

OPINION NO. 182

The head of a state department sought the State Ethics Commission's opinion regarding membership by an employee of his department on the board of directors of a non-profit corporation.

HRS §84-14(b) states that "[n]o employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him." The Commission has stated that this statutory section prohibits a state employee from acquiring a financial interest in a business if, at the time the employee acquires the financial interest, there is a strong probability that he directly will be required to take official action with regard to the business.[†] Under the ethics law, a directorship or officership in a business, whether or not operated for profit, is a financial interest. HRS §§84-3(1) and 84-3(6)(F).

We noted that the individual's department was authorized to contract with the non-profit corporation for certain services. We received a copy of the latest contract. We noted that the contract was a comprehensive one, requiring participation in or approval by the department of many administrative and policy decisions of the non-profit corporation.

It was the opinion of the Ethics Commission that HRS §84-14(b) prohibited an employee of the department who had reason to believe that he might be required to take official action directly involving the non-profit corporation from serving as a member of the corporation's board of directors. We stated that because the ethics law required a state employee to disqualify himself on matters directly affecting a business in which he had a substantial financial interest, it was reasonable that a state employee should be prohibited from putting himself in a position where he would be required to abstain from taking official action.

We pointed out that the legislature had the prerogative to mandate that employees of the department should serve on the board of the non-profit corporation.

We expressed appreciation for the department head's concern for ethical matters within his province.

Dated: Honolulu, Hawaii, March 29, 1974.

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

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.

[†]Official action is defined in HRS §84-3(7) as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority."