

OPINION NO. 197

The chairman of a state advisory commission asked our opinion on the "ethical aspects" of the appointment of a certain individual to his board. The appointee was a full-time employee of one of the State's departments. The chairman asked specifically whether "[the state employee], an administrative employee of a state agency, [should] serve as a [member] on the public commission which advises that state agency."

HRS §84-14(a) (Supp. 1973) provides for disqualification when official action of a state employee or officer may directly affect a business or undertaking in which he has a substantial financial interest. It states, in part, the following:

No employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest

We pointed out that this section requires a state employee to disqualify himself on all matters directly affecting a "business" in which he has a substantial financial interest. We said that this prohibition was inapplicable to the instant case because the department of which the appointee was an employee was not a "business," as this term is defined in HRS §84-3(1). It is a state agency. See HRS §84-3(9). Therefore, we concluded that even though the appointee might have a substantial financial interest in his department because of his state employment, this statutory prohibition did not require him to disqualify himself on all matters directly affecting this department.

Then, as quoted supra, HRS §84-14(a) prohibits a state employee from taking official action directly affecting an "undertaking" in which he has a substantial financial interest. We have construed the term "undertaking" to include an activity, concern, pursuit, or other matter.

We were cognizant that the appointee's commission did not have jurisdiction over matters, such as the appointee's employment by his department, in which he would have a substantial financial interest. Therefore, we said that the section of HRS §84-14(a) that prohibits a state employee from taking official action directly affecting an undertaking in which he has a substantial financial interest was also not relevant to the instant facts.

Thus, we concluded that the ethics law did not preclude the appointee from serving as a member of the commission. We emphasized that this opinion was limited to the application of the standards of conduct of HRS ch. 84 (the ethics law) to the instant facts. We said that there might be other legal or administrative considerations not within the scope of our jurisdiction that might be relevant to the appointment of the state employee to the state commission. For example, we questioned whether the statutory section establishing the advisory commission itself prohibited an employee of the department in question from filling one of the positions of the commission. We advised the chairman that he might want to seek the advice of the Office of the Attorney General on legal questions such as this. Furthermore, we asked whether it was good administrative policy for an employee of a state agency to serve as a member of the commission that advised that state agency. We said that question was for the appointing authority to answer.

In rendering this opinion, we relied upon facts submitted by the chairman of the commission. Pursuant to the Rules and Regulations of the Ethics Commission, the appointee was given an opportunity to review and comment on the facts submitted by the chairman.

We commended the chairman for his concern for ethics in government.

Dated: Honolulu, Hawaii, November 6, 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.