

OPINION NO. 193

A state employee inquired whether the ethics law of the State of Hawaii would prohibit a certain state commission from contracting with one of its commissioners to serve as executive secretary of the commission.

We were informed that if the commissioner were appointed the executive secretary of the commission, he would resign his membership on the commission. This was confirmed by the commissioner.

HRS §84-15 (Supp. 1973) prohibits a state agency from entering into a contract with a state employee--a member of a board or commission is a state employee--in certain situations. We stated that this statutory section, however, would not preclude the commission from entering into a contract with the commissioner for his services because it did not apply to a personal contract of employment. See HRS §84-15(c).

We further indicated that if the commissioner should resign his membership on the commission prior to his appointment as executive secretary, then HRS §84-18 (the post-employment provision of the ethics law) would be relevant. We stated, however, that this statutory section also would not preclude the commission from employing the commissioner as executive secretary because it did not "prohibit [an] agency from contracting with a former ... employee to act on a matter on behalf of the State."

Although neither HRS §84-15 nor HRS §84-18 would prohibit the commission from employing the commissioner as executive secretary, we brought HRS §84-13 to the state employee's attention. This statutory provision prohibits, in part, a state employee from using or attempting to use his official position to secure unwarranted privileges, advantages, or contracts for himself. We stated that the commission should not enter into a contract with the commissioner if this statutory section had been violated. We made no determination of this question because no facts relating to it were presented to us.

Finally, we said that the commissioner, as a member of the state commission, should not participate in commission action relating to his employment as executive secretary. HRS §84-14(a) prohibits a state employee from taking any official action directly affecting an undertaking in which he has a substantial financial interest.

We expressed appreciation for the state employee's concern for ethics in government.

Dated: Honolulu, Hawaii, October 4, 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.