

OPINION NO. 163

A chairman of a temporary advisory state commission has inquired whether the members of his board were required to file statements of financial interest with the Ethics Commission of the State of Hawaii. He informed us that the board was appointed by the Governor pursuant to the request by the legislature. The legislature mandated that some of the members be representative of certain interest groups which might be affected by the commission's recommendation.

In rendering this advisory opinion, we noted that the legislature has authority to establish temporary commissions pursuant to the State Constitution, Art. IV, §5, para. 1. We further noted that the ethics law applies to all officers and employees of the State, including members of boards and commissions and committees, without qualification as to their temporary nature. It was our opinion, therefore, that members of the board were within our jurisdiction and were required to comply with requirements of Hawaii Revised Statutes, chapter 84 (the state ethics law).

We, therefore, advised that the members of this board should file disclosures of financial interest pursuant to the requirement of HRS §84-17.

In addition to the above requirement, we called attention to the conflict of interest provision HRS §84-14. We first noted that the legislature had specifically mandated that certain members of the board be representative of certain interest groups which may have a stake in what the board recommended. We had previously ruled that when an advisory board makes recommendations it takes "official action" within the meaning of the ethics law and that such recommendations can have a direct effect on whatever they concern. (See Opinion No. 24.) In construing the conflict of interest provision, however, and applying it to particular situations, we have recognized the legislative requirements of certain state agencies so that the legislative objectives in creating both those state agencies and the ethics law may be attained. In Opinion No. 91, for example, we advised a member of a licensing board that since the legislature has determined and mandated that members of the professions regulated should participate in the decision-making process, the member should disqualify himself only on matters directly affecting the firm in which he had a substantial financial interest rather than from matters broadly affecting the industry in which he had a substantial financial interest.

Although this board was not a regulatory body, it was our opinion that the ruling in Opinion No. 91 was equally applicable; specifically, a board member need only disqualify himself when a business (as defined in HRS §84-3) or undertaking in which he has a substantial financial interest may be directly affected by board action. It is not necessary for a board member to disqualify himself from matters broadly affecting the industry in which he has a substantial financial interest. We stated this as a general guideline only. Questions involving individual situations on a particular board matter should be directed to the Ethics Commission at an appropriate time.

Dated: Honolulu, Hawaii, August 15, 1973.

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

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