

OPINION NO. 309

We received a request for an advisory opinion from a member of a state board. This board was involved in a matter that had been the subject of considerable controversy. Because of certain relationships between the business which this board member managed and corporations which might be affected by action the board might take, he asked the Commission to determine whether his taking action as a member of the board on this matter would constitute a violation of the ethics code.

The board member described a complicated situation to us which set forth the interrelationships of several companies. He was the general manager of a company which had business ties with a number of enterprises, some of which were related to the matter before his board.

The statute most applicable to his question was HRS §84-14(a) (Supp. 1975) which states:

No employee shall take any official action directly affecting ... a business or other undertaking in which he has a substantial financial interest.

By virtue of his position on the board he was an employee for purposes of the ethics code. (See HRS §84-3(4)). Official action is defined by HRS §84-3(7) to include "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." Clearly his actions as a member of this board constituted official action. Then, a financial interest is defined in HRS §84-3(6)(C) to include an employment interest. Further, we had determined in past opinions that an employment interest is a substantial interest; therefore, he did have a substantial financial interest in the company that employed him. Consequently the conflicts section had application to his situation and he was prohibited from taking any action as a member of the board which directly affected his company.

The issue involved in his request then was whether the action taken by the board which might affect companies that had business ties to his employer would directly affect his employer. We found that it would not have this effect and that the ethics code did not prohibit him from taking action as a member of the board concerning the controversial matter before it.

Our analysis indicated that action affecting the companies that did business with his employer could not directly affect his company. It was clear that the effect of the board action on other companies might well have been of concern to his employer but it was equally clear that the effect on the employer would be at most indirect.

While the ethics code did not require that he abstain from taking action in this matter, we did bring to his attention the language of HRS §84-13 which in essence states that an employee may not use his position to secure or grant unwarranted privileges, exemptions, advantages, or treatment, for himself or others. We noted that through his past positions and his frequent contact with other companies he had a close relationship with businesses that might be affected by the board's decisions in this matter. We stated that if he felt that these relationships might cause him some difficulty, he might wish to avoid even an appearance of impropriety by voluntarily abstaining from taking any action. Whether he did follow such a course of action because of this close relationship with these companies was a matter to be determined by him and the board.

We commended him for his appreciation of the ethical considerations involved in this request and thanked him for his cooperation.

Dated: Honolulu, Hawaii, August 3, 1977.

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

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered.