OPINION NO. 89

An employee has inquired whether he would be in violation of the State ethics law in making a recommendation to a committee within his employing agency which could result in a contract between the State and a private agency of which he is a director. His state duties include reviewing applications and making recommendations to the committee for implementation; the body constituting the employing agency makes the final decision on all applications.

Since 1959, this employee has served as a director of a nonprofit organization. He has no financial interest in the corporation, nor does he receive any compensation for serving on the board.

His concern over a possible violation of chapter 84 of the Hawaii Revised Statutes arose in connection with a project proposal by a State department. His efforts to find a grantee for the project involved sending a memorandum to several private agencies inviting their interest in the project. One of the agencies contacted was the nonprofit corporation of which he is a director.

The selection of agencies to be contacted concerning the project was made at a meeting of an ad hoc committee consisting of himself and representatives from three other departments. At this meeting he advanced his nonprofit corporation, among others, as a possible agency for the project. The nonprofit corporation has proven to be the only agency to accept the proposed project.

The Ethics Commission has already ruled that serving as a board member of an eleemosynary organization, without compensation, does not constitute a financial interest (Opinion No. 25). Thus, HRS, §84-14, does not apply. The possible violation of the ethics law involved here is the fair treatment section which states: "No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others." (§84-13)

The Ethics Commission has amplified the requirements of section 84-13 by urging that all State employees avoid even the *appearance* of asserting undue influence (Opinion No. 85). This employee would have been well advised to have informed the ad hoc committee that he was a member of the board. This disclosure should be made in any future dealings between a State agency and the nonprofit corporation in which he is involved.

In this case, we did not think that further invitation was necessary, since a reasonable number of agencies which could meet the project requirements were informed of the proposal. It seems a reasonable effort had been made to objectively select the proper agency. Furthermore, final approval was reached only after the review committee had reviewed the qualifications of the applicants. The nomination of the nonprofit corporation had to undergo considerable scrutiny by others before approval.

ThIs employee was commended for bringing this situation to our attention, but we advised him to disclose his connection with the nonprofit corporation to his immediate supervisor and to refrain from any further recommendations or discretionary action in relation to this project to avoid any appearance of undue influence in behalf of the nonprofit corporation.

Dated: Honolulu, Hawaii, October 29, 1970.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. The vacancy left by the resignation of The Very Reverend John J. Morrett has not been filled.