

## OPINION NO. 442

The chief of a staff services office of a state division requested an advisory opinion as to whether it was permissible under chapter 84 for a state employee to have done the following:

- (1) sit as a member of a state advisory committee to a state division funding a private entity while holding a paid position at a private entity's county center;
- (2) hold a paid position at the private entity's county center while sitting as a member of the private entity's county advisory board.

Subsequent to the request, a different situation arose since the employee had resigned from the state advisory committee and had become inactive with the county advisory board. Accordingly, in addition to examining the above possibilities, we discussed whether the employee could have accepted employment with the private entity's county center after leaving his position on the state advisory committee.

The private entity was not a state agency but was administratively affiliated with another private organization which was, in turn, administratively affiliated with a state division. The division distributed grant monies to the private organization, which in turn distributed these monies to the private entity. The private entity was advised, but not supervised, by the staff of the state division. The state advisory committee was solely advisory to the state division. The committee was created to comment on the services provided by the State and by the private entity to individuals with special concerns in the community.

The employee had been involved with the private entity from its inception and had helped draft a proposal to secure funding for the private entity. He had been appointed to serve on the state advisory committee and later had organized and had sat as a member of the private entity's county advisory board in his county. He also had been nominated to serve on the board of directors of the private entity but had declined that nomination. After applying for a paid position at the county center, the employee had resigned from his position on the state advisory committee and had become inactive in the county advisory board.

Several ethics questions were raised by the above situation. The first was whether the employee could have, under HRS §84-18, accepted employment in the county center after serving on the state advisory committee. HRS §84-18 stated in part:

- (b) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for other consideration on *matters* in which he participated as an employee. (Emphasis added.)

(c) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on *matters* involving official action by the particular state agency or subdivision thereof with which he had actually served. (Emphasis added.)

The Commission found that the state advisory committee only advised the state division on policies for the delivery of the services provided by the private entity and the state advisory committee did not have any supervisory powers over it. The paid position, on the other hand, did not set policy but was responsible for the day-to-day delivery of services to individuals with special concerns. In applying HRS §84-18, the Commission found that the employee could have accepted the position because its responsibilities did not include matters which he participated in as a member of the state advisory committee, nor did these responsibilities require official action by that committee.

The second question was whether it would have been permissible, under HRS §84-13(1), a portion of the fair treatment section, for the employee to be on the county advisory board while serving in a paid position for the private entity. HRS §84-13(1) states as follows:

No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.

Because of the private nature of his position on the county advisory board and in the paid position, he was not considered to be a state employee as defined in HRS §84-3(4). The Commission found, therefore, that HRS §84-13(1) was not applicable and he could have served in both capacities.

HRS §84-14(b), relating to acquisition of financial interests, was also applicable to the question as to whether the employee could have served on the county advisory board and hold the paid position at the county center simultaneously. HRS §84-14(b) states:

(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

HRS §84-14(b) applies to relationships between state employees and private businesses as defined in HRS §84-3(1) and (4). In this situation, both the county advisory board and the paid position were a part of the private entity, and the statute was inapplicable. Accordingly, we found that the employee could have, under HRS §84-14(b), served in these two capacities.

The final question was whether the employee would have been permitted under HRS §§84-13(1) and 84-14(b) to simultaneously serve on the state advisory committee and work in the paid position for the county center. HRS §84-13(1) prohibits legislators or employees from securing an unwarranted advantage in seeking employment or a contract for services by the use or attempted use of their positions. Because the state advisory committee had no direct supervisory or appointment powers over the private entity and its paid position, as a member of the committee, the employee was not in a position to give himself an unwarranted advantage while serving in the paid position. We decided, therefore, that under HRS §84-13(1), the employee would have been permitted to serve on the state advisory committee as well as accept the paid position for the county center.

Under HRS §84-14(b), state employees are prohibited from acquiring a financial interest in any business or undertaking which may be directly involved in official action to be taken by them. We found that the state advisory committee was solely advisory and that the committee took no official action directly involving the private entity or its paid position. Accordingly, we determined that under HRS §84-14(b), the employee could have sat as a member of the state advisory committee and accepted the position for the private entity's county center.

We advised the employee that to avoid the appearance of impropriety, if, in the future, the state advisory committee were required to take action with respect to the private entity's county center, he should refrain from voting or taking any action directly affecting his county center while serving on the state advisory committee and he should consult with this Commission.

We expressed the hope that the guidelines provided would assist in preventing future conflicts of interest and appreciated the requesting employee's concern in maintaining an ethical standard of conduct in state government.

Dated: Honolulu, Hawaii, July 20, 1981.

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

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.