

## OPINION NO. 204

The chairman of a state board requested an advisory opinion on his eligibility to continue to serve as a member of his board or as its chairman. In the recent general election, his spouse was elected to the state legislature.

Under the state ethics law (HRS §84-3(6), Supp. 1974), a financial interest held by the spouse of a state employee is attributed to the employee. Thus, we stated that his spouse's employment interest as a legislator was also his financial interest.

We reviewed the various sections of the ethics law and concluded that the individual might continue to serve as a member and as the chairman of his board. Moreover, it was our opinion that the conflicts section of the state ethics law (HRS §84-14(a)), which requires disqualification in certain cases, was not relevant to his situation as a member of his board. HRS §84-14(a) (Supp. 1974) states:

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

One notes 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. This prohibition was inapplicable to the instant case because the legislature, in which the individual had a financial interest through his spouse, was not a "business," as this term is defined in HRS §84-3(1). We said it was a state agency. See HRS §84-3(9).

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. This prohibition was also inapplicable to the instant situation because the individual's board did not take any action affecting his spouse's employment interest as a legislator.

We added that while the legislature did take action affecting the individual's board, HRS §84-14(a) would not preclude his spouse from participating in such action because HRS §84-14(a) did not apply to legislators. Even if it did apply to legislators, we stated that his spouse would still be able to take action directly affecting the board because it was not a "business." It was a state agency; see *supra*.

We expressed appreciation for his concern for ethics of public officials.

Dated: Honolulu, Hawaii, December 23, 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.