

OPINION NO. 167

A state administrator requested an opinion whether his agency could approve a contract with a certain private corporation.

He indicated that his agency administered an organization that was extramurally funded. He stated that this organization had requested that his agency approve a contract with a certain corporation under which the corporation would provide professional services to the organization. The contract price for the work was over \$1,000.

He further indicated that a certain employee with the corporation would either perform all aspects of the contracted services or supervise any work done by members of his staff. The individual had been an employee with the state organization previously and had provided management, supervisory, and leadership functions for one section of the organization.

HRS §84-15(b) and (c) state the following:

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the State.

It was the opinion of the Commission that the employee, while employed by the organization, participated in the matter with which the contract was concerned. We noted that at the time that the employee was a section head of the organization, he had a principal role in the development of the organization's long-range plans, which recognized a need for the contracted services. We stated that we believed that participation in the formulation of plans, which are recommendatory in nature and which later result in a proposed state contract, fall within the scope of HRS §84-15(b). Thus, it was the Commission's opinion that the individual had participated in the matter of the proposed contract.

It was our further opinion that the proposed contract was included in the exception of HRS §84-15(c). This section states that the prohibitions of HRS §84-15 shall not apply to a "personal contract of employment." The Commission has held in a past opinion, Opinion No. 86, that this exception covers contracts with corporations.

Finally, we found that HRS §84-13 had not been violated in this instance. This statutory provision prohibits, in part, a state employee from using or attempting to use his official position to secure unwarranted privileges, advantages, or contracts for himself. The Commission noted that although the employee had participated in the formulation of the organization's long-range goals while an employee with the organization, he had not taken any further action to implement these goals. We further noted that at the time the individual had terminated his employment with the organization, the organization had not decided to implement these goals, and a decision to implement the goals was made by the organization several months after the individual had left the

organization. Thus, it was the Commission's opinion that the individual had not used his position with the organization in violation of HRS §84-13.

Therefore, it was the Commission's opinion that the agency could approve the contract.

The Commission thanked the state administrator for his concern for ethical considerations relating to matters within his province.

Dated: Honolulu, Hawaii, September 27, 1973.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Walters K. Eli, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.