

OPINION NO. 146

The chairman of a state board requested review and advice on the following matter.

The chairman of an advisory committee to the board has part-time state employment for which he is compensated for his services at the rate of \$7.50 per hour. This income for the last fiscal year was approximately \$300; for the prior fiscal year, approximately \$500.

The function of the advisory committee is to advise the board on matters pertaining to the type of service in which the chairman is engaged on a part-time basis; the committee makes recommendations regarding the pay of personnel, fees charged, and the qualification requirements for personnel.

The applicable provision of the ethics law, in this case, is HRS, §84-14(a)(1), which states in part as follows:

No employee shall take any official action directly affecting a business or other undertaking in which he has a substantial financial interest; ... except that a member of a board, commission or committee, whose participation is necessary in order to constitute a quorum to conduct official business on any matter described in items (1) and (2) above, will not be in violation of this subsection if he has complied with the disclosure requirements of Section 84-17.

This provision of the ethics law will be violated by the chairman of the advisory committee when he participates in making recommendations on matters pertaining to the rights and duties of personnel. We reach this conclusion because the recommendations by the committee to the board are official action within the meaning of HRS, §84-3(7); the providing of the services is a "business or other undertaking" in which he has a financial interest by virtue of his employment; this financial interest is substantial in the sense that the hourly compensation is certainly not merely nominal, although we make no determination with regard to the adequacy and appropriateness of the rate of compensation. In our judgment recommendations relating to fees, pay, and qualification requirements of personnel, will have a direct effect on this state function, in which he has a financial interest by virtue of his employment.

The ethics statute discussed above prohibits this individual's participation on certain matters as discussed with the exception that his participation is permitted in order to constitute a quorum if he has complied with the disclosure requirements of the law. The ethics statute is silent with regard to individuals who cannot selectively disqualify themselves from council proceedings or when such disqualification is not feasible as you have indicated in this case. This is a matter for resolution by the appointing authority.

Dated: Honolulu, Hawaii, September 28, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
Walters K. Eli, Vice Chairman
Audrey P. Bliss, Commissioner
Fred S. Ida, Commissioner

Note: Commissioner Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered.