

OPINION NO. 178

Because the disclosure of financial interests of a member of a state board raised issues of precedential value, we proceeded in this case, pursuant to Commission Rule 3.5, as though his disclosure were a request for an advisory opinion.

Matters Directly Affecting a Trade Association.

The board member was an officer of a trade association. As an officer, he had a financial interest in this organization; under HRS §84-3(6)(F), an officership in an organization, which may or may not be operated for profit, is a financial interest. We held that this financial interest was a "substantial" one. As an officer of the trade association, he was responsible for the management of its property and business. The budget of the organization was in excess of \$50,000 and the income that it derived from one of its businesses was substantial. Failure to exercise due care in the management of the trade association's business might result in substantial financial liability to the organization. Also, the individual had fiduciary obligations of good faith, loyalty, and fair dealing to the organization. Any violation of these obligations might also result in liability to the organization.

HRS §84-14(a) states that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest." Because we held that the board member had a substantial financial interest in the trade association, we advised the individual that he had to disqualify himself on all matters, including policy matters, directly affecting the organization.

We pointed out that the trade association was "directly affected" when all of its members, or segments of members, were directly affected by policy matters of the board. Because the board member had informed us that members of the organization were in almost all of the industries regulated by the board, he might find that he would be disqualifying himself on almost all policy matters.

While HRS §84-14(a) would prohibit his participation in matters directly affecting members (all members or segments of members) of the trade association, we stated that it did not preclude his participation in matters directly affecting a single member of the organization. An individual member of the trade association, in our opinion, was not the trade association. We brought to the individual's attention, however, that HRS §84-13 prohibited an employee from granting unwarranted treatment or advantages to himself or others.

We advised the individual that if he were to resign his position as an officer of the trade association, he would no longer have a substantial financial interest in the organization. Thus, he would not have to disqualify himself on matters directly affecting members of the organization. However, it would still be incumbent upon him, under HRS §84-13, to be impartial when dealing with transactions directly affecting members of the organization. He was advised that whether or not an individual was a member of the organization should have no bearing on any decision that he made in his state capacity.

Matters Affecting the Business Association.

The individual was also the general manager and an officer of a business association. Because of his potential liability to the business association for failure to exercise due care in the management of its property and business and for a breach of fiduciary responsibilities owed to the organization, we stated that his officership interest gave him a substantial financial interest in the business association. The business association, individually and through its members, was one of the major firms in its industry in the State; thus, liability for mismanagement of its business could be substantial. Also, his employment interest in the business association as its general manager was a substantial financial interest.

Thus, we advised the individual that HRS §84-14(a) required him to disqualify himself on all matters directly affecting the business association or its members. He would not, however, have to disqualify himself on a matter directly affecting a single member of the business association. We stated that he should again be cognizant of HRS §84-13 so that he did not violate it by giving unwarranted advantages or treatment to a member of the business association.

We further discussed the individual's participation in two matters:

Commission Opinion No. 6.

In Commission Opinion No. 6, the Commission advised a member of a state board who owned a business in one of the industries regulated by his board that he was required to abstain from participation in all areas dealing with his industry. After reviewing that opinion, we felt that it should be reconsidered. We stated that we felt HRS §84-14(a) should be more narrowly construed when applied to the facts in Opinion No. 6. Our conclusion in the instant case, however, did not change; the individual was required to disqualify himself on all matters relating to his business association's industry.

Commission Opinion No. 10.

In Commission Opinion No. 10, the Commission held that a member of a committee of a state department who had a loan from the department or who was contemplating applying for one should abstain from all matters pertaining to department loans. If this opinion were applied to the instant case, it would mean that the board member would be required to abstain from (1) general policy matters directly affecting all department loans; (2) a matter specifically affecting the department loan of the board member; and (3) a matter specifically affecting department loans and applications of other individuals. It was our opinion that HRS §84-14(a) should be more narrowly construed when applied to department loan matters. We said that we believed that a board member who had a loan should not be precluded from participating in actions specifically affecting loans and applications of other individuals. Such actions have, at best, an indirect effect on the board member's loan.

The business association held a department loan. In accordance with the above discussion, we stated that HRS §84-14(a) required the board member to abstain from matters, including general policy matters, directly affecting the business association's loan. We emphasized that he was not precluded from participating in policy matters which were related to department loans but which did not have a direct effect on the business association's loan. Moreover, we stated that he could participate in matters that specifically affected loans other than the business association's or any loan that he might personally have.

We thanked the individual for the assistance that he gave us in this matter. We appreciated the concern that he had shown for ethical conduct in government.

Dated: Honolulu, Hawaii, February 19, 1974.

STATE ETHICS COMMISSION
Gwendolyn B. Bailey, Chairman
Audrey P. Bliss, Commissioner
Walters K. Eli, Commissioner

Note: Commissioner Vernon F.L. Char disqualified himself from participation in this opinion. There was one vacancy on the Commission.