

## OPINION NO. 331

The chairman of a state commission requested an opinion concerning the following situation. Each year the commission honored four individuals in the community by selecting them to serve in certain positions at a state event. The positions were considered important as a means of recognizing individual achievements and contributions to the community.

The chairman indicated that the commission had recently begun to accept applications from individuals for these positions. Previously, the commission had selected the individuals from those nominated by commission members. A subcommittee now accepted all applications, reviewed them to see if they met the initial limited qualifications, and then presented no more than three names for each position to the full commission for final selection. The commission reviewed the individual accomplishments and achievements and made its selection by secret ballot.

An individual who was a member of the commission had applied for one of the positions. Before presenting any applications to the entire commission, the chairman asked us to determine if the application of this member could be considered without violating the ethics code.

We explained that in most cases the conflict of interest sections would apply to a commission member who requested action from the body he or she served. These sections prohibit state employees from acquiring interests which may be involved in action they take in their state capacities. We noted that while this example of the statute's application would be somewhat analogous to a commission member applying for one of the honorary positions, the conflicts sections dealt strictly with financial interests. An honorary position did not constitute a financial interest and therefore the application by a member for one of these positions would not be prohibited by the conflicts sections of the code.

We stated that there was another section of the code which did have application to this question, however. We pointed out that the basic thrust of the ethics code is contained in the fair treatment section, HRS §84-13, which states in part:

No ... employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others.

We indicated that a member of a commission was an employee for purposes of the statute. Therefore, this commission member could not use his position on this commission for an unwarranted advantage or treatment.

In Opinion No. 330, we had stated that "an employee who seeks official action on his own behalf from the agency he serves, creates a presumption, under the fair treatment section, that he is using his position in an unwarranted manner." We explained that the relationship which develops between fellow board or commission members is such that a truly objective decision on the action sought by the fellow member can not be achieved. We saw this as especially true in a situation where the criteria for taking action was very personal as it was in this case. We had not, in overruling Opinion No. 10 in Opinion No. 330, and did not here, bar all such action. We stated that where it could be shown that to prohibit a member from applying for action from his or her own board or commission would lead to an unjust or inequitable result or that from the particular circumstances there would be a clear showing that no unwarranted advantage could accrue, we

would find no violation of the statute. No evidence of such factors appeared in this case, however, and we therefore found that a member of this commission could not apply for one of these honorary positions.

Additionally, we noted that HRS §84-1 mandates that the ethics code be liberally construed to promote high standards of ethical conduct in state government; the preamble of the code requires that we enforce the provisions of the law so that public confidence in public servants will be preserved. With these mandates and with the high appearance of impropriety which would be involved in a member of this commission applying for and being selected for one of these positions, we felt that such action should not be taken by a commission member.

We indicated that by holding that a member of this commission should not apply for one of the honorary positions we were in no way making any determination as to the merits of the present member's application. We commended the chairman for his concern for ethics evidenced by this request.

Dated: Honolulu, Hawaii, March 2, 1978.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Chairman  
Audrey P. Bliss, Commissioner  
Gary B.K.T. Lee, Commissioner

Note: Vice Chairman I.B. Peterson and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.