

OPINION NO. 157

A department section head requested an advisory opinion regarding his involvement in some community organizations.

1. He serves on the board of directors of a private, non-profit organization, which receives some federal funds administered by a state committee of which he is a member. He is also a professional consultant to the organization.

2. He is a member of an advisory board for a private, non-profit program which receives state money administered by his department. One of his responsibilities as section head is to monitor the performance of this program for the State. We noted that for the biennium 1971-73, the program received in excess of \$120,000 from the general and special funds.

3. He is on the board of another non-profit organization which also receives state funds for a program monitored by his section. This program received for the biennium 1971-73 in excess of \$200,000 from the general and special funds.

4. He is a board member of another private, non-profit organization which also receives state funds. He has indicated that he has no direct responsibility for the operation of this organization.

This employee submitted a job description with his request for an advisory opinion. We noted in particular that this employee is responsible for directing and administering the programs of his section. His responsibilities include developing and maintaining cooperative relationships with community organizations; implementing referral policies and collaborative efforts in maintaining a high quality of service in the area of concern of his section; and in conferring with consultants and professional groups in planning the section programs.

In rendering this advisory opinion, we noted his strong interest in this type of extracurricular activity and his belief that this involvement made him more effective in his state capacity. At the same time, we noted his concern of a possible conflict in serving on the boards of private agencies because of his responsibility to all public agencies dealing with the area of concern of his section.

We first advised that HRS, §84-14(a)(1), requires an employee to disqualify himself under certain circumstances; and where the employee is unable to disqualify himself in his public capacity, he must make a choice between his private and public capacities. We had previously held that a state employee must disqualify himself pursuant to this provision of the law upon matters involving a private organization of which he is a director whether or not it was one operated for profit if the employee must take either recommendatory or decisional action involving the private organization. See Opinions Nos. 124 and 138.

It was our understanding that as the section head he would not be able to disqualify himself, thus requiring a resignation from the boards of the private agencies. It was our ruling that the exception in HRS, §84-14(a)(1), should be construed strictly as applying to department heads only.

We restated that it was not our intention to discourage activity and membership in public interest and charitable organizations in general. We had no objection to this employee advising these organizations without additional compensation from them when such advice was deemed part

of the state's official responsibilities. However, it was our belief that public confidence may be undermined where a public employee or official takes official action involving an organization with which he has a close fiduciary relationship as a trustee or board member. There was a danger that the freedom of action in the public capacity may be restrained by the fiduciary liability. Furthermore, the relationship increased the likelihood of using his state position to obtain unwarranted treatment for the private organizations with which he was affiliated and this possibility would also have the effect of undermining public confidence in public servants.

We commended him for seeking the opinion and for his concern for ethics in government.

Dated: Honolulu, Hawaii, March 20, 1973.

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

Note: Vice Chairman Gwendolyn B. Bailey was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.