

OPINION NO. 142

Since March 1, 1972 an employee had been serving as an agency head. His position has been classified as top-level management and therefore, exempt from the thirteen groups established for collective bargaining purposes by the Hawaii Public Employment Relations Board.

He indicated that since February 1, 1971, he had been a member of the executive board and chairman of the organizational committee of a particular labor association. Before assuming his present position, he was employed as a section supervisor which position was not exempt.

He further indicated that his association has been actively soliciting support for exclusive bargaining rights in two categories. We noted that the association was unsuccessful in a recent election.

In a personal interview with the Commission staff, he further stated that because of his state position it was possible he would play some role on the management side of collective bargaining activities of his department, division or branch. It was possible he might be designated as the official management representative, but he considered it more probable that his participation, if any, would be limited to that of a consultant. He believed that he would have management negotiation information which would be confidential to the State.

He further indicated that as a member of the executive board of the labor association, he participates in major policy matters of the organization. As chairman of the organizational committee, he also participates in policy matters pertaining to representation of new groups, etc. He would not participate, however, in any collective bargaining activities as the representative of the labor association.

He requested an advisory opinion as to whether these facts and circumstances constituted a conflict of interest.

The Commission recognizes that union membership provides the opportunity to buy various types of group insurance and to obtain other membership benefits which cumulatively may result in a substantial financial interest. We are of the opinion, however, that the discretionary actions of management under HRS, chapter 89, would not directly affect such financial interest.

Following this line of reasoning, the Commission ruled in Opinion No. 84 that an employee's union membership and state employment do not in themselves constitute a conflict of interest situation.

In this case, however, we believe that his organizational activities in the association constituted a potential conflict situation, notwithstanding the fact that the association was unsuccessful in a recent election. He is required to remain impartial in his management role; however, his ability to remain objective might be severely compromised if he, as a board member of the association, were to be involved in seeking to have the association replace the present duly elected exclusive bargaining agent or if he, as a management representative, were to take any action showing favoritism of his association or discredit of the other. Exerting such influence or exhibiting such favoritism or discredit may very well be construed as a violation of HRS, §84-13, which prohibits use of official position to secure unwarranted advantages or treatment for himself or others.

We, therefore, concluded that his serving as chairman of the association's organizational committee, or engaging in any other activities pertaining to representation of new groups while serving in a state management position was a probable violation of the State ethics law.

Further we called his attention to HRS, §84-12, relating to confidential information. He should not disclose confidential information acquired in the course of his official state duties nor use it for his own personal gain or for the benefit of anyone.

We expressed our appreciation for his concern on matters of ethics and thanked him for filing a disclosure with us.

Dated: Honolulu, Hawaii, May 30, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
Walters K. Eli, Vice Chairman
Gwendolyn B. Bailey, Commissioner
Fred S. Ida, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting in which this opinion was considered.