OPINION NO. 413

We received a request for an advisory opinion from the executive secretary of a state board. On behalf of the board, he had asked the Commission to determine if a member of the board might represent its interests on the board of directors of a corporation in which the board was a shareholder.

The question posed raised a conflicts-of-interests issue and came under HRS §84-14(b) of the ethics code.

That section provided that a state employee (and board members were defined as part of this class of persons) might not acquire a financial interest in a business that was likely to be involved in action the employee would take in his or her state capacity. Under the ethics statute, a board position in a private business was considered to be a financial interest. Consequently, the precise question for resolution here was the extent to which the corporation was likely to be involved in action the board would take in the foreseeable future.

Despite the fact that the board was a shareholder, it was not, as a shareholder, involved in the day-to-day management of the corporation. Nor did the board do business with the corporate entity. Its role was limited to voting its stock on matters for decision that were presented at meetings of shareholders, to purchasing new shares, or to selling its holdings.

While we judged that these actions might well have an effect upon the company, it was our conclusion that they did not directly involve the corporate entity. It had been our interpretation that for HRS §84-14(b) to be applied restrictively a more significant involvement in the affairs of a business had to be present than we saw in this case. We, therefore, held that a member of the board might be supported for election and serve as its representative on the corporate board.

We also noted, however, that if a board member were supported for election to the board and gained a seat thereby, the member would not be eligible to receive compensation from the corporation. The board's governing statute provided that members of the board might not receive compensation for carrying out their duties. A board member elected to a corporate seat by virtue of the board's support would be representing the interests of the board. Since the member would serve only by virtue of his or her position on the board, he or she would be meeting a state responsibility and might not be compensated for performing what, for that member, would be state duties.

While we found no conflict under the code of ethics, we did note that a board member elected to the corporate board might, at times, find himself participating in decisions that did not serve the interests of both parties. We recognized that the interests of the board and those of the corporation might not always be the same. The member, owing a loyalty to both boards, would be placed in a difficult, if not untenable, position. Though the separate interests of the designated individual might conflict, such a conflict was not prohibited by

statute. Nor was it a unique position for a member of a board of directors to occupy. We advised that guidance in this area should be sought from the office of the attorney general.

Finally, we commented upon the application of the fair treatment section, HRS §84-13. This section prohibited the use of state position to secure unwarranted advantages or treatment for oneself or others. While we did not wish to unreasonably inhibit the person who might ultimately serve simultaneously on both boards, we did feel that such a member should be aware of the difficult position he or she would occupy. It was particularly incumbent upon such an individual to conduct board matters in an open, straightforward manner.

The Commission commended the board for its sensitivity to the ethics issues raised in this matter.

Dated: Honolulu, Hawaii, August 8, 1980.

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