

OPINION NO. 433

We received a request from an employee who supervised a state facility. He was responsible for the overall management of the facility and adjacent areas and for the administration of all state laws and rules governing smaller facilities. At the time of this request, he was the vice president of a private club and was a candidate for election to the presidency of the club. During the course of our consideration of his request for an advisory opinion, he was elected to the presidency. Because the club, as a tenant of the State, occupied land contiguous to the facility, the employee asked the Commission to determine if the ethics code would prohibit him from accepting the presidency.

The applicable section of the ethics code was HRS §84-14(b), a portion of the conflicts-of-interests provision. That section provides that a state employee may not acquire a financial interest in a business that may be involved in action the employee takes in an official capacity. As a state employee, he was subject to the requirements of the ethics code. Further, the club was a business for the purposes of the code, and the employee's position as president of the club, even though it was not a compensated position, was a substantial financial interest as that term is defined in the statute. The questions the Commission had to decide were whether the action the employee took in his state capacity directly affected the club and whether such action constituted official action.

The employee's primary responsibility was to administer the facility. This included the allocation of space to members of the public who used the facilities and the enforcement of the rules that applied to the use of the facility. We were aware that there was not enough space to meet the needs of those who used the facility, and that an automatic allocation system had been established. Our review indicated that there was no discretion involved in the awarding of space. A list of applicants was maintained in the state computer, and a print-out of the names at the top of the list was posted at the facility. Space was offered to the applicants in accordance with their positions on the list. If a question of abuse of discretion arose in the awarding of space, members of the public were able to bring it to the attention of the employee's office or other appropriate state agencies. We discussed this area of the employee's responsibility because we were aware that many of the members in the club kept their property at the facility. However, because the awarding of space did not involve discretionary action on the employee's part, he did not take official action in this area that could affect either the property owners or the club.

Because of the shortage of space, we were aware that attempts were made to skirt the facility's rules. Those rules prohibited an owner who was selling property from transferring his or her space to the purchaser. However, because the shortage of space made it difficult to transfer ownership, owners sometimes sold their property without notifying the facility or other state authorities. We had also learned, however, that because it was exceedingly difficult for the employee and the department to monitor this kind of activity and enforce the state rules, very few property owners were evicted for violations of the rules during the course of a normal year. While the eviction of a property owner would involve official action, as opposed to the administration of the space assignment list, it did not appear that this activity was significant enough to affect the club members or the club itself.

Finally, it appeared that the employee had some limited responsibility with respect to the enforcement of the lease between the club and the department. The terms of the lease were negotiated between the club and other offices in the department. The employee was not involved in these negotiations in either his state capacity or in his capacity as a member of the board of directors of the club and he did not expect to be involved in such negotiations in the near future.

Because the employee's office was located on the site of the facility itself, he was in a position to notify the appropriate authorities if the club was in violation of its lease agreement. The Commission also understood that, on occasion, the employee might be asked by the club to grant certain concessions to it, such as the use of additional parking spaces in the public parking lot for special events. Our discussions with the employee and personnel in the department indicated, however, that there were exceedingly few concessions requested or granted. In addition, it appeared that the club had been a very good tenant and that there had been no difficulties between the club and the State during the employee's tenure as superintendent of the facility.

Because there was little likelihood that the employee would take action affecting the club, it was our opinion that HRS §84-14(b) would not prohibit him from accepting election to the presidency of the club. However, we cautioned the employee that HRS §84-14(a), another section in the conflicts provision, would prohibit him from taking action which would directly affect the club. It was our advice, therefore, that the employee should not take action in his state capacity that would involve the club, nor, in his position as president, should he deal with the department. The employee had indicated that adherence to these guidelines would present no difficulty for him during the one-year term he would serve as president.

We commended him and his supervisors for the sensitivity they had shown to the ethics issues raised by the circumstances in this case. Because the deputy director of the department had been involved in this request, we forwarded a copy of the opinion to him for his review.

Dated: Honolulu, Hawaii, January 6, 1981.

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

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered.