

OPINION NO. 353

The assistant administrator of a state agency asked this Commission to review the duties of two types of councils and their respective committees which were established under his agency to determine if the ethics code applied to the members of those councils and committees. The councils in question were a state-wide council (council A) and a number of regional councils (councils B). Both types of councils were established under a specific statute. In addition, an additional section of the statute required that a review panel be established. And, council A had on its own initiative appointed three other standing committees.

Section 84-2 of the ethics code states that the code applies to "every nominated, appointed, or elected officer or employee of the State, *including members of boards, commissions, and committees, and persons under contract to the State....*" [Emphasis supplied]

We found that the members of council A and councils B were appointed by the Governor and were therefore appointed officers or employees of the State. These councils were established by state statute and it followed that they were state boards, commissions or committees. We indicated that it made no difference that their official titles used the term "council." The crucial point was that those bodies were established by the State to carry out specific state functions. Clearly then the ethics code applied to members of these councils.

The review panel was also established by statute and its members were appointed by the chairman of council A with the consent of its members. This panel was responsible for reviewing applications for and making recommendations with regard to a specific certification program. These certificates were required by any provider of a certain type of service that wished to alter its facilities or services in any significant way. This review of these applications was performed on behalf of the State as a part of its over-all planning and resources development program in this subject area. We found that the members of this panel were also appointed employees of the State serving on a state body and therefore subject to the ethics code.

Finally, council A had three standing committees established by its own internal rules. Committee 1 had primary responsibility for overseeing the development of the state's policy in a certain area and the development, review and amendment of the state's plan in this same area. Committee 2 was responsible for reviewing proposed project applications for federal funds as required by federal law or by state law and for transmitting its recommendations on such applications to council A. Finally Committee 3 was responsible for developing, coordinating, and monitoring an over-all continuing education program to provide council A and councils B with the orientation information and skills building training necessary for the most effective performance of their functions.

The members of these standing committees were appointed by the chairman of council A with the approval of its members. In addition to members of council A, these committees included members of the councils B as well as outside members.

We stated that the ethics code did not require that an individual be appointed by the Governor to be considered an appointed officer or employee of the State. In Opinion No. 341 we found that members of a committee who were appointed by the head of a department were appointed employees or officers of the State. Here we found that appointment by the chairman of a state board, in this case council A, also qualified the members of the committee as being

employees or officers of the State as it had also qualified the members of the review panel. However, as we had indicated in Opinion No. 341, for the ethics code to be meaningfully applied to these individuals, the bodies they served must also be found to be state agencies.

The term "state agency" is defined by HRS §84-3(9) to include "the State, the legislature and its committees, all executive departments, boards, commissions and committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government...." We believed that this very broad term included the concept of these standing committees. They were permanent committees of the state council, assigned specific duties and endowed with significant discretionary powers to be exercised on behalf of the State in developing its over-all state health plan and program. While they were not established by the Legislature, they were part of the State of Hawaii's participation in the implementation of a federal law. Therefore, we found that the members of these committees must adhere to the standards set forth in the state ethics code.

We stated to the administrator that in communicating our findings to the members of these councils and committees he should indicate to them that their status as state employees required that they not use their positions on these bodies to gain or grant unwarranted advantages to themselves or others. In addition, they were required to abstain from taking official action which affected substantial financial interests of theirs and to refrain from acquiring new financial interests which might come before their council or committee for official action.

We enclosed a copy of Opinion No. 341 for his reference and information. We indicated that his awareness and concern for wishing to determine the applicability of the ethics code to these bodies was commendable.

Dated: Honolulu, Hawaii, September 22, 1978.

STATE ETHICS COMMISSION
I.B.Peterson, Vice Chairman
Audrey P. Bliss, Commissioner
Dorothy K. Ching, Commissioner

Note: Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee was not present during the discussion and consideration of this opinion.