

OPINION NO. 289

A member of a state board asked the Commission to determine if he could accept a position on the board of directors of a financial institution. The state board was responsible for the general administration and proper operation of certain programs and investments.

The financial institution in question, along with several others, received funds for investment in programs for the board's beneficiaries. Similar institutions also received funds from the board on deposit.

The relevant section of the state ethics code was HRS §84-14(b) (Supp. 1975). That provision states 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.

First, we pointed out that a member of this board was an employee for the purposes of the ethics code as provided in HRS §84-3(4). Then, his position as a director of the financial institution constituted a financial interest. (See HRS §84-3(6)(F)). Further, as the decisions of the board required the independent judgment and action of each member, such action was clearly "official action" as that term is defined in the statute. Our response to this employee's request therefore turned on a determination as to whether the subject financial institution would be likely to be involved in action he would take in the future as a member of his state board.

This state board allocated funds to the financial institution for programs to aid the beneficiaries of the board at certain rates and under certain conditions that applied uniformly to all such institutions. The employee stated in an interview with the Commission that the amount of monies allocated to these institutions was not significant and that these institutions realized only a small profit on their servicing of these programs. He also informed us that a \$500,000 reserve fund had been established to provide additional funds to those institutions that used up their allocation. Requests for additional funds were submitted to and decided upon by the executive secretary of the board. That person was also generally responsible for the deposit of regulated funds in various institutions. In these and many other matters the executive secretary exercised considerable authority.

It was our conclusion that the allocations to financial institutions of these special program funds were significant and discretionary decisions that could not be considered to be either ministerial in nature or of only minimal significance. Further, while we recognized the important role played by the executive secretary, his decisions were nevertheless made in the name of the board which maintained a review authority over his actions.

The board's actions were official as that term is used in the statute. Further, as no other agency intervened between the board's decisions and the financial institutions, those actions were direct as to each institution.

Accordingly, we concluded that the employee's directorship in this type of financial institution constituted an interest in a business that would be directly involved in action he took as an employee. It followed that he should not acquire this interest.

The Commissioners themselves were aware that an employee serving on a private board would gain insights that might be useful to him in his state capacity. We also realized, however, that members of boards who did not have this expertise provided valuable service to the boards they served. Indeed, we found it certainly conceivable that in establishing the membership requirements of this and other state boards, the Legislature deemed it advisable to have members serve who did not have experience in the area of concern to the board. That kind of experience had already been mandated in the appointment of one of this board's members. Further, we noted that a director of a private business had substantial fiduciary obligations to that company which might compete with the best interests of the public and in this case the system that was under this board's jurisdiction. We were of the view that both the ethics code in HRS §84-14(b) and the statute establishing the board anticipated these factors. Accordingly, we believed that the ethics code's restriction on the acquisition of this kind of financial interest was a reasonable one.

We appreciated the employee's presentation of this matter to the Commission and his sensitivity to the ethics of persons serving in state board positions.

Dated: Honolulu, Hawaii, January 27, 1977.

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