

## OPINION NO. 449

The executive secretary for a state regulatory board noted that the board was engaged in promulgating a rule to increase rates charged by industry members. The board, as required by statute, consisted of five members: two industry members or individuals qualified to be industry members, two members of an associated industry, and one public member. Because the entire industry consisted only of a few people, the question was raised whether it would be permissible, under the State Ethics Code, for the two industry members to vote on the rate increase proposal since any increase would affect their personal financial interests.

The applicable section of the code, HRS §84-14(a), prohibits employees from taking official action directly affecting businesses in which they have substantial financial interests. The section contains an exemption for board members whose particular qualifications are mandated by statute. These members are allowed to take action which may affect their industries as a whole, but are required to disqualify themselves on matters which directly affect their personal financial interests. Because both members held mandated positions on the board, they normally would have been allowed to participate in discussions and to vote on the proposed rate increase since the increase would have affected the industry as a whole. In this instance, however, because the number of individuals who comprised the industry was so small, it was suggested that action with respect to rates should in fact be considered to have a direct effect on both of the industry members' personal businesses. If the Commission agreed, both industry members would have been required to disqualify themselves from taking action on the rate increase.

After reviewing the statute which governed the industry and the board, it was the Commission's opinion that both industry members would be allowed to vote and participate in the discussion of the rate increase proposal. The Commission noted that the statute had initially limited the number of licenses. The statute further provided that the power to increase or decrease the number of licenses would later be one of the responsibilities of the board. If the legislature had set a maximum on the number of licenses to be issued for an initial period, we assumed that it had been aware of the small size of the industry and did intend that the two industry members be allowed to participate in matters which affected the industry. Further, the Commission noted that the statute mandated two members of an associated industry, which utilized the industry's services, to sit on the board. Because the associated industry also had an interest in the rates which the industry would be permitted to charge for its services, we presumed that these two members would balance the interests of the industry members. As a consequence, the Commission concluded that the restrictions of HRS §84-14(a) as applied to members whose positions are mandated by statute were sufficient to preserve the public's interest. There would, therefore, be no violation of the conflicts-of-interests provisions if both industry members participated and voted on the rate increase proposal.

We wished to commend the employee for his sensitivity to the possible conflict-of-interest questions which may have arisen as a consequence of his board's unique position.

Dated: Honolulu, Hawaii, November 16, 1981.

STATE ETHICS COMMISSION

Edith K. Kleinjans, Chairman

Paul C.T. Loo, Vice Chairman

Dorothy K. Ching, Commissioner

Gary B.K.T. Lee, Commissioner

Note: Commissioner Robert N. Mitcham was excused from the meeting at which this opinion was considered.