OPINION NO. 388

The administrator of a certain state program was asked by a nonprofit organization to serve as a member of its board of directors. He then asked this Commission if his serving on this board would be prohibited by the ethics code.

We stated that the section of the code which dealt with his question was HRS §84-14(b). It states:

> 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.

We explained that a financial interest for the purposes of the ethics code includes a directorship in a business (see HRS §84-3(6)(F)). Then, business is defined to include an "organization carrying on a business, whether or not operated for profit" (HRS §84-3(1)). Therefore, a state employee may not become a director of a nonprofit organization if it may be directly involved in official action he takes.

This employee stated to the staff that, among his duties, he administered federal grant funds for certain types of programs which were important to the overall function of his state program. This money could not go to private organizations but could be granted to programs sponsored by other governmental agencies. While the organization that had asked this employee to become one of its directors could not submit a proposal to him for these funds, it was his understanding that the organization was submitting a proposal to the Community College system through which the organization would provide the personnel to teach certain courses that would qualify for these federal funds. The Community College system could then and probably would come to this employee with a proposal for the funds.

The question here then was whether the action he would take on a proposal submitted to him by the Community College system involving courses taught by the organization would be action *directly* involving the organization. While it was obvious that the Community College system would be *directly* involved, the direct involvement of the organization was not as clear.

We stated to the employee that if the courses would not be offered by the Community Colleges without the participation of the organization's personnel and his subsequent approval of federal funding, then we saw that the organization would be directly involved in action he would take on the proposal; should this be the case, we stated that he should not become a member of its board of directors. If, however, the Community Colleges planned to offer these courses and seek funding from his office regardless of whether this organization's personnel or other individuals were used as instructors, then the organization would not be directly involved in action he took; it would be directly involved in action taken by the administrator at the community college level who would determine whether the organization's personnel would be used in the program. In this latter situation, he would not be prohibited from becoming a director of the organization.

We indicated that we suspected that the actual situation would lie somewhere between these two alternatives. The Community College system might plan to offer the courses but might be more inclined to do so because of the proposal submitted by the organization and the probable federal funding involved. If this should be the case, we noted that we would be hesitant to rule that

the organization would be directly involved in action he took in his state capacity and that he would therefore be prohibited from becoming a director of the organization. What we did see, however, was an appearance that the organization might be favored in such proposals because of his presence on the board. While this appearance was not sufficiently strong to justify our prohibiting his serving on the organization's board, we did suggest he refuse a request to join the board if it were likely that the organization would be involved in the Community College's proposal for the grant of funds.

We noted that if the circumstances were such that the organization would not be directly involved in action he took, and he did decide to become a director, he should be aware of certain restrictions found in another section of the code. We explained that HRS §84-13 prohibits employees from using their positions to grant unwarranted advantages to themselves or others by the use of their official positions. This would include using state time, equipment and facilities for private business purposes. Accordingly, he should be careful to avoid favoritism when dealing with projects which might involve the organization, even though indirectly, and to avoid using state time, equipment or facilities in carrying out his duties as a director of the programs of the organization.

We commended the employee for requesting this opinion before accepting this position and for making his concerns known to the organization so that its members would become more aware of the relationship a public official should have to private organizations.

Dated: Honolulu, Hawaii, June 25, 1979.

STATE ETHICS COMMISSION
Gary B.K.T. Lee, Chairman
Dorothy K. Ching, Commissioner
Edith K. Kleinjans, Commissioner

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered. Vice Chairman Paul C.T. Loo was not present during the discussion and consideration of this opinion.