

## OPINION NO. 513

A state board member requested the Commission's advice about whether he could participate in hearings on a petition by a development corporation. Because the board member served as president and as a member of the board of a non-profit corporation that owned the utility system in a private development, there was some concern that the board member might be in a position of conflict of interest.

HRS §84-14(a) states as follows:

- (a) No employee shall take any official action directly affecting:
  - (1) A business or other undertaking in which he has a substantial financial interest; or
  - (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

Membership on the board of directors of a private organization, including an unpaid position with a non-profit organization, is included as a substantial financial interest, pursuant to HRS §84-3(6)(f). Consequently, a state board member who serves in this capacity may not participate in any discretionary action involving the private organization.

The private, non-profit corporation was created by a county council resolution, and its board included five members who were appointed as follows: one by the mayor of the county, one by the county council, one by a county board, and two by the private development corporation. The board member had been appointed by the county board. The private non-profit corporation had been treated as a municipality for loan purposes, and bonds had been floated to finance the development's utility system. Since the bonds were 99.9% redeemed, the system was to be turned over to the county shortly, and, thereafter, the functions of the private, non-profit corporation were to cease.

The Commission found that although the private, non-profit corporation owned the utility system, the corporation was neither a part of, nor a subsidiary of, nor affiliated with, the development corporation. Accordingly, the Commission determined that the board member would be permitted to participate fully in the hearings on the development corporation's petitions.

The Commission commended the board member for his sensitivity to the provisions of the State Ethics Code and appreciated his seeking advice at an early time.

Dated: Honolulu, Hawaii, November 23, 1983.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairperson  
Allen K. Hoe, Vice Chairperson  
Mildred D. Kosaki, Commissioner

Note: Commissioner Arnold J. Magid was excused from the meeting at which this opinion was considered. Commissioner Gary B.K.T. Lee disqualified himself from discussion and consideration of this opinion.