

OPINION NO. 378

A legislator requested an advisory opinion concerning his legislative duties as they related to another state position he occupied and a family interest.

In his legislative capacity he was a member of a particular subject matter committee. In addition he had been appointed by the governor to serve as a state representative to a regional commission. The commission had been created by the governors of a number of states to provide ways for the states to cooperate in certain programs. It enabled the states to share facilities in achieving certain goals. A number of programs had been developed to achieve this end, one of which was particularly significant for Hawaii.

This particular program permitted Hawaii residents to receive training in certain specialized areas in those states that had already constructed the necessary facilities. For each person accepted to a training program Hawaii paid the state providing the training a support fee. All participating states were both senders and recipients of persons for training. The advantage of the program was that Hawaii saved the cost of establishing specialized training programs for the few persons who required such training. At the same time, space in those training programs was very limited and a number of the schools accepted only state resident students and persons from states participating in this commission exchange program.

The legislator's child was seeking admission to one of these training programs. He had also sought certification that he was a Hawaii resident and eligible to participate.

In his legislative position, the legislator voted on the state budget item for the commission. He wished to know if the convergence of his interests and these events placed him in a position of conflict.

We were also aware, as we considered this matter, that the chairman of the subject matter committee had questioned the value of this concept and the justification for the expenditure of state funds to support the commission's programs.

We noted that his question fell into two areas of the ethics code, the fair treatment and conflicts of interests sections. The application of these sections to his question was complicated by the fact that he held three different positions here, that of legislator, that of commissioner, and, in a private capacity, that of parent. Nevertheless, we pointed out that none of these interests constituted a financial interest in a business or undertaking. A conflict of interest, under HRS §84-14, cannot arise without such an interest being present. Such an interest did not arise here because (1) the legislature was not a state agency under the statute; (2) his service to the commission was in a state capacity (in fact, because the commission was the creation of Hawaii and several other states and because the commissioners that governed it were state commissioners, it was both legally and practically a state agency); and (3) his relationship to his child was a family rather than a financial interest. While the child's acceptance in the program might result in a financial savings to the legislator, that savings did not constitute a financial interest. We did note that if the State should terminate its membership in the commission the child's opportunity to be accepted to the training program would be substantially reduced.

Because he had no financial interest, he could not have taken action affecting a financial interest. Accordingly, he had not and would not in the future violate HRS §84-14(a) or (b) by participating in matters that concerned this commission.

The fair treatment section provides:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others....

We noted initially that because legislators were exempted from the coverage of this provision for acts performed in their official capacities, he would not violate this section when he discussed or voted on the commission budget. Action he might take as a state commissioner, however, was not exempt from this section. Accordingly, when he testified on behalf of the commission, it could be argued that he was subject to HRS §84-13.

We did not pursue this analysis any further in view of our conclusion that he had not violated this section.

A number of circumstances led us to this conclusion. First of all Hawaii had been a member of the commission for nearly twenty years and was recognized as one of the foremost supporters of the program. This was the first year in memory that the Legislature had seriously questioned the State's participation in the program. During his previous five years of service as a commissioner, therefore, the State's commitment had been assumed and had not been controversial. We also noted that the support payments requested from the states were hammered out among the participating states, all of which were treated as equals in the organization. The fact that he had been elected to chair the commission indicated his previously expressed support for the program and the quality of Hawaii's participation.

As a representative of the State of Hawaii to the commission it was quite natural that he should support a program whose goals and budget he had helped to articulate. While his child's application for admission to the training program might have been an embarrassing coincidence we saw no reason to suspect that his support for the organization was related to his child's application.

We also learned that he would play no role in the certification of his child as eligible to participate in the program. The State appointed a certification officer who, for this particular training program, merely confirmed that the student was a resident of the State of Hawaii. The child's acceptance lay solely within the discretion of the school to which he applied. The commission merely coordinated the various factors that were involved in the certification aspects of the application. As a state commissioner the legislator played no role in either the certification process, which was not discretionary, or the admission process. The certification process in certain of the other exchange programs did require judgment by the state commissioners, but the commissioners did not exercise such judgment in the program to which the legislator's child was making application.

In conclusion, it was our opinion that his position as a state legislator, a state commissioner, and a parent of a student who was applying to a participating institution did not create a conflict of interest.

Dated: Honolulu, Hawaii, April 2, 1979.

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

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.