OPINION NO. 287

An administrator of a state care facility (Facility A) who was also a systems administrator for a state health care system in his county was contemplating the purchase of a private facility. This facility had a present capacity of 24 beds and provided services to the elderly ambulatory. These were individuals who required little medical care and, therefore, did not require the services of a state facility. The employee stated he would fulfill his responsibilities to this private facility only on his own time. He asked the Commission to determine if the acquisition of this ownership interest would conflict with his state duties under the state ethics code.

At our request, the employee forwarded a copy of the job description for the position he had filled since the summer of 1974. His responsibilities included planning, organizing, directing, and coordinating all activities of the two state facilities within his county. More specifically, he administered, directed, and coordinated all activities of this state system to carry out its objectives in the provision of health care and its participation in community health programs. He established formal means of accountability from an employee holding a subordinate administrative position to whom he had delegated certain responsibility; he regularly had contact with this position to provide proper direction. In addition, through delegation of duties, he supervised activities of all employees of the system and was responsible and accountable for the actions of each employee individually and collectively. He determined policies of the state facility relative to new or proposed plans, programs, and objectives and reviewed and evaluated existing policies, procedures, and work methods and installed improved work methods and procedures. His position description included many other duties but the foregoing were the most relevant to the question he had raised. The description indicated that he had very broad and discretionary powers in this health care system.

The employee stated that he personally had no responsibility over private facilities and did not have direct responsibility in the referral of individuals to these facilities. When the level of care being rendered to an individual did not require treatment in a state facility, the attending physician or patient care committee at the facility could request a social worker to find a place in a private facility for the patient. The social worker had the primary responsibility for making this decision which was not usually reviewed even by the physician in charge. The social worker who was responsible for these referrals worked for a state facility (Facility B) which was not directly administered by this employee. This social worker was under the supervision of the administrator of that facility. The social worker worked for Facility A on a consultant basis.

The employee stated that in most matters involving the discipline of this social worker he would not be involved but rather the administrator of Facility B would exercise responsibility. Should a grievance matter arise under the collective bargaining agreement in effect, however, he would then be involved in the settling of this grievance. He also stated that should a private care facility complain that the social worker was not referring patients to care facilities on a fair basis, the social worker's supervisor would review those complaints and he would generally not be involved.

The applicable section of the state ethics code was HRS §84-14(b) (Supp. 1975). That section provides as follows:

> 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 noted that the employee's interests in this private facility constituted a financial interest as that term is defined in HRS §84-3(6)(A). The question to be resolved here was whether the private care facility would be directly involved in official action he would take as a state administrator. It was our view that this care facility would be so involved and that this section of the statute would therefore prohibit him from acquiring this financial interest.

We recognized that the primary responsibility for referrals to private facilities, such as the one this employee contemplated purchasing, lay with the social worker at Facility B and with that employee's supervisor. However, the subject employee's position description indicated that he was responsible for all state personnel working in this particular state facility system. It was conceivable, therefore, that he might be required to involve himself in matters arising from actions taken by state employees under his supervision that affected private homes. While it was very difficult to determine the probability of this occurring, his broad discretionary powers indicated to us that this possibility was sufficiently strong that he should not acquire ownership of this private care facility. Further, his ownership interest in this facility would prevent him in the future from taking action that might directly affect private facilities. It had always been the Commission's view that an employee should not place himself in a position that would require him to abstain from taking official action.

In addition, both the social worker and his supervisor would have been aware of his ownership interest in the private facility. Regardless of his attempts to insulate himself from matters concerning care facilities, it was certainly possible that the fact of his ownership would affect the decisions made by the social worker and his supervisor. As he was aware, the fair treatment section of the ethics code, HRS §84-13, prohibited the use of official position to secure unwarranted privileges for oneself or others. His desire to secure a ruling on this matter in advance of his purchase of this private facility indicated to us that he would make no conscious attempt to secure an unwarranted advantage or treatment for himself or the care facility. However, because of his broad discretionary powers and the responsibilities he had over the administrator of Facility B and the social worker, it was conceivable that the weight of his position would grant unwarranted advantages or treatment to the private facility he purchased.

The employee indicated that he worked very closely with a regulatory board of a department which was responsible for the supervision of all such private facilities. His relationship to that board was concerned solely with certification for certain government-aided patients and state facility licensing. He took no action in his work with this board that involved private facilities. We were concerned, however, that his ownership of a private facility could influence or have the appearance of influencing this board in the exercise of its duties as it affected his interest in the private facility he proposed to purchase.

We emphasized in reaching our conclusion that the ethics code did not prohibit the acquisition of outside interests so long as the pursuance of those interests did not require the use of state time or facilities and did not conflict with or have a tendency to undermine the duties of the state employee. Nor was this Commission of the view that outside interests should not be acquired. However, the employee's first responsibility was to the State and to the public, and outside interests were to be avoided where they conflicted with those public responsibilities.

We commended the employee for his full cooperation in this matter and his desire to be in conformance with the state ethics code.

Dated: Honolulu, Hawaii, January 26, 1977.

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

Note: Chairman Paul C.T. Leo and Vice Chairman I.B. Peterson were excused from the meeting at which this opinion was considered.