

OPINION NO. 271

We received a request for an advisory opinion from a member of state board which played a significant role in a certain state conservation program.

This member and others wished to participate in a program of education for individuals interested in preparing applications to the board. These applications concerned the classification of places and things within the board's jurisdiction. The member wished to know if serving as an instructor in such a program would violate any of the provisions of the state ethics code.

At the time, applications presented to the board were prepared by or under the supervision of the staff of a state employee who also exercised authority in a state conservation program. The board and this employee were independent of each other, the latter being a part of another department. The board member indicated and we confirmed that there had been an on-going difference of opinion between that staff and the member as to what constituted a sufficient application. It was the member's view that an application should be quite complete while it was the view of the staff that the application need only be sufficiently detailed to identify the item submitted for review and need not contain full documentation. The board member also indicated that much work had not been completed by the staff and submitted to the board for its review.

This member and other members of the board were interested in educating individuals and groups who might be interested in preparing applications as to the criteria the board believed should be followed in the preparation of an application. It was also this member's hope that such a program would enable many additional individuals to prepare applications for submission to the board.

The member stated that the board members who were interested in participating in this program would receive no compensation for their services and would have no ownership, officership, or management interest in the organization or group that put this program together. The member did not know if other instructors in this educational program would be compensated.

We pointed out that acquisition of an outside interest was governed by HRS §84-14(b) which provides that an employee shall not acquire a financial interest in any business or other undertaking if he has reason to believe that that business or undertaking may be directly involved in official action to be taken by him. First, the member was aware that as a member of a state board he was an employee for the purposes of the ethics code. Then, his teaching services would constitute an undertaking. Further, because his students would be submitting applications to the board, at some point the member would be taking official action which would directly involve this proposed undertaking. However, the Commission noted that, under HRS §84-14(b), a conflict arises only upon the acquisition of a financial interest in an undertaking or business. Because the board member would not be compensated for his services, his teaching could not be considered to be an employment under the statute. Further, he would have no financial interest in the organization that controlled the program. As he would not be acquiring a financial interest in either this educational program or the teaching services he might provide, we believed that it would be permissible for him to provide instruction to students who might participate in the program.

We stated, however, that if the program was initiated the board member should be aware of the requirements of HRS §§84-12 and 84-13. Under HRS §84-12 he had to be careful not to disclose information which by law or practice was not available to the public and which he acquired

in the course of meeting his state responsibilities. Clearly, he must not disclose such information to other teachers or students in this program.

Further, HRS §84-13 prohibits the use of position to grant unwarranted advantages or treatment to oneself or others. Pursuant to this provision, we advised him that he should be careful to be impartial in dealing in his official capacity with any individuals participating in this program who presented applications to the board. He did not anticipate that he would be assisting students in the program in the preparation of actual applications for presentation to the board. We stated that should such a circumstance arise, we did not believe that the ethics code would require that he abstain from taking action. However, because he would be taking official action involving his own work product, we advised that he should consider voluntarily abstaining from taking action on those applications he had had a hand in drafting. We believed that such action on his part would avoid the raising of an inference that he was using his position as a board member to influence a result favorable to his own work.

We indicated that we were aware of federal regulations concerning the functioning of boards such as his own. We were also aware that his own board was in the process of preparing rules and regulations to govern its conduct. Because our jurisdiction was limited to questions raised under the ethics code, we stated that he should carefully review, with the other board members, the applicable rules and regulations in this area before proceeding with this project.

We commended the board member for bringing this matter to the attention of the Commission for the disposition of the ethics questions involved in his proposed undertaking.

Dated: Honolulu, Hawaii, September 14, 1976.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairman
Gary B.K.T. Lee, Commissioner
I.B. Peterson, Commissioner

Note: Chairman Audrey P. Bliss and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.