

## OPINION NO. 494

A member of a state board that governed a state institution had been hired by a private organization. Because the organization represented employees of the institution, the board member asked this Commission to determine whether his new employment created a conflict of interest with his state position.

The applicable section of the ethics code was HRS §84-14(b) which states:

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.

Pursuant to HRS §84-3(4), members of state boards are included as employees for purposes of the ethics code. Further, as defined in HRS §84-3(6), the board member's employment by the private organization was a financial interest. Finally, we noted that "official action" included all action that involved the use of discretionary authority. It was clear to the Commission that because the board was the governing body of the institution, almost all action of the board would be considered to be discretionary.

In deciding the question, the Commission first reviewed the relationship of the board to the private organization. In the board member's opinion, there was no direct relationship between the board and the organization. This was confirmed by an administrator at the institution who explained that because employees who were members of the organization were civil service employees, the State was their employer; the board only had authority over appointed staff members. If a dispute involving these employees had arisen, the board would not have been involved. Furthermore, the administrator stated that contract negotiations were conducted by administration officials without guidance from the board. In these sessions, administration officials acted as representatives of the State, not of the board. The administrator did note that the board might become peripherally involved in one particular situation. In that instance, however, the board's involvement would be limited to setting a policy for the smooth administration of the institution in that situation. In the Commission's opinion, this action on the board's part would not have a direct effect on the private organization. Accordingly, the Commission determined that it was unlikely that the board member would be required to take action that would affect the private organization and found that the board member's acquisition of an employment interest was not in violation of HRS §84-14(b).

The Commission was aware, however, that others might question the board member's employment by the private institution, and that an appearance of impropriety might arise. The Commission pointed out to the board member that the fair treatment section of the ethics code, HRS §84-13, prohibits employees, including state board members, from granting any unwarranted or unfair advantage to themselves or others. The Commission emphasized that there has been no evidence that the board member had used his position intentionally to advantage the private organization in any inappropriate way, and asked that the board member continue to be sensitive to the provisions of the fair treatment section. Finally, the

Commission asked the board member to consult with this Commission if circumstances changed and the board became more involved in decisions that might affect the private organization.

We commended the board member for bringing this matter to the attention of the Commission.

Dated: Honolulu, Hawaii, April 15, 1983.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairperson  
Allen K. Hoe, Commissioner  
Mildred D. Kosaki, Commissioner  
Gary B.K.T. Lee, Commissioner  
Rabbi Arnold J. Magid, Commissioner