

OPINION NO. 329

An individual who was involved in the commercial production of a certain product was hired by the State as a specialist in a related field with statewide extension responsibilities relating to the industry which had developed around that field. The industry and his business dealt in similar products but ones which were treated differently by the division with which he worked.

The employee had been asked to become a participating member of a co-op which was initially being established to help market the product he produced. The initial membership would consist of six to eight producers although he stated the co-op would be open to all similar producers in the State including those in the industry to which he provided extension services. The members would each pay an initial fee and then contribute a percentage of their gross receipts from sales through the coop toward its operational expenses. At the end of each year any excess funds would be returned to the members. As a member, the employee would sit on the board of directors; however he stated he would not be an officer. The employee asked this Commission to determine if the ethics code would prohibit him from becoming a member of this co-op.

We pointed out that the section of the ethics code which dealt with interests an individual gained or wished to gain after becoming a state employee was HRS §84-14(b). That section states:

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.

We noted that an ownership interest and a directorship in the cooperative were both financial interests for purposes of the ethics code. (See HRS §84-3(6)). Therefore, we stated that the statute would prohibit him from acquiring these interests in the cooperative if the co-op might be directly involved in official action he took.

We explained that in Opinion No. 178, we had found that an officer of a trade association had a financial interest in that association and we had held that he might not take any action which directly affected that association. We had further stated that the trade association would be "directly affected" when all of its members or segments of members were directly affected by action taken by the state board on which this individual sat. We had indicated that the board member/officer could take action, however, that affected only one member of the association. Similarly, by stating that HRS §84-14(b) would prohibit this employee from acquiring an interest in a cooperative if it would be directly involved in official action he took, we meant that he would be prohibited from acquiring the interest if all the members or segments of members would be directly involved in such action but not if the action involved just one member.

The employee's job description indicated that he was involved in developing nutritional, irrigation, and pest control programs for certain products, conducting variety trials, providing pertinent research information to producers of a certain product and the general public, and coordinating the efforts of other specialists in helping to resolve problems in this field including those encountered in the post-harvest handling, marketing and retailing of the products. The employee had stated that these latter duties would involve his referring a producer with one of these problems to an appropriate authority in that particular field rather than his attempting to deal with

that problem himself. His main responsibilities lay in conducting research and providing the information gathered to those groups which it might affect.

In addition, he stated and his supervisor agreed, that while he was an extension agent he generally provided backup support to the county agent who dealt directly with the producers rather than direct services to the producer. The supervisor had indicated that an extension agent would be assigned to this co-op once it was finally formed but it would be a county agent rather than the employee.

These factors did not seem to indicate to us that he would be involved in action directly affecting this co-op. While one of the prospective members of the co-op produced the product which was within the employee's expertise and the employee might take action which indirectly affected that prospective member when providing extension services to that industry, we did not see this as an interest which would prohibit the employee from becoming a member of the co-op.

We recognized that the proposed bylaws of this co-op would allow it to become involved in marketing the product for which he was the extension agent should a changing membership require it. We also noted that the membership would be open to any producer in the State. Therefore, a significant number of new members might require extension services in his field. However, for this fact to be sufficient enough to prohibit him from joining the co-op, we stated there must be a strong probability rather than a mere possibility that these new members and thus the co-op would be directly involved in action to be taken by him. It did not appear to us at the time we issued this opinion that this would be the case. Therefore we found no reason to prohibit him from joining the co-op.

We did state, however, that if the membership of the co-op did expand in the future and the co-op did become actively involved in marketing the product which was his state speciality, HRS §84-14(a) would require that he abstain from taking any action directly affecting the coop, all of its members or segments of members. If he then found that his carrying out his state duties was significantly limited by his having to abstain, he should withdraw from membership in the co-op.

In addition, there were other considerations involved in his participating in this co-op. While we did not find from the facts presented to us that the co-op would be directly involved in action taken by him, we pointed out that the coincidence of his private and state positions might create an appearance of conflict. To counteract this inference we stated that he should be very careful in the manner in which he conducted himself when dealing with or for the co-op.

In that regard we also noted that he should be aware that HRS §84-12 prohibited him from disclosing or using for the benefit of the co-op any confidential information which by law or practice was not available to the general public. And, HRS §84-13 prohibited him from using his state position to secure unwarranted advantages or contracts for himself or others. This included such things as using state time, equipment or facilities for any private business purpose.

We commended the employee for recognizing the ethical questions which were involved in his joining this cooperative and for requesting this opinion before doing so.

Dated: Honolulu, Hawaii, February 6, 1978.

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