

## OPINION NO. 177

A member of a state board inquired whether he might participate in a certain matter pending before his board.

The individual indicated that prior to his appointment to the board, the board had approved the employment of his wife as an employee of the agency which his board administered.

HRS §84-14(a) states, in part, that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest."<sup>†</sup> "Official action" is defined as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." HRS §84-3(7).

Initially, we pointed out that HRS §84-14(a) requires a state employee to disqualify himself on all matters directly affecting a *business* in which he has a substantial financial interest. This prohibition, however, was inapplicable to the board member's situation because the department which his board administered was not a "business," as this term is defined in HRS §84-3(1). We stated that it was a state agency. Therefore, even if one were to assume that he had a substantial financial interest in the state agency because of his wife's employment by the agency, he would not have to disqualify himself on all matters directly affecting the agency.

As quoted supra, HRS §84-14(a) also prohibits a state employee from taking official action directly affecting an undertaking in which he has a substantial financial interest. We construed the term "undertaking" to include an activity, concern, pursuit, or other matter. Thus, we were required to determine whether the subject matter before the board involving an agency fee which this individual would have to pay as a user of the services of the agency, was an undertaking in which he had a substantial financial interest.

HRS §84-3(6) defines a "financial interest" as follows:

[A]n interest held by an individual, his spouse, or minor children which is:

- (A) An ownership interest in a business.
- (B) A creditor interest in an insolvent business.
- (C) An employment, or prospective employment for which negotiations have begun, or
- (D) An ownership interest in real or personal property.
- (E) A loan or other debtor interest.
- (F) A directorship or officership in a business.

It was our opinion that the board member did not have a financial interest, as this term is statutorily defined, in the subject matter before the board. Thus, we held that he might take official action as a member of the board on the subject matter.

We stated that it might be helpful to him if we were to compare our conclusion on whether he might participate in the subject matter before the board with the question of whether he might participate in matters relating to his wife's employment by the agency.

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<sup>†</sup>An exception to §84-14(a) reads as follows: "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 [§84-14(a)] above, will not be in violation of this subsection if he has complied with the disclosure requirements of §84-17."

Like the matter before the board which the individual had inquired about, a matter relating to his wife's employment was an undertaking, as used in HRS §84-14(a). The difference was that under HRS §84-3(6)(C), an employment interest was a financial interest. We held that the wife's employment interest was a substantial financial interest. Thus, he would be required under HRS §84-14(a) to disqualify himself on matters directly affecting his wife's employment.

We thanked the individual for his concern for ethical considerations relating to matters within his province.

Dated: Honolulu, Hawaii, February 6, 1974.

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

Note: There was one vacancy on the Commission.