

OPINION NO. 300

In February of 1977, the employee requesting this opinion became the administrator of a state planning and development agency. Several months prior to his appointment he was asked to serve on the board of directors of a nonprofit corporation which provided services to a particular segment of the community. If the corporation intended to expand its facilities or programs in a substantial way or alter the scope or type of service rendered, or alter the usage of its facilities, it would have been required to obtain a certificate from the employee's agency. Although he foresaw no request for such a certificate at the time he asked for this opinion, the possibility remained that such a request might be made in the future. Because any request for such a certificate might have been expected to come before him as administrator of the agency, he had asked if continuing in his private position created a conflict under the ethics code.

The section most applicable to his question, HRS §84-14(a) (Supp. 1975) states: "No employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest" Although he was in a non-civil service appointive position, he was still an employee for purposes of the ethics code. Official action is defined as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." Then, "business" includes any corporation whether or not operated for profit; this would encompass this private corporation within its meaning. And, finally, a "financial interest" includes a "directorship or officership in a business;" thus his membership on the board of directors of the corporation was a financial interest in this company. (See HRS §84-3 for definitions.)

In past opinions, we had generally considered a directorship of a corporation to be a substantial interest. We had found this to be so because of the fiduciary duties involved in holding a directorship and the possible liability occasioned by the mishandling of those duties. The fact that this corporation had filed for voluntary reorganization under Chapter 11 of the federal bankruptcy law did not change his position with the company and his directorship continued to be a substantial financial interest. Therefore, we found that he might not take official action with regard to the corporation and its facilities. If the company was to come before his agency for any reason he would be required to abstain from taking any action which directly affected the company. He did not, however, have to resign his position on the board of directors.

We expressed our awareness that many employees come into their positions with outside interests and noted that these interests are generally taken into account before the person is hired. In those cases the statute required only that the employee abstain from actions affecting those interests. Divestment would be required only in a case where the employee's interests were so extensive as to require his constant abstention.

Finally, we stated that he should be aware of two additional sections the statute which were applicable to situations such as his. The first, HRS §84-12, prohibits an employee from disclosing confidential information gained in the course of his official duties, or from using such information for the benefit of others; the second, HRS §84-13, prohibits an employee from using his position to gain unwarranted advantages for himself or for others. We commended him for his concern for ethics in government and wished him well in his new position.

Dated: Honolulu, Hawaii, April 7, 1977.

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

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