OPINION NO. 288

We received a request from an employee who was the secretary for a state board but not a voting member. He was also a professional engaged in his own private practice. In that capacity he had been asked by a private individual to represent a company in a land proceeding before a state commission. The employee was to represent this company in his private capacity and on his own time. The employee wished to know if his representation of this company in his private practice would conflict, under the ethics law, with his official duties to the state board.

We stated that the acquisition of a financial interest by a state employee was governed by HRS §84-14(b) (Supp. 1975). That section provides:

> 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 pointed out to the employee that as secretary to the board he was an employee for purposes of the ethics code. Then, his representation of the company was a financial interest. Accordingly, he could not acquire this interest if the business would be subject to official action he took as a state employee.

His duties to the board were primarily concerned with the preparation of the meeting agenda. However, he had indicated that he sat in on board meetings and, on occasion, actually participated in meetings by giving input on various matters. It was our view that he did then take part in the official proceedings of the board. We found that, if there were a probability that the company would come before the board for action, he would not be able to acquire that company as a client. We pointed out that HRS §84-14(b) prohibits an employee from acquiring an interest that would cause him to abstain from taking official action.

The company in question planned to develop a certain complex on land leased to it. The negotiations for this lease had already been completed; the employee had played no part in these negotiations. His only involvement with the company would be to represent it in the specific matter before the state commission.

The employee's concern was caused by the fact that the owner of the land leased to the company had agreed to turn over a certain amount of other of its lands to the state agency which was supervised by the board which employed him. This land would be given for the development of a certain project. Because the development of this project had been and would continue to be a controversial issue, he wished to have this Commission consider the possible application of the ethics code to this matter.

We noted that the employee's financial interest was in the company; he had no interest of any kind in the landowner. In addition he would have no dealings with the landowner other than to occasionally pass on information concerning the proceeding before the state commission. We also noted that there was no connection between the land parcel given to the state agency and that parcel that was being leased by the company.

We recognized that with regard to the company's proceeding before the commission, the landowner was certainly an interested party and would be affected by the action of that

commission. However, this employee's interest was solely as to the company; while it was clear that the landowner might be involved in action he took as a state employee, his representation of the company would not constitute a financial interest in the landowner.

As this employee clearly had no interest in the landowner and as the company was unlikely to ever come before his board for official action, we held that his representation of this company would not constitute a violation of HRS §84-14(b). Nor did we see a potential for the use of his state position to grant unwarranted advantages to the company.

We emphasized that this opinion was based on facts that the employee had presented to us which indicated absolutely no relation between his private client and the agency controlled by his board. We indicated that should additional facts come to light at a later time that might vary this situation, he should advise us.

Finally, we noted that the ethics code established minimum standards of conduct. We stated that should the board be of the view that this employee's representation of this company would not be in the best interests of the agency and the board, it would be within the board's prerogative to prohibit him from acquiring this interest.

Dated: Honolulu, Hawaii, January 27, 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.