

OPINION NO. 355

An employee of a state facility which offered direct services to a certain group of persons was a member of the board of directors of two private organizations. One of these organizations (Organization 1) offered services to this same group and the other (Organization 2) was established to help protect the rights of these and certain other individuals. The employee asked the Commission if his holding of these private positions placed him in violation of the conflicts section of the ethics code.

In both organizations, he became a member of the board of directors after he had been hired by the State. Therefore, the conflicts section of the code which applied to his question was the most restrictive provision, HRS §84-14(b). It states:

No employee shall acquire financial interests in any business or other undertaking which he had reason to believe may be directly involved in official action to be taken by him.

We explained that for purposes of the ethics code, an officership or directorship in an organization, whether or not operated for profit, is considered to be a financial interest. (See HRS §§84-3(1) and (6).) Therefore, his board positions gave him financial interests in both of the organizations. We stated that if at the time he became a member of these respective boards he could have reasonably foreseen that either of these two organizations would be involved in official action he took or would take in his state capacity, then he would have violated this section of the statute by accepting the position. Because we found that neither organization had been or was now involved in official action he took in a state capacity, we concluded that he had not violated the ethics code when he had accepted these positions.

We explained to the employee that "official action" is defined by HRS §84-3(7) to include a "decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." In his job at the state facility he was responsible for providing support to other employees in carrying out programs designed to promote the physical, mental and emotional well being of the clients. Such support included but was not limited to assisting in individualized programs designed to provide basic academics applicable to everyday living, supervising indoor and outdoor activities, and observing, reviewing and evaluating individualized therapeutic conditions for clients.

The employee stated that in this position he had no contact with Organization 2 and as a member of its board he had no contact with the state facility. Therefore, while this organization was established to service individuals that included the clients of this facility, there was no official relationship between the two. Consequently, he could not take official action affecting the organization and thus had not violated the code by becoming a member of the board of directors.

With regard to Organization 1, it appeared that there was an ongoing relationship between the state facility and this organization. While the director of the facility did meet regularly with the director of the organization to discuss programs and policies, this employee had no input into such policy decisions. His job description indicated, and we confirmed, that his duties for the facility fell principally within the area of providing direct care and services to clients of the facility and not into providing input into the facility's administrative policies with regard to such organizations as this. In addition, this organization did give the facility a stipend for use in providing transportation for

clients. However, he was not involved in this aspect of the facility's services and was not in any way a beneficiary of this stipend. Given these factors we did not see that this organization was involved in official action he took. Therefore, we found that this employee had not violated the statute by accepting a position on this organization's board of directors.

We specifically pointed out to the employee that we were not here discussing any possible conflict that might have arisen from his being on both of these boards. We noted that for the ethics code to apply to that question, one of the organizations had to be a state agency. Organization 1 was clearly a private agency; while Organization 2 did receive state funding, it did not appear to be a state agency for the purposes of the ethics code. We explained that questions which might arise because of his positions on both boards would have to be settled by the individual boards or by any federal law which might be applicable to the members of Organization 2 because of its receipt of federal funding.

We commended the employee for seeking to resolve any possible conflicts which might have arisen because of his public and private positions. We recognized that some state employees did not realize or chose to overlook the fact that service to non-profit community organizations can also conflict with their duties as state employees. The fact that an organization provided a community service, did not insulate a state employee's participation on its board from the standards of the ethics code.

Dated: Honolulu, Hawaii, November 3, 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.