

OPINION NO. 251

A member of the state legislature who was chairman of one legislative committee and a member of certain other committees was also an executive officer of and held an ownership interest in Company A, a local corporation.

Since 1967 he had vigorously pursued the development of a certain service. Just prior to his request for an opinion, he had presented arguments in the legislature in favor of a system to provide this service that would be operated by a certain limited partnership in which his corporation held a ten percent stock interest. Considerable publicity had resulted from his promotion of this particular system in the legislature and he asked the Commission to determine if his actions on behalf of this limited partnership in the past legislative session had been in violation of chapter 84.

Before responding to the question he had raised, we pointed out initially that the 1972 amendments to HRS §84-13 of the state ethics law specifically prohibited the Commission from reviewing a legislator's activity in the legislature. In addition, HRS §84-14(a), which concerns the taking of official action directly affecting substantial financial interests and HRS §84-14(b), which concerns the acquisition of financial interests that may be involved in the taking of official action, apply only to employees and not to legislators. Accordingly, these conflict of interest provisions of the ethics law did not have application to the question the legislator had raised.

HRS §84-14(d) (Supp. 1975), which prohibits a legislator from receiving fees or compensation for action he takes as a legislator, did have application to this matter. That section provides that:

No legislator ... 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, ... 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 ... of which he is ... [a] legislator.

The legislator in question had attempted to secure passage of legislation that would be beneficial to the establishment of a certain service and in particular, the kind of service planned by the limited partnership. The question we had to resolve then was whether the interest he held in this limited partnership could be considered to be a fee or compensation to either secure passage of a bill in which he had participated or would participate as a legislator, or to act in a representative capacity on such bill.

In an interview with the Commission, the legislator had provided us with certain background information:

Since 1967 he had been attempting to arrange for the private operation of this certain service and he had invested his own time, effort, and funds in attempting to accomplish this goal. After an unsuccessful attempt to raise funds locally to support this venture, he contacted a person associated with Company B, which did business in a related area, to determine the interest of that company in operating such a service. The person contacted judged that such a service was feasible and in 1973, Company A entered into an agreement with Company B under the terms of which Company A would contribute certain of its assets to Company C, which was to be formed and managed by Company B. In return, Company A would receive a percentage of interest in Company

C. The legislator's interest in Company C was that of a stockholder. While his percentage of interest was not substantial, we could foresee that this percentage of interest in a venture of this size might well be significant. While we could not project its potential value, it did appear that it would be more than minimal.

Company B had succeeded in raising the necessary funding for this venture. Company B could not proceed, however, without assurances of state backing and an agreement on the part of the State that it would guarantee the payment of mortgages that Company B had secured to underwrite this venture. The legislator had attempted to gain this backing during the legislative session.

On the basis of our review of the foregoing facts and certain documents relating to the contractual agreement between the companies involved in this matter, we concluded that the legislator's financial interest in the limited partnership could not be construed to be a fee or compensation for actions he had taken in the past legislative session. It was our view that the ten percent ownership interest granted to Company A did not constitute an unreasonable return to that corporation for the assets turned over to Company B for the benefit of Company C. This, coupled with the fact that the agreement was entered into nearly three years prior to the beginning of the legislative session, persuaded us that his share of the stock interest did not represent a fee or compensation to him to secure passage of a bill, but, as stated, constituted a fair return for the work he had done in a private capacity to lay the groundwork for the development of the service in question.

We could see no evidence that the legislator had received anything of value that could be considered to be a fee or compensation for his continuing to pursue legislation favorable to the starting up of the intended service. While it was clear that his own financial interests might be advanced by legislative action on this service, that increase in the value of his holdings could not, under the facts of this matter, reasonably be construed to be a fee or compensation. Under HRS §84-14(d), it is only the payment of a fee or compensation for legislative action by a legislator that is prohibited, not the consequential increase in the value of a legislator's holdings. In view of the timing of the agreement in this matter and the seemingly reasonable relationship between the stock interest in Company C and the assets ultimately transferred by Corporation A to it, it was our view that that interest had to be viewed as a bargained for payment for assets of Company A rather than as a fee or compensation to him for taking action as a legislator.

We noted that the legislator had previously disclosed his ownership interest in Company A and that his interest in providing the service in question had long been a matter of public record.

We commended him for bringing this matter to the attention of the Commission so that his role could be objectively reviewed.

Dated: Honolulu, Hawaii, May 7, 1976.

STATE ETHICS COMMISSION
Audrey P. Bliss, Chairman
Paul C.T. Loo, Vice Chairman
Dorothy K. Ching, Commissioner
Gary B.K.T. Lee, Commissioner
I.B. Peterson, Commissioner