

OPINION NO. 530

A member of a state board had assumed a sales position with a private manufacturing company. The board member had requested the Commission's advice on how this change in his private employment would affect his position as a board member and whether he could continue to serve on the board.

The most relevant section of the State Ethics Code was HRS §84-13(4) which states as follows:

§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:

....

- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

As a member of a state board, he was an employee for purposes of the ethics code as provided in HRS §84-3(4). Then, his employment as a sales representative of the company constituted a financial interest pursuant to HRS §84-3(6)(C). Additionally, in past opinions, the Commission had stated that a substantial financial transaction was one that was sufficient in magnitude to influence an employee in the conduct of his official duties. In making its determination, the Commission looked at the circumstances surrounding the board member's outside business pursuit and how that outside interest related to and affected his official duties.

The board member explained that he supplied a distribution center. The distribution center provided supplies to the jobbers who in turn supplied the dealers. Individual customers and shops acquired their supplies from the dealers. At times, the board member did come into contact with the shop owners, and in some cases the owners were also industry members. The board members stated that since it was against company policy for him to initiate sales contacts with shops, those contacts were initiated by the jobbers. In those instances, as a courtesy, the board member accompanied a jobber to assist in making a sale of products to the shop. The board member emphasized that he did not attempt to actively solicit business or persuade these customers, but that he was only allowed to provide basic information about the product and the company's policies and promotions. Although the board member did not receive a commission from these jobbers' sales, he did receive a commission on what the distribution center sold on a quarterly basis.

The Commission noted that the responsibilities of the board included establishing qualifications for the registration of industry members, inquiring into the practices and policies of the industry, investigating violations of the statute, and administering the industry's certification program. The board also exercised a policy-making function in regard to the industry; however, spot checks and other investigative functions were carried out by the investigative section of the department. Accordingly, the board had almost no contact with individual industry members.

In his discussion with the Commission's staff, the board member had stated that as a sales representative, he only came into contact with individual members of the industry when he occasionally accompanied a jobber to assist the jobber in making a sale. He had noted, however, that more often than not the owner of the shop was not an industry member; therefore, the board member believed that meetings with shop owners would not necessarily bring him into contact with specific members of the industry that his board regulated.

After reviewing the situation, the Commission believed that the board member could not accompany a jobber on a sales call without violating HRS §84-13(4). In the Commission's view, providing basic information about the company's products, policies, and promotions was a part of the solicitation and sales process. The Commission therefore advised the board member to avoid all contact in his private employment with individuals that the board regulated. The Commission noted that if the board member avoided this kind of interaction, he would not only be in compliance with HRS §84-13(4) but he also would protect himself from charges of receiving any unfair advantages in his job as a sales representative.

A provision of the conflicts-of-interests section of the ethics code, HRS §84-14(b), prohibits board members from acquiring financial interests in any business which they have reason to believe may be directly involved in official action to be taken by them. Because the board member's clients were the distribution center and the jobbers who sold the products, not individual members of the industry, in the Commission's opinion, the board member had not acquired a financial interest that placed him in a position of conflict. The Commission determined that the board member could, therefore, continue his service as a member of the board.

The Commission also advised the board member to be aware of other provisions of the ethics code that were applicable to his situation. First, he was told not to refer to his state position in conjunction with his private employment. Second, he was asked to bear in mind that HRS §84-14(a), another conflicts-of-interests provision, states that a board member may not take action directly affecting a business in which he has a substantial financial interest. Accordingly, in the event that the company later became involved in a matter before the board, the board member was directed to disqualify himself from taking any action concerning the matter. Finally, if the board member's situation changed with respect to the marketing of the products such that there would be a greater likelihood that his customers or potential customers might be involved in matters before the board, he was advised to contact the Commission for further determination.

The Commission commended him for bringing his change in status to its attention and thanked him for his interest in preserving ethics in government.

Dated: Honolulu, Hawaii, May 18, 1984.

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

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