

OPINION NO. 326

We received a request for an advisory opinion from a member of a state board that had responsibility for administering a state law governing employees. He was interested in becoming a minority investor in a corporation which was seeking a transfer or assignment by the present lessee of a lease to property owned by the State of Hawaii. Such transfer or assignment required the approval of two state boards. He asked the Commission to determine if his acquisition of this interest would violate any provisions of the ethics code.

Provisions contained in HRS §84-14(b) and HRS §84-15(a) had most direct application to the question he had raised. HRS §84-14(b) (Supp. 1975) states:

No employee shall acquire financial interests in any business or other undertaking which he has reason to believe maybe directly involved in official action to be taken by him.

While he would be acquiring a financial interest as that term is defined in the statute, this business interest would have no conceivable relationship to this board. Accordingly, we stated that the conflicts of interest section would not restrict this acquisition.

The contracts section provides that a state agency may not enter into a contract with a business in which a state employee has a controlling interest if the value of the contract is in excess of \$1,000 unless the matter has been the subject of public notice and competitive bidding. The board member was, of course, a state employee and as such was subject to the requirements of the code. Further, while his interest in this company would be that of a minority shareholder, that interest coupled with his position on the board of directors would constitute his interest as a controlling one under the statute. However, the lease transfer he was seeking from the present lessee had been submitted to a competitive bidding process when it was first granted. The negotiations that his potential company was involved with concerned only the present lessee and not the State. While the State would be required to give its approval of the lease transfer, we did not interpret this as a contract as that term is used in HRS §84-15(a). Accordingly, it was our opinion that this section had no application to his potential company's acquiring this lease interest.

The member's letter had already indicated a sensitivity toward the requirements of the fair treatment section, HRS §84-13. That provision prohibited him from using his state position to secure unwarranted advantages for himself or for others and such advantages include contracts. In his letter he also noted that he would not represent the corporation in any proceedings in which its presence would be required before the two boards. While we did not see that the statute specifically prohibited him from making such an appearance, we commended him for his sensitivity in removing himself from even this appearance of impropriety.

Dated: Honolulu, Hawaii, January 16, 1978.

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.