

## OPINION NO. 361

A state employee who gave certain counsel to a state department had been invited to sit on the board of directors of a non-profit, service-oriented corporation. He asked us to determine if his acceptance of this position would place him in conflict with any of the provisions of the state ethics code.

The applicable provision of chapter 84 was HRS §84-14(b) which provides:

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.

The non-profit corporation provided services to persons in the community who met certain eligibility criteria. Despite this community service orientation, however, the corporation was a business for the purposes of the ethics code. In addition, his position as a director, even though unpaid, constituted a financial interest under HRS §84-3(6).

Accordingly, the conflicts section required that if, as an employee of the State, he anticipated that the corporation might be involved in action he would take in his state capacity he might not accept a position on its board of directors. The corporation had been very much involved in attempts to change a number of policies in certain state departments. And it appeared to us on first review that a potential existed for such involvement with the department served by this employee.

We did learn that the corporation had recently sought certain action from the department. The deputy director of the department advised us, however, that that matter was no longer active and that the department was not involved with the corporation on any other matter. He had also indicated that while other state agencies might have considerable involvement with the corporation, this department did not. In the past we had stated that the restriction of HRS §84-14(b), which was quite broad, should not be applied unless there was a strong probability that the employee would be required to take action affecting the business in which he intended to acquire an interest. Because the circumstances of this matter did not indicate such a probability at the time, it was our opinion that he might accept the invitation to serve on the board of directors of this corporation.

We did caution him, however, as to the application of the fair treatment section, HRS §84-13, to his two positions. Certain of his colleagues were involved in matters that were of concern to this corporation. He was advised, therefore, to be meticulous in avoiding any contact or participation, however informal, in such matters so that his position with the corporation would in no way affect state decisions that concerned it. Further, we stated that if his assignment should change or events within the department occur such that his state position would be involved with the corporation, that he should notify this Commission promptly.

We were most pleased that his sensitivity to the ethics questions involved here led him to request an advisory opinion at an early time.

Dated: Honolulu, Hawaii, November 29, 1978.

STATE ETHICS COMMISSION  
Paul C.T. Loo, Chairman  
Audrey P. Bliss, Commissioner  
Dorothy K. Ching, Commissioner

Note: Commissioner Gary B.K.T. Lee was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.