

OPINION NO. 84

An employee has inquired whether a conflict of interest exists under the following circumstances:

1. The employee's official duties include labor management relations assignments in his agency. He has indicated that because of his training and job experience he possesses certain expertise in the area of labor management relations which will require him to play a role in the agency in the implementation of chapter 89, HRS, relating to collective bargaining in public employment. He has indicated that he is preparing a policy and procedure manual for collective bargaining and will in all probability play some role in collective bargaining in his agency. Furthermore, he will be training subordinates to undertake various duties and functions of collective bargaining. Although his role will not be specifically defined until such time as the Governor of the State of Hawaii has taken steps to implement the law, the possibility that he will have some negotiation information confidential to the State is very great.

2. He has informed the Commission that he is a member of an employee organization and has inquired whether he may retain this membership and also join another association.

Upon receipt of the request for an advisory opinion this Commission interviewed representatives from these two employee organizations for facts concerning their internal management, as well as the duties and responsibilities of union membership within the respective unions. Both unions have indicated that individuals who belong purely for membership benefits not subject to collective bargaining will be treated as a separate and distinct class from individual members who are also included in a collective bargaining unit represented by the union. For example, the former class would not be able to hold union office or participate in discussions or take action on policy-making.

Although the above facts will be relevant to the Hawaii Public Employment Relations Board in determining whether this employee may participate in a collective bargaining unit, they are also relevant to this Commission in determining whether he will be in probable violation of the State ethics law, chapter 84, Hawaii Revised Statutes. This advisory opinion is to determine the existence of a conflict of interest situation and to advise the public employee as to the courses of action permitted under the ethics law.

The Commission is cognizant of the fact that union membership carries with it the opportunity to buy various types of group insurance and to obtain other union membership benefits which cumulatively may be substantial. Nevertheless, we are of the opinion that such membership benefits would not be directly affected by the discretionary acts of management under chapter 89, HRS. We, therefore, rule that this employee's union membership and State employment do not in themselves constitute a conflict of interest situation. This opinion is limited to the facts stated above, and is based upon the presumption that the employee will not be entitled to representation by a collective bargaining unit.

We further advise him to request supplemental opinions and further review should circumstances or facts change because of subsequent implementation of the Collective Bargaining Act and adoption of Rules and Regulations pursuant to the law.

Dated: Honolulu, Hawaii, September 9, 1970.

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

Note: Commissioner Walters K. Eli disqualified himself from consideration of this case, pursuant to Rule 18 of the Rules and Regulations of the State Ethics Commission. The vacancy left by the resignation of The Very Reverend John J. Morrett has not been filled.