

OPINION NO. 332

We received a request for an opinion from an individual who had been appointed to a state council which had been established to advise the State on programs and services for a particular target group in the community. At that time, he was the director of a private neighbor island organization which provided services and programs to a portion of that target group. He was advised by the Commission, at the time of his appointment, that in accordance with HRS §84-14(a), he should avoid taking any action on the council that would directly and specifically affect his employing organization. Subsequently, he moved from the neighbor island and sought new employment on Oahu.

According to the individual's testimony, he became aware, through an advertisement, of a position that was ostensibly with a Honolulu organization of the same nature as the one he had served on the neighbor island. After inquiring about the position, he realized that it and the person who filled it were slated to become part of a newly organized agency. The council had been instrumental in the planning of the agency and in the approval of its final budget for the receipt of federal funds. In addition, the council had given a one-year grant to the agency for its initial programs. The council was also responsible for the final approval of the agency's board of directors and its bylaws.

The individual applied for and accepted the position with the agency. He then asked the Commission to determine whether his acceptance of this position had been in violation of the statute.

We pointed out to the individual that as a member of a state board or commission, he was a state employee for purposes of the ethics code and was, therefore, subject to its provisions. Two sections had particular application to the question he had raised. The first, HRS §84-14(a), applied to him when he was initially appointed to the council. As we had noted in our letter to him at that time, he was required to abstain from taking any action on the council which would directly and specifically affect the neighbor island organization. We stated that that portion of the conflicts section was concerned with interests held before one became a state employee.

We explained to the individual that a different situation occurred once someone became an employee and then wanted to acquire a financial interest. The relevant provision, HRS §84-14(b), 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 indicated that HRS §84-3(4) defined an employee to include any "nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees..." HRS §84-3(6) defined a financial interest to include an employment interest. Further, the term business was defined by HRS §84-3(1) to include "a corporation ... or other organization carrying on a business, whether or not operated for profit." Therefore, we stated that as a member of the council he should not have acquired an employment interest in any business which he had reason to believe would be directly involved in official action to be taken by him.

In his testimony he indicated that once he had inquired about the advertised position with the Honolulu organization he realized that the position was to be transferred to the agency. He was also aware that the council was taking action directly affecting the agency and would continue to do so in the future. Therefore, we found that by applying for this position without first resigning from the council he had violated this section of the statute.

The Commission learned from his testimony and that of another member of the council that a selection committee chose him for the position with the agency from a group of finalists. Two of the five members of this committee were fellow council members. We noted that at that point he should not have pursued this position further without first inquiring of this Commission as to the possible application of the ethics code. Certainly he should have been aware that his application might be favored by the fact that two of his colleagues had a voice in the final selection. Despite their efforts they could not be truly objective in such circumstances. In addition, his fellow applicants could not be certain that his relationship to members of the selection committee did not influence the final decision. We found that his actions here had created an appearance of impropriety.

Nevertheless, we did not believe that the individual had overtly used his position on the council to secure his present employment with the agency. Accordingly, we did not recommend that he resign his paid position with the agency. Because his two positions were in conflict, however, we stated that he must resign from the council if he wished to remain with the agency.

We stated that he should also be aware that should he choose to give up his position with the council the post-employment provisions of the ethics code would apply to him. HRS §§84-18(b) and (c) state:

(b) No former ... employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, *on matters in which he participated as an employee.*

(c) No former ... employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, *on matters involving official action by the particular state agency or subdivision thereof which he had actually served.* [Emphasis supplied.]

We noted that these sections meant that for a period of twelve months he could not represent or assist the agency on any matters in which he had taken action as a member of the council.

In addition, during those same twelve months, he could not assist or represent the agency on any matter involving official action of the council. We explained that this section of the statute was designed to provide a "cooling off" period during which time the employees of the former agency and the former employee would have an opportunity to adjust to their new status with regard to one another.

We understood that the individual was vitally interested in programs for the target group and we indicated that we respected his dedication to the field. Again, we found no wrongful intent on his part at any time. We stressed, however, that individuals who serve in public positions must be aware of the effects that may be created by the methods used to achieve their goals, no matter how

noble. Public confidence in governmental decisions must not be sacrificed to the achievement of these goals.

We requested that the individual notify the Commission of his decision in this matter. Should he decide to resign from the council, we stated that our staff would assist him in determining how the post-employment provisions would affect him as an employee of the agency.

We commended the individual for the concern for ethics evidenced by his requesting this opinion.

Dated: Honolulu, Hawaii, March 8, 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.