

OPINION NO. 527

A state board member recently acquired private employment, the duties of which included the supervision and rental of a space. As a state board member, he chaired one subcommittee and served as a member of another. Because of the nature of the board member's private employment, questions concerning the possibility of a conflict of interest had been raised within the community served by the board. In his private employment, the board member was involved in decisions on who would be allowed to use the space free of charge. As a state board member, he was also involved in the purchase of products for the State. There was a belief that the board member was in a unique position to use his discretionary authority in both his private and state positions to grant unwarranted advantages to certain groups. Accordingly, the board member sought the advice of the Commission on the application of the State Ethics Code to his situation.

The question the board member presented at first appeared to fall within the purview of the fair treatment section, HRS §84-13, which prohibits employees, including board members, from attempting to use their state positions to secure unwarranted privileges, exemptions, advantages, contracts, or treatment, for themselves or others. The Commission determined, however, that although the fair treatment section might be applicable to the board member's situation, HRS §84-14(b), a portion of the conflicts-of-interests section of the ethics code, was not only more relevant but dispositive of his question. This section states as follows:

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.

The philosophy behind this section is that once individuals assume state responsibilities they should preserve their credibility by not placing themselves in positions of potential conflicts of interest. The board member was included in the definition of "employee" for purposes of the State Ethics Code. Furthermore, an employment interest is defined as a "financial interest," pursuant to HRS §84-3(6)(c). The board member had stated that the use of the space fell into two categories: free public exhibits, which were held once a month, and activities for which rent was paid. The space was available for rent by any private individual or organization when it was not being used for a free public exhibit. A number of activities had been scheduled there. The board member also had stated that he had a personal financial interest in the rental of the space because he received a portion of the rental fee paid for private activities.

The Commission discussed whether the board member might be in a position to take action that directly involved the business he was employed by, which received all of the income from the rental of the space. In its review of the facts, the Commission noted that the state board had received seven requests for the funding of activities at the space in fiscal year 1983-84; five of these requests were approved for funding by the board. The Commission did not receive information indicating whether these activities fell within the "free of charge" category or whether rental fees were included in the requests. "Space rental" was

listed as one of the nine categories of expenses that applicants might include in the proposed budget-expense section of their grant applications. Accordingly, even if none of the grant applications previously received by the board included requests for funds for space, in the Commission's view, it would be reasonable to assume that future requests for the funding of activities might include that expense.

The Commission believed that it was a real possibility that organizations might apply in the future for funding by the state board for activities to be held in the space. The Commission concluded that if the cost of publicly-funded private activities also included the expense of renting the area, a conflict-of-interest problem would arise. Clearly, whether the state board ultimately approved or rejected any of the grant applications, the board would at least review such applications, and the board member would find himself in a position of conflict. Unfortunately, because he had acquired his new employment interest while he was serving as a member of the state board, HRS §84-14(b) required him to divest himself of his newly acquired financial interest or to resign his position on the board.

The Commission realized that its advice, requiring the board member either to divest himself of his private employment interest or to resign from the state board, may have presented the board member with a difficult choice. The Commission also recognized that the State might lose an experienced board member; nevertheless, the Commission saw no choice but to fulfill its responsibilities and enforce the provisions of the conflicts-of-interests section of the ethics code.

The Commission believed it was unfortunate that the board member did not seek the Commission's advice before accepting the new position but commended the board member for requesting an advisory opinion so that this matter might be resolved.

Dated: Honolulu, Hawaii, March 19, 1984.

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