

OPINION NO. 94

An appointee to a state board has asked whether his wife's position with a state agency and her membership in an employee association would constitute a potential violation of the State ethics law (HRS, chapter 84) in relation to his duties on a board which is responsible for the administration of legislation affecting the rights of government employees.

The responsibility of the board is to serve as an impartial, objective third party.

His wife has been an employee of a state agency for a number of years. Her responsibilities have no direct relationship to or direct effect upon his board.

Initially we advised that this opinion is based solely upon the facts submitted and his representation of his functions under the board. We reserved the right to review his situation from time to time.

His wife's employment, salary, and accompanying employee benefits constitute substantial financial interests, which should be disclosed to the other members of the board; however, it does not immediately appear that his responsibilities as a board member will directly affect her employment. If any official action he may take in a specific circumstance will directly involve his wife's employment interests, he must disqualify himself. If such disqualification becomes too frequent, then the conflict of interest between his official action and his wife's employment will be so pervasive as to call for a resolution of the conflict either by the resignation of his wife from her employment or his resignation from the board. At this time we do not think that such action is called for, provided he is sensitive to situations of possible direct conflict of interest and other areas of violation of the ethics law.

He should pay particular attention to the requirement of HRS, §84-12, relating to confidential information. As a neutral party in matters between two opposing interests he would have access to confidential information. We recognize that it is normal for spouses to share their work experiences with each other but this should not extend to the disclosure of confidential information which may be of value to the organization representing his wife's interest. We do not presume to require his wife to not participate in organizational membership to the extent protected under the Constitution and other state law. However, it is the Commission's present position at this initial stage that any active role on the part of his wife in organization activity will place his state position in jeopardy and he may be required to resign. This position is intended to avoid even the appearance of a violation of §84-13, relating to fair treatment.

The development and stature of the board of which he is a member will depend to a great extent, on the validity of the decisions, recommendations, and policies made by the board. These decisions, recommendations, and policies should be free from the influence of direct conflicts of interest, and we so advised that he should be sensitive to the possibility that such conflicts may arise due to his wife's public employment, even if they may not be immediately evident.

Dated: Honolulu, Hawaii, January 28, 1971.

STATE ETHICS COMMISSION
James F. Morgan, Jr., Chairman
Vernon F.L. Char, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner
S. Don Shimazu, Commissioner