

OPINION NO. 166

A state employee requested an advisory opinion with respect to his involvement with a certain non-profit community organization.

The employee was head of a state department section and indicated that part of his job description was to foster support for and aid certain community organizations. The employee was also chairman of the board of directors of a certain non-profit community organization. He stated that the organization did not receive state financial support and that it was not eligible for financial assistance from any state agency. He also stated that he did not receive any salary as chairman of the board of the organization.

He further indicated that he did not make administrative decisions that affected the organization. However, he stated that in his state capacity he provided agency services to the organization.

The Commission received the job description submitted by the employee and noted that he was responsible for the overall administration of his agency's program and the coordination of the agency's activities to provide adequate agency services to meet community needs. In particular, we noted that he was responsible for providing for agency staff to participate in certain community planning groups and for program consultation to certain agencies and community organizations.

We brought to the employee's attention that in a recent opinion, the Commission had held that a certain state employee who was responsible for directing and administering the programs of his section and for 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 control of his section; and in conferring with consultants and professional groups in planning the section's programs was required, under HRS §84-14(a)(1), to resign from the board of directors of certain nonprofit corporations that were affected by action that he took in his state capacity. A copy of this opinion, Opinion No. 157, was enclosed for the employee's reference.

We advised the employee in the instant case that we believed that his being a member of the board of directors of the organization while he was head of his state agency would involve a violation of HRS §84-14(a)(1). This section provides in part the following:

No employee shall take any official action directly affecting:

(1) A business or other undertaking in which he has a substantial financial interest

Except that a department head who is unable to disqualify himself on any matter described in [item] (1) ... above will not be in violation of this subsection if he has complied with the disclosure requirements of section 84-17

We said that we believed that his fiduciary relationship to the organization as a member of its board of directors constituted a substantial financial interest. The Commission further felt that actions that he took as head of his agency had a direct effect on this organization. Therefore, it was our opinion that he was required, under HRS §84-14(a)(1), to disqualify himself when he had to

take official action that affected the organization. However, the Commission found that as head of the organization, he would not be able to disqualify himself; thus, HRS §84-14(a)(1) required him to resign as a member of the board of directors of the organization. It was the Commission's ruling, one which we have made in the past, that the exception in HRS §84-14(a)(1) should be strictly construed to apply to heads of departments only.

We emphasized that it was not our intention to discourage activity and membership in public interest and charitable organizations in general. The Commission commended the individual for his interest in and work with the organization. We stated that we would not have any objection to his remaining a general member of this organization and hoped that he would continue his work with the organization and other public interest organizations. We said what the Commission did discourage was a state employee having a fiduciary relationship to an organization which is affected by action that he takes in his state capacity.

The Commission brought to his attention that if he should remain a member of the organization, HRS §84-13 would be applicable to actions affecting the organization that he might take in a state capacity. This statutory provision prohibits a state employee from using or attempting to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others. Thus, he was advised that membership in the organization should have no bearing on any decision that he might make that affected the organization.

The Commission thanked him for seeking this opinion and for his concern for ethics in government.

Dated: Honolulu, Hawaii, September 27, 1973.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.