

OPINION NO. 10

The division head of a state department, a committee of which approves certain loans, asks whether it is in violation of Act 263, SLH 1967, for committee members to apply for loans and for persons having these loans to be appointed to the committee. He states that committee members do not act on their own loans or loans in which they have a financial interest, the policy being to declare their interest and excuse themselves from deliberating on matters relating to their business.

The Ethics Act was passed to promote high standards of conduct in state government. In furtherance of this end, section 8 of the Act prohibits participation in official action directly affecting a business or matter in which an employee has a substantial financial interest.

We hold that there is no violation of Act 263 for committee members to apply for loans or for persons having loans to be appointed to the committee. However, there must be self-disqualification and complete abstention from all action regarding this type of loan by such members to avoid participation in violation of the Act.

The money allotted by the legislature for loan is limited, and in the past has proved to be insufficient for all qualified applicants. Principal repaid is again available for loan, and interest collected pays for loan administration. The committee members, even after a loan application has been granted, have discretion to grant extensions on principal payment in certain instances and have discretion to declare the loan due on breach of conditions or default.

Thus, a member who has applied or is contemplating applying for a loan should take no official action regarding loans. Any decision he is called upon to make regarding other applications, or upon extension or collecting of loan money, directly affects the amount of money available for loan and thus his interest in obtaining a loan.

A member who has at some earlier time obtained a loan must also abstain from all official action regarding loans to avoid participation in violation of section 8 of the Act. Because his interests are so closely connected with the loan fund, its disbursements and collections, any action on other loans may well in the future influence committee action on his loan. It is this tie-in of interests, this personal, private stake in committee loans, which may well tend to sway an official in his decision, and which makes official action on loans action directly affecting such member's substantial financial interest.

Finally, all members having or applying for loans must declare such interest to the State Ethics Commission under section 12(a) of the Act. The filing of disclosures is a condition of continuing in public employment when, as in this instance, an employee of a state agency has a substantial financial interest which may be affected by that agency.

We reemphasize that the public service is a public trust; public employees are fiduciaries of the public estate. In this context, the highest ethical standards are demanded; the morals of the market place will not suffice. Thus, members applying for loans and having

loans must take no official action directly affecting their private interests and cannot, therefore, take any action on loans.

Dated: Honolulu, Hawaii, October 16, 1968.

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

Note: Commissioner July Simeona participated in the consideration of this opinion, but was excused from the meeting at which it was formally adopted.