

OPINION NO. 347

The executive director of a state agency became concerned that the state and private positions of one of his staff members might constitute a conflict under the ethics code. He asked this Commission to review that situation and determine if any violation existed.

The employee in question was the statewide coordinator of one of the programs of his agency. In this position he was responsible for coordinating the efforts of approximately 25 other employees by scheduling and coordinating their activities in carrying out this program. He had held this position with the State for two-and-a-half years. He was also currently president of a private non-profit organization which received grants totalling approximately \$20,000 from the agency. The employee had been associated with the organization for approximately 12 years and had served as an officer for most of those years.

The employee indicated to the staff that in his position with the State he would not normally deal with the programs of the private organization and had no duties with regard to the review of the organization's applications for funding from the agency. He indicated that he had attended the agency's board meetings as an observer and had answered questions when asked. He had also participated as a panel member for the agency and reviewed certain types of proposals, but he stated that he was asked to do this as a community representative rather than as a staff member. He had done volunteer work for the agency since its inception and had participated on various panels during that time. He indicated to the staff that he did not believe he had participated in any panel which had reviewed a proposal submitted by the organization. Finally, while he had signed or co-signed a number of the organization's proposals, because of his position as an officer, he had never represented the organization before the agency's board.

HRS §84-14(a) stated that "[n]o employee shall take any official action directly affecting...[a] business or other undertaking in which he has a substantial financial interest." We pointed out that even though this individual was employed in a temporary program, he was a state employee for purposes of the ethics code. And, a business was defined by the code to include non-profit organizations such as the one to which he belonged. (See HRS §84-3(1).) Then, an officership or directorship in a business was considered a financial interest (See HRS §84-3(6)(F).) Finally, we indicated that the Commission had held in the past that an officership in an organization was a substantial financial interest cause of the fiduciary duties involved.

Given these definitions we stated that the conflicts section prohibited this employee from taking any official action which directly affected the private organization. Such official action would include "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." (HRS §84-3(7)) It did not appear from the facts presented to us that this employee was in a position to take such action. However, we indicated that if the organization should come before him, he should abstain from taking any action affecting it.

We pointed out to the director that a more important factor in this case was the unfavorable appearance that was created when a person on his staff was also the recipient of grant funds on behalf of a private organization. HRS §84-13 prohibits a state employee from using his or her position to gain or grant an unwarranted advantage to him or herself or others. While we found no violation of this section in this particular case we recommended that members of his staff should, if possible, avoid this situation by not serving as conduits for agency funds to private

organizations. We also stated that staff members should be careful not to use their positions to advantage any group in an unwarranted manner nor should they use confidential information to aid organizations to which they belonged. Finally, we stated that if members of his staff wished to become officers of organizations which might be involved in actions they would take as state employees, they should check with the Commission first as a different, more stringent section of the code would apply to that situation.

We also indicated some concern over asking this employee or any staff member to sit on a review panel as a community representative. We did not believe that the public nor possibly the employee would be able to appreciate that distinction. We felt that the appearance of impropriety was such that the director should avoid such situations in the future. We stated that this employee or any other member of his staff should participate as staff members if he wished them to participate at all. In this way their actions would be governed by the code.

We commended the director's concern for maintaining high ethical standards and we indicated our appreciation of the cooperation provided by the employee involved.

Dated: Honolulu, Hawaii, August 21, 1978.

STATE ETHICS COMMISSION
Paul C.T. Loo, Chairman
I.B. Peterson, Vice Chairman
Dorothy K. Ching, Commissioner
Gary B.K.T. Lee, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered.