

OPINION NO. 158

A department head had inquired whether a proposed appointment as trustee of a private, non-profit organization will place him in violation of the State ethics law.

He has disclosed that in the past his department has contracted with a subsidiary of the organization for the performance of certain consultant services and that there are several pending contracts at the present time. In the past, the contracts have ranged from \$30,000 to \$40,000 each. As the department head, he had control of the selection of the consultant and of the approval of the terms, conditions, and fees under the contract. To his knowledge there was no practical distinction between the subsidiary and the parent organization of which he was a proposed trustee.

In addition to the above information, he indicated a proposed transfer of employment to another department in the State. He has ascertained that he would not be required to take any action relating to this organization in his new capacity. He has further ascertained that the organization does not have any contracts with the new state agency with which he will be serving or any of its subagencies, and that to the best of his knowledge the non-profit organization will not be competing with the state agency directly for public or private contracts or grants.

Based upon the facts presented, it was our opinion that under HRS, §84-14(b), he may not accept a directorship in a business when he has reason to believe that the business may be directly involved in official action to be taken by him. We did note his statement that he would not be compensated as a director; however, we reminded him that a financial interest is defined by HRS, §84-3(6)(F) to include a directorship or officership in a business. We made this ruling notwithstanding the exception for department heads contained in HRS, §84-14(a), regarding disqualification under certain circumstances of conflict of interest. The exception in that section specifically pertained only to that subsection, and in our opinion was not applicable to §84-14(b).

Because the facts presented did not indicate that he had reason to believe that the organization would be directly involved in official action to be taken by him in his new government capacity, it was our opinion that he would be able to be a director without being in violation of that provision at the time he assumed his new state position. However, we advised that in the event circumstances changed he should disqualify himself from official action pursuant to §84-14(a). We pointed out that the exception in that section would not apply to him since he would not be a department head in his new capacity.

We also called his attention to HRS, §84-12, relating to confidential information, for his further guidance in his state action. Specifically, that section prohibits divulging information acquired in the course of one's official state duties which is by law or practice not available to the public. We also recommended that he seek a new advisory opinion at the appropriate time in the event the facts or circumstances changed substantially from the facts presented.

Dated: Honolulu, Hawaii, March 28, 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.