

## ADVISORY OPINION NO. 550

A legislator requested the Commission's advice on how to lessen the possibility of conflicts of interests because he served as the chairman of a legislative committee and also was employed as a consultant on a fairly regular basis by a private organization. The Commission stated that two subsections of the conflicts-of-interests section, HRS §84-14(a), requiring disqualification, and HRS §84-14(b), on prohibited acquisition, do not apply to legislators. Furthermore, the Commission noted that HRS §84-13, the fair treatment section, allows legislators to take action in the exercise of their legislative functions without violating the fair treatment section. The Commission recognized that the legislator knew that the ethics law thus would allow him to accept the committee chairmanship and still serve as a consultant to the private organization. The Commission expressed its appreciation to the legislator for seeking advice in reducing potential conflicts.

In the Commission's view, an appropriate standard for the legislator to consider was the one that applies to other state officials and employees. Pursuant to HRS §84-3(4), "employee" includes any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or to the constitutional convention; it excludes legislators, delegates to the constitutional convention, justices, and judges. HRS §84-14(a) requires employees to disqualify themselves from taking official action that affects their substantial financial interests. "Official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. The Commission pointed out that this portion of the conflicts-of-interests section requires employees not only to disqualify themselves from participating in final decisions but also to refrain from any participation in the decision-making process. Furthermore, the Commission commented that in instances where employees are unable to disqualify themselves or where such disqualification seriously hinders the State's ability to proceed with its business, the Commission has asked employees to divest themselves of their private business interests or terminate their state employment. Accordingly, the Commission told the legislator that if he were to adopt a similar standard, he should refrain from participating in all decisions, including floor votes, that directly affects the private organization and its competitors.

The legislator had stated that he had been considering two alternatives. In the first, he would voluntarily refrain from serving as chairman on all matters relating to the private organization and/or the state agency primarily involved in the private organization's business and turn these duties over to the vice-chairman of the committee. The legislator also stated that second choice would be for him to ask that matters relating to the private organization and/or the state agency be transferred to the jurisdiction of another committee. The Commission advised that while both courses of action would reduce the likelihood of fair treatment questions being raised, the latter alternative also would serve to remove the legislator from potential conflicts-of-interests situations. The Commission commented that if the legislator decided to voluntarily adopt the latter alternative, the Commission believed that the perception of a conflict of interest on the legislator's part by the public would be lessened substantially.

The Commission appreciated the legislator's seeking its advice and commended him for his active interest in promoting a high standard of conduct for legislators.

Dated: Honolulu, Hawaii, February 13, 1985.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Edith K. Kleinjans, Vice Chairperson

Tim S. Farr, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: There was a vacancy on the Commission.