OPINION NO. 537

The Commission received a request for an advisory opinion from an employee who had accepted a position as a board member of a private non-profit institution that competed with the employee's state agency. The employee wished to know whether his acceptance of the board membership created a conflict with his state position.

The section of the ethics code relevant to the question the employee raised was HRS §84-14(b), which prohibits a state employee from acquiring "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." HRS §84-3(6)(F) includes a "directorship or officership in a business" as a financial interest, and HRS §84-3(1) defines "business" as "a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit."

After examining the employee's job description, the Commission concluded that it was reasonable to assume that conflicts would arise between the employee's state position and his position as a board member of the non-profit institution. The Commission noted that action the employee took in his state capacity to initiate or modify programs or policies at his agency might at times directly affect the private institution, since it competed with his state agency.

The purpose of the ethics code, as stated in its preamble, is to preserve public confidence in state employees. Since the appearance of an impropriety can be just as damaging as actual unethical behavior, the Commission noted that HRS §84-14(b) prohibits situations where conflicts are likely to arise, rather than relying on the personal integrity of state employees.

Because the Commission determined that HRS §84-14(b) prohibited the employee from accepting a position as a member of the board of the private institution, the Commission advised the employee to resign from the board. The Commission noted that it had seen no evidence of the private institution receiving any unwarranted advantages in this case and stated that it realized that the employee was sensitive to the ethical considerations involved in this matter.

The Commission informed the employee that it appreciated his dedication to both his state position and the board of the non-profit institution and commended the employee for seeking its advice in regard to this matter.

Dated: Honolulu, Hawaii, August 10, 1984.

STATE ETHICS COMMISSION
Allen K. Hoe, Chairperson
Edith K. Kleinjans, Vice Chairperson
Tim S. Farr, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Mildred D. Kosaki disqualified herself from discussion and consideration of this opinion.