

## OPINION NO. 368

We received a request for an advisory opinion from a member of a state board which had authority over a specific agency. He anticipated that he himself would be using the services of the agency. He wished to know if the ethics code would prevent him from taking action that would affect a user fee charged by the agency for its services and a financial aid program if he became a recipient of a loan. He also asked us to determine if he could participate in personnel matters which involved the employees of the division whose services he would predominately use.

The questions he had posed concerning the user fee and financial aid fell, technically, within the conflicts section of HRS §84-14(b) because he was not presently making use of the agency's services. That section dealt with the acquisition of financial interests after one becomes a state employee, and as he was aware, a member of his board was a state employee for the purposes of the ethics code. HRS §84-14(b) states:

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

The issue of user fees was in actuality the question of whether a member of this board might utilize this agency's services inasmuch as all users of these services were required to pay these fees. He stated that the fees were reviewed by the board and such rates were established by it. We noted that that is official action for purposes of the ethics code. We explained that we had already determined that payment of these fees, while not a business, was an "undertaking" in that it did fall within the concept of an activity, concern, pursuit or other matter (see Opinion No. 177). The question then turned on whether he had a "financial interest" in the matter of paying these fees.

"Financial interest" was defined by HRS §84-3(6) to mean "an interest held by an individual, his or her spouse, or dependent children which is:

- (A) An ownership interest in a business.
- (B) A creditor interest in an insolvent business.
- (C) An employment ...
- (D) An ownership interest in real or personal property.
- (E) A loan or other debtor interest.
- (F) A directorship or officership in a business."

While the member would have to pay a fee if he used this agency's services, it was still not one of those interests which are defined as financial interests by the statute. Therefore, we ruled that a member of this board could use the services of this agency.

With regard to the question of financial aid, we stated that a loan to him would be considered a financial interest and would also constitute an undertaking. The question in this case

was whether a loan from this agency would be directly involved in official action to be taken by him as a member of the board. The member advised us that the board administered a trust fund which involved certain specific loans. Because his action on the board would directly affect those loans, we stated that he could not apply for one of them. However, he also stated that the bulk of financial aid given by the agency was required to be issued in accordance with federal guidelines and that the board did not become involved to any extent in policy matters regarding this aid. We did not believe that aid of this type would be directly involved in official action he took and that he might therefore apply for such aid.

We pointed out to the employee that he should be aware that HRS §84-13 prohibited him from using his state position to gain an unwarranted advantage for himself or others. Therefore, if he chose to apply for financial assistance, he should be careful to avoid reference to his position on the board in securing such aid.

We noted that while we had discussed the question of the acquisition of these various interests, we felt that the more fundamental issue had to do with whether a present user of the agency's services might take action on the board which affected user fees and financial assistance programs. Since we had determined that a member of this board might become a user and pay the user fees and apply for financial assistance, it followed that a user/member need not later disqualify him or herself from taking action affecting them.

HRS §84-14(a) states:

No employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest ....

This section of the code only required abstention on matters directly affecting a business or undertaking in which the employee had a substantial financial interest. Since we had already determined that a user/member did not have a financial interest in user fees, he or she need not abstain when that issue came before the board. In the case of financial assistance, while that was a financial interest, we had determined that the board did not take action directly affecting most of the individual aid programs. If the user/member received the type of general individual financial assistance which the board did not directly affect, we stated that the user/member need not abstain when the board took action that might generally involve these financial assistance programs.

The board member had also asked if a user/member might take action affecting personnel matters which involved the employees of the division that would provide services to him. The conflicts sections, HRS §84-14(a) and (b), would not prohibit a user/member from taking such action because the member did not acquire a financial interest in the employees simply because he or she might receive services from them. (In Opinion No. 177, we did discuss actions which might be taken when a member's spouse was an employee of the agency.) We suggested, however, that he and any user/member consider the potential problems that such action might cause in his relationships with these employees. There might be an appearance of impropriety involved in such actions because of the authority of the board. While we could not require that a user/member abstain in these personnel decisions we strongly suggested that he or she consider voluntarily doing so. Absent that, we again reminded him and any user/member that HRS §84-13 prohibits the use of one's state position to grant an unwarranted advantage to oneself or any other person.

We commended this member for his sensitivity to these issues and expressed our appreciation for his coming to the Commission to clarify these issues for not only himself but for any future user/members. We enclosed a copy of Opinion No. 177 for his reference.

Dated: Honolulu, Hawaii, March 2, 1979.

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

Note: There was one vacancy on the Commission.