

OPINION NO. 263

The staff member of a state board requested an advisory opinion concerning a board member's participation in the promulgation of regulations.

The board member was licensed in the occupation regulated by the board. He was also the director of a school's programs in that area. The regulations to be promulgated by the board were to establish the requirements for gaining and maintaining a license in the occupation the board regulated and to establish the requirements for accredited schools in the subject matter of the occupation including some specifications for curriculum and qualifications of faculty.

The request raised two questions: 1) should the board member participate in the promulgation of regulations for licensing and 2) should he participate in the promulgation of regulations establishing the curriculum and qualifications of the faculty for schools which taught the subject matter of the occupation.

HRS §84-14(a) (Supp. 1975), which had application to these questions, states in part that:

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

The first question was of a type that had been dealt with earlier by the Commission in Opinion No. 91. The Commission recognized there that a professional's license was a substantial financial interest and, therefore, subject to HRS §84-14(a), but stated that when the legislature established a board to regulate a profession, including those professionals' licenses, and then required professional qualifications for the members of the board, the members should participate in the board's regulatory activities. These members were chosen because of their association with and expertise in the profession to be regulated and "should participate in determining how the standards of proficiency in the profession are best served." We noted that in the legislation creating the board in question, the legislature had required that all members of the board be certified in the practice of the occupation. Accordingly, we found that the member need not disqualify himself from actions which affected the licensing process or requirements in general; he need only disqualify himself from participating in action directly affecting his personal license.

In regard to the second question, we learned that the member was employed by the State in his capacity as the director of a school offering courses in the subject matter. We had previously stated that a state agency is not a "business" for purposes of HRS §84-14(a). However, the statute also prohibits a person from taking action directly affecting an "undertaking." We had construed the term "undertaking" to include an activity, concern, pursuit or other matter, which would encompass the member's employment interest in the school. Further, an employment interest is a substantial financial interest. (HRS §84-3(6)(C).) Therefore, we stated that the member should not participate in any action by the board which would directly affect his employment interest in the college.

We found as a practical matter, that the board's establishment of curriculum requirements for schools coming within its jurisdiction would not directly affect the member's employment interest with the school. Although the regulation of curriculum would have some effect on the courses an instructor might teach, we saw no direct effect on the member's opportunity to teach at the

school. As we understood it, the school the member was associated with was the only licensed school for the subject in the State.

We found, however, that the member's participation in the establishment of the qualifications for instructors at accredited schools would have a direct effect on his employment interest at his school; accordingly, we advised him that he should abstain from taking action in this area. We stated that he should not only abstain from voting on particular regulations, but should also refrain from making recommendations as that would also constitute official action.

In summary, we found the board member would not be in violation of the ethics code by participating in the promulgation of regulations concerning licensing procedures, school accreditation, or curriculum requirements. We stated that he should refrain from participating in the discussion of and promulgation of regulations concerning the qualifications of faculty members at accredited schools and of directors of accredited schools, if that were considered. We suggested that if the board member were faced with taking action in other matters which would directly affect a substantial financial interest of his, ones which we did not consider in the opinion, he should also abstain from participation on those matters.

We commended the board for recognizing the possible conflict involved in this matter and thanked the staff member for aiding us in obtaining pertinent information.

Dated: Honolulu, Hawaii, August 6, 1976.

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

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.