

OPINION NO. 404

The executive secretary of a state board received a complaint with respect to that board's work which, in part, raised two questions of conflict of interest. Because this Commission has jurisdiction over conflict-of-interest questions that involve state employees, he referred the questions to us. The relevant section in both cases was HRS §84-14(a).

The first question involved a member of a board who occupied one of the industry positions mandated by statute.

The conflicts-of-interests section of the ethics code, HRS §84-14(a), states that "[n]o employee shall take any official action directly affecting ... [a] business or other undertaking in which he has a substantial financial interest." However, the statute also provides that a board or commission member who is mandated to represent a particular industry or to have particular expertise shall only be prohibited from taking official action that directly and specifically affects the business or undertaking in which the financial interest is held.

Therefore, pursuant to this statutory provision, the board member needed to disqualify himself only on matters directly and specifically affecting his own license and his private business. It was not necessary for him to abstain from matters affecting the industry in general. Minutes of the board's meetings confirmed that the board member had complied with this section by abstaining when matters pertaining to his private business had required board action, and therefore the Commission found no violation of the conflicts section.

The second question related to an employee in a branch of a state department who supplemented his income by working in his spare time for the board member's firm. Because he was employed by the State in an area related to his private employment, a concern was expressed that the employee would be able to use his position to influence his private interests.

In his state position, the employee eliminated certain public hazards. He exercised no discretion in his tasks, but, rather, performed at the direction of a supervisor. Only supervisors recommended action; therefore, there was little likelihood that he would be able, through his state position, to generate any business for himself or the company which employed him. However, his branch administrator noted that because the office had a very small staff, if the supervisor was off the job and a request for services was received, the employee was sent. The administrator emphasized that such services were not initiated by the branch and occurred only upon a request from the public. Since such occurrences were rare, and the work and the attendant discretion was not a part of the employee's job, the Commission found that his outside employment did not conflict with his state duties. If, however, circumstances changed and the employee found that such work became a more regular part of his duties, he and his administrator were directed to consult with this Commission for advise.

In our investigation, we were informed by the employee that his private employment included the elimination of certain hazards in the private sector. No problem was presented

by one particular aspect of his private employment since his branch was not concerned with that area. But a question of fair treatment was raised with respect to the control of other hazards, where an overlapping interest existed between his state employment and private work.

HRS §84-13, which deals with fair treatment, states that:

No ... 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; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- ...
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a ... person or business whom he inspects in his official capacity.

The Commission was advised that when the employee first started to work in the private sector, his administrator agreed that part of his private work was acceptable since it came under the jurisdiction of another state department and not his department. Since he did have duties with respect to other aspects of his private work in his state employment, the employee was cautioned against accepting jobs involving such overlapping interests. Generally, the branch received requests for assistance from two sources: referrals from another of the department's branches and requests from private individuals. The former were follow-up referrals; the branch advised establishments as to how to solve their problems. Requests from citizens consisted of questions about similar problems in the private sector. In both cases, a supervisor checked the situation and, normally, recommended that private assistance be sought. State resources were used only if a public hazard existed.

Because hiring private assistance was the usual recommendation, the employee's administrator felt that he should not operate in that particular area of work in his private employment. Since the employee lived in a small community and the working relationship between a supervisor and an employee may be a close one, the Commission agreed that it was wise for the employee to restrict himself to work not related to his state work in the spirit of HRS §84-13, and commended his superior for his sensitivity to this ethics question.

Finally, in the course of this investigation, it was also suggested that members of the board had used their positions to give themselves unwarranted advantages in the industry they regulated. A check of the board's minutes and records with respect to those persons involved in this case did not reveal evidence of unwarranted use of position by any member of the board. In fact, the records indicated that the board had treated complaints against at least one of the members in a thorough manner. Similarly, there was no evidence of use of position to unwarrantedly disadvantage the complainant in the case. The Commission wished to emphasize that it was addressing only those issues within its jurisdiction, namely, the ethics

code, and declined to comment on matters that involved regulations of a state department or the board.

We commended him for bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, February 26, 1980.

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

Note: Vice Chairman Paul C.T. Loo and Commissioner Robert N. Mitcham were absent from the meeting at which this opinion was considered.