

OPINION NO. 544

A member of a state board was employed by corporation A. The board had received a petition from corporation B, a wholly owned subsidiary of corporation C. The board member's employer, corporation A, was also a wholly owned subsidiary of corporation C. The board member had indicated that he had decided that he would voluntarily disqualify himself from participating in any discussion or decision-making by his board regarding corporation B's petition. However, the board member was interested in knowing whether the State Ethics Code would have permitted him to participate.

The applicable section was HRS §84-14(a), which prohibits employees from taking official action directly affecting businesses in which they have substantial financial interests. In past Commission opinions, such as Advisory Opinion No. 434, the Commission had concluded that for purposes of the ethics code the interests of a subsidiary and its parent company were identical. The Commission had noted that while a parent company and its subsidiary may be separate legal entities, the benefits gained by a subsidiary ultimately flow to the parent company. Accordingly, the Commission had determined that employees must disqualify themselves from taking action that directly affects their employers' parent companies.

The board member's situation involved a "brother-sister" relationship between his employer, corporation A, and the petitioning corporation B. After reviewing the board member's circumstances, the Commission decided to reaffirm its conclusion that the interests of parent companies and their subsidiaries are essentially the same because there is no limit to the flow of benefits from one to the other. Although the Commission's past opinions had focused on the flow of benefits gained by a subsidiary to its parent company, the Commission noted that the flow is bidirectional, and benefits gained by a parent company through its own business or from other subsidiaries may be channeled to any subsidiary as needed. The Commission noted that regardless of the source of funds, profits may be transmitted from the parent company to the subsidiaries in a number of ways such as in the form of capital, compensation for corporate officers, and profit-sharing. As a result, the Commission believed that a close relationship exists between parents and subsidiaries and subsidiaries with a common parent company. The Commission therefore concluded that employees who are employed by a subsidiary of a parent company must disqualify themselves from taking action in their state capacity that directly affects another subsidiary of that parent company. The Commission also stated that unless it is demonstrated that no relationship between subsidiaries with a common parent company exists and that benefits do not flow from one to the other either directly or through the parent company, a disqualification is required under the conflicts-of-interests section.

To assist the Commission in reaching a decision, the board member had submitted a job description with his request for an advisory opinion. The Commission noted that after it had issued Advisory Opinion No. 434, a request for a reconsideration had been submitted and, subsequently, the Commission had revised its conclusion by issuing Advisory Opinion No. 446. In that opinion, the Commission had decided that a board member who was not involved in the management or policy decisions of either the subsidiary or parent corporation would be allowed, under the State Ethics Code, to vote on a proposal submitted by the parent

corporation to the board. After reviewing HRS §84-14(a), the Commission determined that the statute does not allow for exceptions and requires employees to disqualify themselves from any official action directly affecting a business or undertaking in which they have a substantial financial interest. The Commission noted that it had always concluded that an employment interest is a substantial financial interest for purposes of the ethics code. Furthermore, the Commission recognized that the statute focuses on the employment relationship without reference to an employee's discretionary responsibilities in the private sector. Accordingly, the Commission concluded that an employee is required to refrain from official action regarding his private employment interest irrespective of the scope of his responsibilities in his private work. Accordingly, the Commission overturned its decision in Advisory Opinion No. 446.

The Commission commended the board member for his sensitivity to the ethical considerations of his situation and appreciated his initiative in removing himself from participation while awaiting the Commission's decision.

Dated: Honolulu, Hawaii, October 24, 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.