

## OPINION NO. 307

The director of a department requested an advisory opinion concerning a member of a state committee which sat in an advisory capacity to one of the state programs administered by his department. The member had been offered a seat on the board of directors of a private nonprofit corporation, and the director asked the Commission to determine if the two positions were in conflict under the Hawaii State ethics code.

The relevant section of the ethics code was HRS §84-14(b) (Supp. 1975) which 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.

First, we pointed out that a member of a state committee is an employee for the purposes of the ethics code pursuant to HRS §84-2. Secondly, pursuant to HRS §84-6(F), a directorship in a business is a financial interest for the purposes of the ethics code; therefore, the committee member would have a financial interest in the corporation. The question for our determination then was whether the corporation was likely to be directly involved in official action the individual took as a member of the state committee.

The committee was established by the State; its members were appointed by the director of the department by mandate of federal law. The committee sat in an advisory capacity and gave input to the department in a particular program. It was our understanding that its primary function had to do with giving advice on a handbook that the department published; the handbook provided guidance to individuals involved with the program.

The administrator of this program provided the Commission with information on the functioning of the committee and on its relationship with the corporation. He indicated that the committee had on several occasions discussed the corporation and its relationship to the program. He noted that the corporation was the fiscal intermediary for the program, meaning the corporation received and monitored claims submitted by recipients of services under the program, and determined eligibility for payment. If the corporation determined that a claim was valid, payment was made to the appropriate individuals. This payment was reported to the department which authorized reimbursement to the corporation by the State. The corporation was paid a \$1 fee for each claim processed. The contract between the department and the corporation was renewed annually. However, the administrator indicated that it was likely that the corporation would continue to provide those services for an extended period of time in the future. There did not appear to be any other feasible source for these services.

The department had sole responsibility for decisions made on the contract with the corporation. The administrator indicated, however, that on a number of occasions members of the panel had commented on various aspects of the contract. At the time of this request, the committee had not made recommendations concerning the contract to the department. This failure to make such recommendations was due in large part to committee members being unable to reach a consensus on the subject matters discussed. He noted that it would be appropriate for the committee to make such recommendations and stated that it was conceivable that this could occur in the future. He also advised us that it was likely that the corporation would be the subject of discussion by the committee in the future.

It appeared likely that the corporation would be involved in action taken by this committee at times in the future. It therefore followed that the committee member in question would also be taking action directly involving the corporation. We recognized that the committee did not make final decisions with respect to the corporation's contract or other matters concerning this program. However, we pointed out that the statute provided that official action was not limited to final decision-making but included "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." (HRS §84-3(7).) We stated that the recommendations made by this committee, therefore, did clearly constitute official action for the purposes of interpreting the ethics code.

Accordingly, it was our view that should the committee member decide to accept the position on the board of directors of the corporation, he must relinquish his position on this state committee. That he would be able to disqualify himself on matters concerning the corporation was of no relevance to this particular section. We noted that it had always been the Commission's view that the section required that an employee not place himself in a position that would require disqualification.

We acknowledged the significant service that the committee member had provided to the committee and understood the director's desire to have him continue his membership. However, we stated that the position with the corporation presented a clear conflict and one that was of a kind that was anticipated by the ethics code. It was therefore our opinion that the committee member should not occupy both positions simultaneously.

We appreciated the director's bringing this matter to the Commission's attention at an early time and thanked the administrator of the particular program for his cooperation.

Dated: Honolulu, Hawaii, July 18, 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