

OPINION NO. 189

A former state employee submitted a request for an advisory opinion on whether he would violate HRS §84-18 if he were to accept employment as a consultant with a private firm. He further inquired whether, if the employment would violate the ethics law, he might assist the company if he did not receive any compensation, although reimbursement would be made to him for personal expenses.

The individual had received an inquiry from a company whether he would be available to it as a consultant. The company intended to submit to a state committee an application for financial support of one of its projects. If the former employee was able to accept the consultantship, he would be involved exclusively in coordinating the company's projects and would not participate in any public presentation of its proposals.

HRS §84-18(b) states that "[n]o former ... employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters in which he participated as an employee." The former employee informed our staff that he had not participated in his state capacity in matters relating to the company's proposed project. Thus, this statutory section was inapplicable to the instant case.

Then, HRS §84-18(c) states the following:

No former ... employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular state agency or subdivision thereof with which he actually served.

Pursuant to this provision, we said that the individual would not be able to assist the company for compensation on any matter that would require official action by the agency with which he was associated.

The individual indicated that the private company which had inquired whether he would be available to it as a consultant intended to apply to a state committee for a loan. Because this application would require approval by his former state agency, which approval would be official action under HRS §84-3(7), we stated that HRS §84-18(c) would prohibit him from assisting the company on this matter for a fee or other consideration for a period of one year from termination of his state employment.

The former state employee also inquired whether he might assist the company as a consultant if he received no compensation. He would, however, be reimbursed for personal expenses.

We pointed out that the restrictions on post employment set forth in HRS §84-18(b) and (c) were applicable when assistance was given to a private company for a "fee or other consideration." We held that the individual might assist the company if he were not paid any compensation. We said that the company could reimburse him for personal expenses. We cautioned the individual, however, that reimbursement of personal expenses might, in some circumstances, provide him with "consideration." For example, if he were to combine personal business or personal travel on a working trip for the company, the restrictions of HRS §84-18(b) and (c) would apply.

We gave the individual an additional caveat with regard to his post-employment activity. We stated that HRS §84-18(a) would prohibit him from "[disclosing] any information which by law or practice is not available to the public and which he acquired in the course of his official duties or [using] the information for his personal gain or the benefit of anyone."

We thanked the former state employee for his concern for ethics in government.

Dated: Honolulu, Hawaii, July 30, 1974.

STATE ETHICS COMMISSION
Gwendolyn B. Bailey, Chairman
Vernon F.L. Char, Vice Chairman
Audrey P. Bliss, Commissioner

Note: Commissioner Walters K. Eli was excused from the meeting at which this opinion was considered. There was one vacancy on the Commission.