

OPINION NO. 543

A state employee requested an advisory opinion from the Commission on the question of whether his transfer in his department from one position to another created a conflict of interest. Because the employee's spouse also held a position in the same department, the employee stated that there had been allegations that his new position conflicted with his spouse's position. The employee also stated that there had been allegations that his transfer was based on favoritism.

The employee's supervisor sent a letter to the Commission setting forth the circumstances of the transfer. The supervisor stated in his letter that it had been necessary to fill the new position quickly in order to comply with federal regulations. The supervisor also stated that the new position was temporary and the employee would be replaced by a permanent one in due time. Finally, the supervisor discussed the employee's qualifications and experience and stated that the transfer had been made on the basis of the employee's outstanding qualifications, experience, and research interests.

The sections of the ethics code relevant to the questions the employee raised were HRS §84-14(a), a part of the conflicts-of-interests section of the code, and HRS §84-13, the fair treatment section of the ethics code. These two sections, in pertinent part, read as follows:

§84-14 Conflicts of interests. (a) 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.

§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:

- (1) Seeking other employment or contract for services for himself by the use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.

- (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.

HRS §84-14(a) prohibits state employees from taking any official action directly affecting their financial interests in businesses or other undertakings. HRS §84-14(a) was applicable to the employee's situation since, under HRS §84-3(6), an employee's financial interests include those of his or her spouse. However, since HRS §84-14(a) applies to nonstate businesses or other undertakings only, the Commission found that this section of the ethics code would not prohibit the employee's spouse from taking official action that affected the employee's office. The Commission has construed the term "undertaking," however, to include an employment interest in a state agency or department. The Commission informed the employee that a conflict of interest would arise only when the employee's spouse would be required to take official action that directly affected the employee's employment interest in his department. The Commission informed the employee that, at such times, the ethics code required that his spouse disqualify herself and allow someone else to take the necessary official action.

The fair treatment section of the ethics code, HRS §84-13, prohibits state employees from using their official positions to give themselves or others unwarranted advantages or special treatment. Although the employee stated that there had been allegations of favoritism, the Commission found no evidence that would support a violation of HRS §84-13. The Commission noted that no such evidence or information had been brought to its attention, nor had anyone filed a complaint with the Commission. The Commission therefore saw no reason to inquire further in the matter.

The Commission informed the employee that its advisory opinions are based on and limited to the facts in the opinion. The Commission told the employee that should these facts change, he might wish to contact the Commission for another opinion.

Finally, the Commission told the employee that it appreciated his seeking its advice in this matter and commended the employee for his candor in discussing the facts of his case.

Dated: Honolulu, Hawaii, October 12, 1984.

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

Note: Commissioner Mildred D. Kosaki and Commissioner Arnold J. Magid were excused from the meeting at which this opinion was considered.