OPINION NO. 428

This opinion concerned an employee who provided services to a class of persons in his state position. Because he served as a member of the board of directors of a private nonprofit foundation, which also provided services to that class, he wished to know if a conflict of interest between the two positions existed.

The applicable section of the State Ethics Code was HRS §84-14(b) which prohibits an employee from acquiring a financial interest in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him. The employee's position on the board of directors of the foundation, though it was unpaid and though the foundation was a nonprofit corporation, was, nevertheless, a substantial financial interest for the purposes of the ethics code (HRS §84-3(6)(F)).

One of the employee's major responsibilities was to evaluate persons who applied for a particular kind of aid. After conducting studies of the applicants, the employee recommended applicants with good evaluations to the foundation for consideration. The evaluations were then sent by the foundation to an out-of-state center for review. After reviewing the evaluations, the center selected and sent the appropriate aid which matched the individual applicants to Hawaii. Thereafter, an instructor-trainer traveled from the center to Honolulu to conduct a final evaluation and to begin a four- to six-week training session with the client. The employee's responsibility at this juncture was to prepare the client for training and to assist the instructor as necessary. He was also responsible for assisting the client if any problems arose following the departure of the trainer. In addition, the employee served as the state agency's liaison to the foundation and was responsible for drafting and disseminating material which informed the public about the state agency's work.

The foundation subsidized the cost of services and aids to qualified persons in Hawaii. All persons who received assistance from the foundation were referred by employees of the state agency. Persons who were candidates for receipt of a certain kind of aid were evaluated and recommended to the foundation by the employee. Others who received financial assistance for their equipment were persons who did not qualify for assistance from the State.

The foundation did not receive any funds from the State or its clients and relied solely upon its Aloha United Way share, donations, and bequests for its support. It was, however, a small operation whose volunteer board of directors conducted its business with a part-time secretary. As a consequence, the state agency provided evaluation and professional services to persons who applied for assistance from the foundation.

The programs at the state agency and the foundation were complementary. The state agency provided assistance to clients in the form of evaluation, training, and equipment to clients in its programs. However, once clients had finished their rehabilitation programs and their cases were closed, the state agency could only provide training services and not equipment. Such persons, however, were able to apply for equipment subsidies from the foundation.

The complementary effect each organization had upon the other's program could best be seen in the provision of a particular aid to clients. While the State did not have the resources to provide that type of aid to clients, it was able to provide evaluation and technical assistance to clients who were qualified applicants. The foundation, on the other hand, had financial resources which could be utilized to provide training and aids to qualified persons, but was not able to conduct evaluations or to give follow-up assistance. The foundation did not have a professional staff because the number of persons who were assisted by its programs was very small. As a result, the State provided the initial evaluation of applicants, the foundation provided the aid and training, and the State provided follow-up services to the client.

It was clear to this Commission that the employee was not in a position to take official action which affected the foundation or its board of directors. We noted that although the employee worked closely with the foundation, he did not pass judgment on its programs, and he did not take any discretionary action which affected the foundation financially or otherwise. While the employee did recommend that certain persons whom he had evaluated in his state position receive assistance from the foundation, we concluded that those recommendations did not affect that foundation.

Further, the employee was the state agency's liaison to the foundation and received compensatory time off for the hours spent at the board meetings. As a consequence, any services he provided to the foundation as a board member were done in his state and not private capacity. We found, therefore, that a conflict of interest did not exist, and the employee could retain his position on the board of directors of the foundation.

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

Dated: Honolulu, Hawaii, November 12, 1980.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairman
Gary B.K.T. Lee, Commissioner
Robert N. Mitcham, Commissioner

Note: Vice chairman Paul C.T. Loo and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.