

OPINION NO. 297

An employee filed a disclosure with the Commission in which he indicated the acquisition of a financial interest. Because we believed that his disclosure raised sensitive questions which were of precedential value, we treated his disclosure as a request for an advisory opinion pursuant to Commission Rule 3.5.

The employee was a member of a state board which was responsible for the licensing of certain professionals. Among other things, that board was charged with responsibility for examining the qualifications of applicants for certification, the administering of examinations, and the denial, suspension, or revocation of certificates for the unethical practice of that profession.

The employee had recently been elected to the executive board of a private association of that profession. As a member of that board, he had been asked to serve on the ethics committee and/or the peer review standards committee of this private association. As a member of these committees, he would hear complaints against persons practicing the profession; such complaints might result in findings that a person should be suspended or dismissed from the association. The employee indicated that in these state and private capacities, he might on occasion hear complaints against the same individuals. This opinion discussed the implications of this situation under the ethics code.

We explained to the employee that despite the fact that he was not compensated as a member of the private association's executive board, this position nevertheless constituted a financial interest pursuant to HRS §84-3(6)(F). HRS §84-14(b) prohibits an employee from acquiring a financial interest in a business that is likely to be directly involved in official action to be taken by him. However, our staff's discussion with this employee indicated that action he took as a member of the state board directly affected only those individuals that came within the board's jurisdiction. The board did not take action concerning the association itself except in an indirect manner. Such indirect effect was not within the coverage of the conflicts section. We stated that he should, however, abstain from taking official action directly affecting the association if it became involved in a matter before his state board. This would be in conformance with HRS §84-14(a) which prohibits the taking of official action which directly affects a business in which an employee has a substantial financial interest.

Our concern with his position was that he might be called upon to judge the ethical conduct of the same individuals in both his private and state capacities. For example, an individual who had received an adverse judgment from an association committee on which he sat might justifiably question his participation in a similar proceeding before the state board which might take away that individual's license. In our view such an occurrence created a strong appearance of impropriety and misuse of position. Certainly such a situation could undermine the integrity of the state board. We therefore concluded that he could accept appointment to either the ethics or peer review standards committees of the association, with the caveat that he avoid taking state action affecting any person whose conduct he had previously judged in his private position with the association.

Though our concern was primarily with his conduct as a state employee, we believed the considerations we noted above might also apply where he participated in an association matter concerning an individual who had been investigated by the state board. In this regard we brought to his attention the language of HRS §84-12. This section prohibits an employee from disclosing "information which by law or practice is not available to the public and which he acquires in the

course of his official duties." We noted that it might be exceedingly difficult for him to separate information he learned in the course of a state investigation from a proceeding involving the same individual before the association. We therefore believed that he should seriously consider disqualifying himself from participating in matters before the association which involved persons previously investigated by the state board.

We recognized that complaints against individuals before both boards, while not rare, nevertheless occurred infrequently. Accordingly, we saw no reason why he could not accept appointment to the ethics committee or the peer review standards committee of the association.

The Commission had previously issued a caveat to him concerning the application of HRS §84-14(a) as it related to his own license to practice his profession. We stated that that caveat was, of course, still applicable to him.

The Commission commended him for bringing this matter to its attention at an early time so that the issues raised could be properly resolved.

Dated: Honolulu, Hawaii, March 29, 1977.

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

Note: Chairman Paul C.T. Loo and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.