

## OPINION NO. 44

May a University of Hawaii teacher, who was also employed by the East-West Center to do certain art work, enter into an agreement with the East-West Center the day after he leaves its employment to do the same type of work for compensation on an hourly-basis contract?

We hold that in this instance he will not violate the ethics law, chapter 84, HRS, if certain requirements are met.

While the East-West Center was created and is funded by the United States Congress, it is administratively attached to the University of Hawaii. Funds are channeled to the University of Hawaii for the Center's use. The Center's Chancellor, who administers the Center's program, is responsible to the University Board of Regents through the President of the University of Hawaii. Because of the close ties with the University, we hold that the East-West Center falls under the purview of the state ethics law.

The fact that the teacher is an employee of the University and wishes to enter into this contract does not give rise to any ethical problems, per se. His University capacity has no official connection with the East-West Center, notwithstanding the connection of the two institutions.

However, as a former employee who contracts within two years with the state agency for which he worked, he is governed by section 84-16. Subsection (b) of that section generally prohibits such contracts if the employee participated while in state office in the matter with which the contract is directly concerned. Cases of "personal contracts of employment" are excepted. Thus, we must decide whether this is a "personal contract of employment" within the exception to section 16.

The services he will perform involve design and layout of printed material and are in the nature of professional artistic services. He will be paid by the hour, monthly, upon submission of a statement of work accomplished and hours expended.

In this instance, we find that the contract for artistic work paid for on an hourly basis is a personal contract of employment within section 84-16(c). For this reason, he will not violate section 16 of the ethics code by entering into this contract with the East-West Center.

While the special exemption of section 16(c) may take this contract out of the prohibitions of section 16, the spirit of section 16(b) should be carefully considered by the contracting state agency. It would be inappropriate for a former employee to set himself up as a recipient of a contract with the department with which he worked the day after he leaves the department.

In this connection, section 13 must be considered by the contracting authority. Section 13 prohibits the use by an employee of his official position to secure unwarranted contracts of treatment for himself. In deciding whether a contract entered into the day after

an employee leaves a state position is an unwarranted one, obtained through the use of official position, one consideration would be whether the contract is to complete a project or job started when the employee was a state employee, or to do completely new work.

While we make no decision on whether or not the contract resulted from official action on his part and, if so, whether or not the contract was warranted, we suggest that if situations of this type should arise in the future, the contracting state agency should carefully consider section 13.

Dated: Honolulu, Hawaii, November 18, 1969.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
James F. Morgan, Jr., Vice Chairman  
S. Don Shimazu, Commissioner  
July Simeona, Commissioner

Note: Commissioner Margaret W. Smalley was excused from the meeting at which this opinion was considered and adopted.