

OPINION NO. 24

A member of a state board who is a practicing medical doctor has been approached by private interests to participate financially in a medical home and to serve as medical director of the home. He has stated that his interest in the home would be a controlling interest or a substantial financial interest, and asks whether this would violate the Ethics Act (Act 263, SLH 1967).

The board, of which he is one of numerous members, serves in an advisory capacity to the director of a department on matters within the jurisdiction of the department. Medical homes come within the jurisdiction of the department, which has adopted regulations governing this type of body. The regulations govern these institutions from their conception, when certificates of approval for their establishment must be obtained from the department director, throughout their existence, as annual renewal of certificates is required. Certificates are issued only when various requirements regarding construction, sanitation, etc., are met.

Section 8(a) of the Ethics Act, the conflict of interests section, prohibits participation by a state employee in official action directly affecting a business or matter in which he has a substantial financial interest. Even though the board "acts as an advisory commission and does not direct administrative or regulatory matters of the Department," its recommendations are "official action" within the meaning of section 4(7). They can have a real, or "direct" effect on whatever they concern.

The employee has stated, however, that as a member of the board, he could and would disqualify himself from participation, should the board take official action directly affecting any of this type of medical home. Such selective disqualification, scrupulously practiced, would prevent a violation of section 8(a) of the Act. Nor, under the circumstances enumerated above, will the interest in the proposed home constitute a *per se* violation of section 8 of the Act.

Dated: Honolulu, Hawaii, April 8, 1969.

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

Note: All members of the Commission concur in this opinion. The vacancy left by Commissioner George's resignation in favor of public office has not been filled.