

OPINION NO. 209

A state employee requested an advisory opinion on whether he might be involved in activities of a certain non-profit corporation.

He had been an officer of this private, non-profit service agency. He was still a member of the board of directors of this organization. He informed us that this organization had submitted a request for funds to the state department of which he was an employee. He indicated to us that in his state position he would not be responsible for monitoring or evaluating the performance of the funding contract that the organization had applied for. However, he would be responsible for referring individuals in need of services to this organization, along with other public and private referral sources.

We reviewed the job description submitted by the employee and noted that his duties and responsibilities included making maximum use of agency and community resources; coordinating services and facilities for the benefit of clients; maintaining public relations with other community agencies; and participating in the development of community resources.

1. Whether He Might Serve as an Officer of the Non-Profit Organization or as a Member of its Board of Directors.

We noted that in a past opinion, the Ethics Commission had held that a state employee who was responsible for directing and administering the programs of his section and for developing and maintaining cooperative relationships with community organizations; implementing referral policies and collaborative efforts in maintaining a high quality of service in the area of control of his section; and in conferring with consultants and professional groups in planning the section's programs was required, under HRS §84-14(a)(1), to resign from the board of directors of certain non-profit corporations that were affected by action that he took in his state capacity.

The State Ethics Commission believed that in the instant case the employee's past resignation as an officer of the organization had been required by HRS §84-14(a)(1). We said that this statutory section now required him to resign his membership on its Board of Directors. HRS §84-14(a)(1) provides, 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....

The Commission believed that the employee's fiduciary relationship to the organization as a member of its board of directors gave him a substantial financial interest in the organization. Also, his former position as an officer of the organization was a substantial financial interest. In HRS §84-3(6), a "financial interest" includes an interest which is "[a] directorship or officership in a business." In HRS §84-3(1), a "business" includes an "organization ..., whether or not operated for profit." Therefore, it was our opinion that he was required, under HRS §84-14(a)(1) to disqualify himself on official action, which is discretionary action, that directly affected the non-profit organization. He informed us that the organization was one of the agencies to which he would be making referrals. It was also our opinion that in carrying out the duties and responsibilities that we have quoted, *supra*, from his job description, he would be taking official action directly affecting the organization.

As a state employee, he was not able to disqualify himself on actions directly affecting the organization in question. Thus, his resignation as an officer of the organization was consistent with the requirement of HRS §84-14(a)(1), and this statutory section now required him to resign as a member of its board of directors.

2. Whether He May Continue to be a Member of the Organization.

We stated that HRS §84-14(a)(1) would not require the employee to resign his membership in the organization; a general membership did not give him a substantial financial interest in this organization.

We emphasized that we did not discourage activity and membership in public interest and charitable organizations in general. We commended the employee for his interest in and work with the organization and hoped that he would continue his work with this organization and other public interest groups. We said that what we did discourage was a state employee having a fiduciary relationship to an organization which is affected by action that he takes in his state capacity.

The Commission, however, pointed out that if he should remain a member of the organization, HRS §84-13 would be applicable to action affecting this organization that he might take in a state capacity. This statutory provision prohibits a state employee from using or attempting to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or others. Thus, we said that his membership in the organization in question should have no bearing on any decision that he might make that affects this organization.

3. Whether He Might Serve in the Future as a Non-Member Consultant or Advisor to the Board of Directors of the Organization.

HRS §84-14(b) states the following:

No 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.

We said that the ethics law would not prohibit the employee from serving the organization as a consultant on a non-compensated basis. However, we stated that HRS §84-14(a)(2) would be applicable to him in this situation. This statutory section states:

No employee shall take any official action directly affecting ... [a] private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity

We have construed the term "undertaking" to include an activity, concern, pursuit, or other matter. Thus, under HRS §84-14(a)(2), we said that if he should advise the organization with respect to a certain matter, he would not be able to take any official action in his state capacity directly affecting this matter at a later time. Of course, this prohibition would not apply if he initially advised the organization on a matter in his state capacity.

We also stated if he should serve as an advisor to the organization, he should again be careful not to violate HRS §84-13 (the fair treatment section), which was discussed *supra*.

The Commission thanked the employee for seeking this opinion and for his concern for ethics in government.

Dated: Honolulu, Hawaii, February 28, 1975.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Walters K. Eli, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.