there was reason to believe that the state official had violated the State Ethics Code by not disclosing his spouse's positions as a member of the board of directors and officer of two corporations. The Commission also found that there was reason to believe that the state official had violated the State Ethics Code by not listing his spouse's stock interest in her employer's parent company.

The State Ethics Commission believed that the state official's apparent violations of HRS sections 84-14(a) and 84-17 were hardly trivial, and could have been avoided by him had he given sufficient attention to the information provided to him by the Commission.

The Commission believed, however, that further proceedings were not warranted in this case. Although the state official's disclosure forms omitted information, this information was related to Company A, and the state official had disclosed on his financial interests disclosure forms his spouse's employment with Company A. Although the state official awarded contracts to Company A in spite of his spouse's financial interests in the firm, the Commission believed that the state official honestly thought there was no conflict, because he did in fact contact the Commission's Executive Director for advice regarding awarding contracts to his son's firm. The Commission noted that Company A is highly regarded in the areas for which it received contracts, and there was no indication that the firm's selection was based upon anything other than merit.

The Commission also believed that further proceedings were not warranted in this case because the state official had been fully candid and cooperative in dealing with the Commission. The state official quickly amended his financial interests disclosure reports, and stated that he would undertake measures to ensure his future compliance with the State Ethics Code.

Although the Commission believed that further proceedings were not warranted in this case, the State Ethics Commission believed that the organization that filed the charge was fully justified in filing a charge in this case. The Commission appreciated the organization for its dedication to the enforcement of high ethical standards in state government.

Dated: Honolulu, Hawaii, November 14, 2001.

HAWAII STATE ETHICS COMMISSION

Cassandra J.L. Abdul, Chairperson
Eloise Lee, Commissioner
Carl Morton, M.D., Commissioner
Dawn A. Suyenaga, Commissioner

DISSENTING OPINION

I respectfully dissent from the majority decision. HRS section 84-31(b) provides that the State Ethics Commission may issue a "charge and further statement of the alleged violation" if a majority of Commission members determines that there is probable cause for belief that a violation of the State Ethics Code may have occurred. I believe that there is sufficient evidence that the state official clearly violated provisions of the State Ethics Code in a serious manner, and that this case warranted a formal, contested case hearing.

Ronald R. Yoshida, Vice Chairperson