

ADVISORY OPINION NO. 86-12

A member of a state board asked the Commission whether it would be a conflict of interest for him to represent a client before a county agency.

The board member informed the Commission that in addition to being a member of the board he was also an attorney licensed to practice law in the State of Hawaii. His law firm had been representing the client in question since prior to his becoming a member of the board.

In order to proceed with a particular project, the client had made several applications to a county department and would be making an application to the member's board.

The board member indicated that he understood that section 84-14(a), Hawaii Revised Statutes ("HRS") prohibited him from taking any action as a member of the board that would directly affect his client's project. He asked the Commission whether a conflict of interest would exist if he were to represent the client before the county agency with regard to the applications before that agency.

The Commission advised the board member that the relevant section of the state ethics code, section 84-14(d) HRS, provided:

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

Pursuant to this section, the board member could not represent his client before the county agency if he would be participating in official action regarding the same matter. If the applications before the county agency and the one to be filed with the member's board were not the same matter, then the board member could represent his client before the county agency and his representation would not constitute assisting the client on a matter in which he would be participating as a state employee.

The Commission found that the applications before the county agency and the application to be filed with the member's board were not the same matter. The application to be filed with the member's board had a separate and distinct purpose. The client's project could possibly go forward even if that application was denied. Further, the jurisdictions of the county agency and the member's board were distinct, and the decision of one agency was not contingent upon the decision of the other. Therefore, the Commission found that the board member was not prohibited by HRS §84-14(d) from representing his client before the county agency.

The Commission thanked the board member for seeking the Commission's opinion on this matter at an early time and for his sensitivity to the ethical considerations in this situation.

Dated: Honolulu, Hawaii, December 31, 1986.

STATE ETHICS COMMISSION
Tim S. Farr, Chairperson
Cynthia T. Alm, Commissioner
Rev. David K. Kaupu, Commissioner

Note: Vice Chairperson Laurie A. Loomis and Commissioner Arnold J. Magid were not present during the discussion and consideration of this opinion.