

## OPINION NO. 520

The Commission received a request for an advisory opinion from a division head who asked the Commission to determine whether an employee in his division could serve as a member of a citizens' advisory committee for a private non-profit organization. The employee's office had direct responsibility for certifying the private organization and monitoring it to assure compliance with state standards.

In order to operate in Hawaii, the organization was required by law to have a citizens' advisory committee. The Commission understood that members of the citizens' advisory committee would not receive compensation for their services.

The sections of the ethics code relevant to the question the division head raised were HRS §§84-14(b) and 84-13, which in pertinent part read as follows:

§84-14(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.

**§84-13 Fair treatment.** 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 ....

After examining these provisions of the ethics code in light of the facts of the case, the Commission concluded that neither of these provisions would prohibit the employee from serving as a member of the citizens' advisory committee.

HRS §84-14(b) prohibits state employees from acquiring financial interests in businesses that they have reason to believe may be directly involved in official action to be taken by them. In this case, however, the employee would not be acquiring a financial interest in the non-profit organization or in the citizens' advisory committee because he would not be compensated for his services or serving in the capacity of an officer or director. The Commission therefore believed that HRS §84-14(b) would not be applicable.

The fair treatment section of the code, HRS §84-13, would normally have prevented the employee from serving on the citizens' advisory committee if there were other private agencies in competition with the non-profit organization, since serving on the citizens' advisory committee of one private agency might create an impression of favorable or special treatment. In this case, however, the Commission understood that there were no other private agencies in Hawaii offering the services that the private organization intended to offer and therefore the Commission believed that the employee could serve on the citizens' advisory committee without coming into conflict with HRS §84-13. Furthermore, the Commission noted that the employee's official duties and his duties as an advisory committee member were similar, since in both capacities the employee would be concerned with the organization's compliance with state standards. Because the duties of both positions were

similar, the Commission believed that serving on the citizens' advisory committee would not be inconsistent with the employee's official responsibilities.

Although the Commission found that the employee could serve on the citizens' advisory committee without violating HRS §84-13, the Commission suggested that the employee contact the Commission again for an advisory opinion should other private agencies begin to offer services similar to those offered by the non-profit organization.

In accordance with section 21-4-2(c), State Ethics Commission Rules, a copy of this advisory opinion was forwarded to the employee. Section 21-4-2(c) provides that a copy of an advisory opinion rendered by the Commission will be sent to a state employee who was involved in, but did not request, the advisory opinion.

The Commission commended the division head for bringing this matter to its attention at an early time and told him that it appreciated his sensitivity to the ethical considerations raised in this matter.

Dated: Honolulu, Hawaii, December 30, 1983.

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

Note: Commissioners Gary B.K.T. Lee and Arnold J. Magid were not present at the meeting at which this opinion was considered.