

ADVISORY OPINION NO. 570

A member of a state board asked the Commission to determine whether his acceptance of a consultant contract with a city agency would create a conflict of interest with his state position.

The board member had recently submitted a proposal to the city agency suggesting that it use a particular service to inform citizens of its activities. The board member also told the city agency that he would be available to work as a consultant if the city agency accepted his proposal.

The board member indicated that his board might consider proposing that funds be set aside to help the city agency inform citizens of its activities. The board member asked the Commission to determine whether his board's discussion of the funding would preclude him from accepting a consultant contract with the city agency.

Because HRS §84-3(4) defines a "state employee" for purposes of the ethics code to include members of boards, commissions, and committees, the board member was subject to the ethics code. The sections of the ethics code relevant to the question the board member raised were HRS §§84-14(a) and (b), which read in pertinent part as follows:

- (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.
- (b) No employee shall acquire 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 §84-14(b) prohibits the acquisition of a financial interest if it would be "directly involved" in official action to be taken by a state employee. Since the board's role was simply to advise the director of the state department to which the board was attached, the Commission concluded that action taken by the board would not "directly involve" the board member's employment with the city agency. Likewise, the Commission concluded that HRS §84-14(a) would not require that the board member disqualify himself from board discussions concerning funding. The Commission noted, however, that the board member had stated that he would not participate in such discussions. The Commission told the board member that it believed that his voluntary disqualification was appropriate to avoid even the appearance of an impropriety.

Although HRS §§84-14(a) and (b) neither restricted the board member's activities as a board member nor prohibited his employment with the city agency, the Commission asked

the board member to note the following restrictions in the State Ethics Code. HRS §84-12 prohibits state employees from using confidential information for their personal gain or for the benefit of others. HRS §84-13 prohibits state employees from granting unwarranted advantages to themselves or others, including using state time, equipment, or other state facilities for private business purposes. Finally, HRS §84-14(d) prohibits state employees in their private capacities from assisting others for a fee before their agencies or boards. The Commission told the board member that if he had questions regarding these or other sections of the ethics code, he might wish to contact the Commission for another opinion.

Finally, the Commission commended the board member for seeking its advice at an early time and for his candor in discussing the facts of his case.

Dated: Honolulu, Hawaii, November 27, 1985.

STATE ETHICS COMMISSION

Allen K. Hoe, Chairperson

Tim S. Farr, Vice Chairperson

Edith K. Kleinjans, Commissioner

Rabbi Arnold J. Magid, Commissioner

Note: Commissioner Laurie A. Loomis was excused from the portion of the meeting at which this opinion was considered.