OPINION NO. 128

A member of a state commission inquired whether his law firm may continue representation of a client in transactions with various state agencies.

The particular client has contracted with the State, including the agency to which his commission is attached, for the supply of goods.

We initially noted that the duties and responsibilities of his advisory commission were stated in the broadest terms, that is, to sit in an advisory capacity to the agency on matters relating to services in a particular field.

It was our opinion that the law firm could continue to represent the client, as described in his letter. However, we advised that this employee was subject to the following considerations under the State ethics law, chapter 84, HRS.

1. He should disqualify himself from commission matters, even when advisory in nature, which may result in state action directly affecting the client, which is a business in which he had a substantial financial interest by virtue of the client-attorney relationship existing between the corporation and the law firm of which he was a partner. For example, discussion and/or recommendation relating to contracts, the method of awarding these contracts, or negotiations thereof, were matters from which he should disqualify himself pursuant to HRS, §84-14, relating to conflicts of interest, since the recommendation of the advisory commission on those matters may directly affect his client. With regard to the matter of disqualification, we referred him to the guidelines contained in Opinions No. 4 and 40.

2. His attention was called to HRS, §84-15, which prohibits appearances in behalf of a private interest before any state agency for a contingent compensation. Where a contingent compensation is not involved, such appearance or transaction may be subject to review under HRS, §84-12, relating to confidential information, and §84-13, relating to fair treatment. We advised that, if in the course of his responsibilities as a member of the commission, he should obtain information which is not by law or practice available to the public, he would be prohibited under §84-12 from using such information for his personal gain or the benefit of others, such as a client. Moreover, under HRS, §84-13, he should not use his influence as a member of the commission to secure or grant privileges, exemptions, advantages, contracts, or treatment for his client.

3. Finally, we called his attention to HRS, §84-16(b), which may be applicable up to two years after he has terminated his relationship with the State as a member of the commission. Specifically, that section prohibits a contract by and between a state agency and a client which he represents personally involving a matter which he has participated in during his state employment.

We emphasized that the problems stated above were not intended to suggest that he must resign from state service. We believed that by disqualifying himself in certain instances of conflict, he would still be able to make a significant contribution to the commission.

Dated: Honolulu, Hawaii, March 1, 1972.

STATE ETHICS COMMISSION
Vernon F. L. Char, Chairman
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Gwendolyn B. Bailey, Commissioner
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Fred S. Ida, Commissioner