

OPINION NO. 447

We received a request for an advisory opinion from a state advisory committee member who also served as a board member of an advisory council associated with a private nonprofit organization. The board member had asked this Commission to determine whether he would be permitted, under the ethics code, to continue to serve simultaneously on both boards.

In Advisory Opinion No. 442, we had found that the state advisory committee was a solely advisory board to a state division. The advisory committee had been involved in the creation of private nonprofit centers and initially had been responsible for selecting individuals to sit on the private advisory councils. This function had since ceased and the sole function of the state committee was to comment on the delivery of services which were provided by the division and the centers to a segment of the community. We noted that the function of the private advisory councils was to advise the county centers and the board of the private nonprofit organization about the delivery of services to their clients.

Because the board member had accepted membership on the private advisory council after he had already become a member of the state advisory committee, a portion of the conflicts-of-interests section of the ethics code, HRS §84-14(b), had the most direct application to his request. HRS §84-14(b) provides:

(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.

In applying HRS §84-14(b) to the board member's situation, we noted that he would not have been permitted to sit on the private advisory council if the state advisory committee had continued to select the council's members. However, since the committee's functions had changed and it no longer selected individuals to sit on the private advisory councils, the Commission concluded that the board member would, under HRS §84-14(b), be able to serve on both the state advisory committee and the private advisory council simultaneously.

We also examined the board member's situation under the fair treatment section of the code, HRS §84-13, which provides in part that:

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 the state advisory committee had no direct supervisory or appointment powers over the private advisory councils, the board member was not in a position to give himself an unwarranted advantage while he sat on the advisory council. Accordingly, we determined

that, under HRS §84-13, the board member could continue to serve on the state advisory committee while serving on the county advisory council.

We commended the board member for bringing this matter before us. We noted that it was our experience that this kind of attention to matters of ethics contributed to an improved ethical climate in state government.

DATED: Honolulu, Hawaii, September 9, 1981.

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

Note: Chairman Edith K. Kleinjans and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.