OPINION NO. 410

A member of the State House of Representatives, who was also the vice-chairman of a House committee, received an informal offer to work for a business on a contractual basis. He had also been invited to serve as a member of the board of directors of a nonprofit organization. Because of his position in state government, he asked this Commission if it would be appropriate, within the provisions of the State Ethics Code, for him to accept the two positions.

The positions were discussed together since membership on the board of directors, though unpaid and though the center was a nonprofit corporation, was nonetheless a substantial financial interest for the purpose of the ethics code, pursuant to HRS §84-3(6)(F). We found this to be so because of the fiduciary duties involved in holding a directorship and the possible liability occasioned by the mishandling of those duties.

The most important point to be made in cases such as this was that HRS §84-14, the conflicts-of-interests section, did not apply to legislators. The legislature had excluded its members from the coverage of this section; these questions were handled as internal matters in each house. Generally, an *employee* could not acquire an interest in a business that might be involved in action he or she would take in an official capacity. It did appear in this case that both the business and the nonprofit organization could very likely be involved in action the legislator might take if he retained his present committee assignments in the future. Since the restriction of the conflicts section did not apply to legislators, the fact that both organizations could be involved in action he would take as a legislator did not bar him from accepting either position.

However, HRS §84-13, the fair treatment section of the ethics code, did have application to the conduct of legislators. For example, this section prohibits a legislator from using his or her state position to further, in an unwarranted manner, his or her private interests or the interests of others. If the legislator had solicited a position in the industry upon which his committee work focused, such conduct might have constituted a violation of this section. It was the Commission's understanding, however, that both the business and the nonprofit organization initiated the discussions and offered the subject positions to him. It could not be said, therefore, that he had used his state position to acquire these positions.

At the same time, it was not unreasonable to assume that businesses and organizations that were significantly affected by the legislature would desire to have on their boards, or to employ, members of the legislature. Both the business and the nonprofit organization might have been concerned about actions of the legislature that could significantly affect them. While we did not believe that attempts by such organizations to gain an advantage in the legislature could be seen as a violation of the ethics code on the part of a legislator, it was a matter of concern, and one that had been commented upon frequently by citizens of the State. The offer of these specific positions to the legislator was not, of course, unique, as many legislators held interests in businesses and organizations that were significantly affected by legislative action. This was a community concern that needed to be addressed by the legislature. The Commission noted that it was a problem that was not susceptible of an easy

solution, recognizing that the majority of legislators found it necessary to supplement their state incomes.

It was the Commission's conclusion, from the facts stated to it, that the ethics code did not prohibit the legislator from either working for the business or accepting a position on the board of the nonprofit organization.

The statute did restrict him from acting as a lobbyist for both organizations and from using his state position to advantage either of them in an unwarranted manner. However, he could take legislative action which would affect them and other members of the industries they represented.

We appreciated his concern for the ethics of public officials and ethics in state government and commended him for his sensitivity in recognizing the ethical question involved and for bringing it to our attention.

Dated: Honolulu, Hawaii, June 5, 1980.

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

Note: Commissioner Edith K. Kleinjans was excused from the meeting at which this opinion was considered.