

OPINION NO. 101

A member of a state commission had requested an advisory opinion. Due to a vacancy and two disqualifications we were unable to immediately render an advisory opinion.

Subsequently, he notified the executive director of this Commission that action upon an application pending before his agency was urgent. At an executive session of his agency, the chairman represented that the situation had become critical and immediate action was needed. The executive director advised this board member, that under the circumstances he should disclose on the record his stock ownership in the corporation involved in the matter, that he had asked the Ethics Commission for an opinion, that the Ethics Commission was unable to render an opinion due to the inability to obtain a quorum, that due to the emergency situation his board was in need of a quorum and that he felt that he could act without bias or prejudice.

The Ethics Commission now renders its opinion on the described circumstances to serve as guidance in the future.

The relevant facts are that a Hawaii corporation in which he had an ownership interest in excess of \$3,000, had a pending application before his board. He inquired whether he should disqualify himself from participating in the case.

The relevant section of the ethics law is HRS, §84-14, which states in part that "No employee shall participate, as an agent or representative of a State agency, in any official action directly affecting a business or matter in which he has a substantial financial interest" There was no question in this case that action by his board would directly affect the applicant-corporation. The only question for our determination was whether his interest was a substantial financial interest within the meaning of the State ethics law. We have stated that no absolute amount is determinative of what is substantial. We shall continue to consider 1) the individual's financial circumstances, 2) his State salary and responsibilities, and 3) the legislative intent expressed in the laws or regulations describing the public duties of the employee. In this case we noted that the law creating this employee's board specifically prohibited the commission or staff members from owning stock or having any financial interest in certain businesses regulated by the board. The meaning of that provision is without ambiguity. The legislature has clearly expressed a policy that it is in the public interest that no commissioner or employee have any financial interest in the particular type of corporation. Such an intent was relevant to our determination as to whether this employee's interest constituted a "substantial financial interest" under §84-14 of the ethics law. Any interest, regardless of amount, in the specified type of corporation would be substantial, in our opinion.

The agency had in the past treated the local corporation as a type of corporation subject to special regulation; therefore, it appeared to be the type of interest which the legislature had expressly determined to conflict with the public responsibilities of that agency. We, therefore, considered this employee's interest to be a substantial financial interest under HRS, §84-14. We advised that he should not participate in official action involving that company.

The ethics law makes no provision for emergency situations wherein official action must be taken in a situation where a quorum cannot be obtained. Strictly speaking, his participation on the matter was a violation of the State ethics law. However, this Commission recognizes that there are times when state business must be carried on in spite of the restrictions of the law. Under the peculiar circumstances of this case, we will not proceed with further action.

In the future, however, this Commission will require one of its own members to act after proper disclosure to the person requesting the opinion so that an employee will be advised whether or not a conflict exists in his case.

Dated: Honolulu, Hawaii, February 25, 1971.

STATE ETHICS COMMISSION
Gwendolyn B. Bailey, Commissioner
Walters K. Eli, Commissioner
S. Don Shimazu, Commissioner

Note: Chairman James F. Morgan, Jr. and Vice Chairman Vernon F.L. Char disqualified themselves from consideration and preparation of this opinion.