

## OPINION NO. 228

The executive officer of a state board requested, on behalf of the members of his commission, that the State Ethics Commission answer several questions concerning the ethics law.

He asked us the following questions:

1. In a case before his state board in which an organization, "Association A," is a party, is a board member who hears the case in violation of the ethics law if he was a member of Association A approximately five years ago but presently is not a member?
2. In a case before the state board in which Association A is a party, is a board member who hears the case in violation of the ethics law if he was an employee of the organization immediately prior to becoming a board member?
3. In a case in which Association A or another is a party, is a board member who hears the case in violation of the ethics law if he was an employee of Association A prior to becoming a board member and who, in such capacity and as a representative of Association A, negotiated or signed (or both) a contract, a provision or provisions of which are in issue in the said case?
4. In a case in which Association A is a party, is a board member who hears the case in violation of the ethics law under the following circumstances:
  - (a) A contract negotiated or signed by him as a representative of Association A is in issue; and
  - (b) He is an associate member of Association A (which means he may not vote for officers of the organization or stand for election to office in the organization); and
  - (c) He participates in the group life insurance program of Association A; and
  - (d) He is a former employee of Association A; and
  - (e) He has vested pension rights resulting from his prior employment with Association A.
5. In a case in which Association A is a party, is a board member who hears the case in violation of the ethics law if all the circumstances listed above under question 4 are true except the one described in item (a)?

### Questions 1 and 2, supra.

HRS §84-14(a) (Supp. 1974) states 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 asked the state employee to note that this statutory section prohibits a state employee from taking official action directly affecting a business in which he currently has a substantial financial interest. We said HRS §84-14(a) did not prohibit an employee from taking official action

directly affecting a firm or an organization in which he had a substantial financial interest before beginning state service or a firm or organization in which he had a substantial financial interest prior to the case in which the organization was involved.

Thus, we answered questions 1 and 2 in the negative.

**Question 3, supra.**

We also answered this question in the negative. We emphasized, however, that our opinion was limited to the application of the ethics law to the facts set forth in question 3. We said although the ethics law did not require a board member's disqualification or abstention in a case in which a provision of a contract which the board member negotiated or signed as a representative of Association A was in issue, the board member might wish to consider voluntary abstention. We stated that such abstention would be appropriate when the board member felt that he could not be impartial because of personal bias or prejudice or if he felt that his abstention from the matter would promote public confidence in government.

**Question 4, supra.**

We also answered this question in the negative. It was our opinion that an individual who was only an associate member of Association A (he may not vote for officers of the organization or seek election as an officer) who was a participant in the life insurance program of Association A, and who had vested pension rights resulting from prior employment with the organization did not have a substantial financial interest in Association A. We asked the employee to note that a financial interest was defined in HRS §84-3(6) as an interest held by

an individual, his spouse, or minor children which is:

- (A) An ownership interest in a business.
- (B) A creditor interest in an insolvent business.
- (C) An employment, or prospective employment for which negotiations have begun.
- (D) An ownership interest in real or personal property.
- (E) A loan or other debtor interest.
- (F) A directorship or officership in a business.

It was also our understanding that no official action that a board member might take would directly affect an associate membership in Association A, an insurance plan that he might participate in, or any pension rights that he might have for past service with Association A.

We pointed out again that the individual might, however, wish to consider voluntary abstention if he felt that he could not be impartial in a case because the contract which was in issue was negotiated or signed by him as a former representative of Association A or if he felt that his abstention from the matter would promote public confidence in government.

We also brought to the board's attention HRS §84-13, which prohibits a state employee from using his official position to grant unwarranted treatment or advantages to himself or others. Thus, we said a board member would violate this provision if he were to use his state position to grant unwarranted treatment to Association A. We stated that a board member who was an associate member or a former employee of Association A should be impartial when participating in matters affecting Association A.

**Question 5, supra.**

We answered this question in the negative.

We expressed appreciation for the board members' concern for ethics of public servants.

Dated: Honolulu, Hawaii, August 4, 1975.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
Audrey P. Bliss, Commissioner  
I.B. Peterson, Commissioner

Note: Vice Chairman Gwendolyn B. Bailey and Commissioner Paul C.T. Loo were excused from the meeting at which this opinion was considered.