

## OPINION NO. 441

One of the responsibilities of a state department was to appoint and commission members of a certain industry in the State of Hawaii. Recently, the department had received a complaint regarding certain members of the industry. A private firm which employed industry members had been giving gifts of appreciation to clients who utilized one of the firm's services. It had been the complainant's position that the industry members were public officials subject to the ethics code who should have been barred from using their state positions to obtain additional business. Because the complaint fell within this Commission's jurisdiction, a department employee requested an advisory opinion on whether the conflicts-of-interests section of the code was applicable to the industry members.

In order to determine whether the conflicts-of-interests section applied to the industry members, it was necessary for the Commission first to determine whether the industry members were employees for the purposes of the ethics code. HRS §84-3(4) defined "employee" to include "any ... appointed ... officer or employee of the State ...." The Commission noted that throughout the statute which governed the industry, the industry members were referred to as "public officers." One option available to the Commission was to adopt the literal terminology of the statute and decide that the industry members were public officers because the statute referred to them as public officers and the industry members also were appointed and commissioned by a state department. Accordingly, the industry members would have been included as employees for the purposes of the ethics code.

It was the Commission's opinion, however, that, except for those individuals who were also employed by the State, the industry members were not meant to be included as employees for the purposes of the ethics code. Instead, the Commission adopted the view that an individual's status as an industry member was similar to that of an individual who had received a license to do business in the State. As a consequence, the provisions of chapter 84, HRS, including the conflicts-of-interests section, were not applicable to the industry members.

We appreciated the employee's presentation of this question to this Commission.

Dated: Honolulu, Hawaii, July 20, 1981.

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

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee was not present during the discussion and consideration of this opinion.