OPINION NO. 522

The Commission received a request for an advisory opinion on whether a board member might be in a position of conflict of interest. Pursuant to section 21-4-1(b), State Ethics Commission Rules, the board member, who was the subject of the request, was notified and was afforded an opportunity to present his views on the matter to the Commission. The board member discussed the matter with the Commission staff and also appeared at a Commission meeting.

The requester had asked the Commission's advice regarding two instances where, in his opinion, there might have been a conflict of interest. The first instance was participation by the board member in personnel meetings involving the consideration of applicants who were members of a private association; the second was the board member's participation in discussions concerning plans that may have affected the private association.

The applicable section of the ethics code was HRS §84-14(a), which states as follows:

> 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.

The board member's employment interest with the private association was a substantial financial interest. The Commission found, therefore, that the board member was required to abstain from taking discretionary action that had a direct effect on the association. The Commission then examined the question of whether the board's actions had direct effects on the private association or only on the individual members of the association and not the association itself. The board's personnel responsibilities primarily consisted of placing individuals in the department. After reviewing the placement procedure and discussing it with both the requester and the board member, the Commission was of the opinion that, for the most part, any action taken by the board in personnel matters had a direct effect only on the individual employee-member and not upon the association. Accordingly, the board member was told that he would be allowed to participate fully in personnel matters. The Commission, however, understood that the association might become involved in personnel matters at a later stage. The board member was advised that if the board participated in or reviewed the matter, he would be required to disqualify himself on all issues in such an instance because of the association's involvement.

The second question posed was whether the board member could participate in discussions concerning the board's plans. The requester indicated that a committee represented the State in certain negotiations. As the Commission understood it, the State was represented by a sole negotiator; the committee did not participate in negotiations but served as a mechanism for the State's negotiator to communicate the current status of the

negotiations to the departments. In light of this, the Commission found that the board did not take discretionary action that directly affected the negotiation process. Consequently, the board member was not prohibited from participating in any informational sessions regarding the plans. However, because information discussed by the committee was not a matter of public record and was not available to the public, this information fell within the purview of HRS §84-12, the confidential information section. Accordingly, the Commission noted that the board member and other members of the board were precluded from disclosing this information or from using it for their own benefit or the benefit of others.

While the Commission concluded that the board member was not prohibited by the conflicts-of-interests section from participating in personnel actions or attending discussions on the plans, the Commission emphasized that the fair treatment section of the ethics code, HRS §84-13, would prohibit the board member from granting any unwarranted or unfair advantages to the private association. The board member, however, had already indicated his sensitivity on this point.

The Commission commended the requester for bringing this matter to the attention of the Commission and for his continued concern for ethics in government.

Dated: Honolulu, Hawaii, January 19, 1984.

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

Note: Commissioner Arnold J. Magid was excused from the meeting at which this opinion was considered.