

ADVISORY OPINION NO. 87-5

A former principal of a state school requested an opinion from the State Ethics Commission (the "Commission") concerning the application of the post-employment restrictions of the ethics code to her representation of a private company at various schools. Schools, through their Parent Teacher Association ("PTA") boards, sell the company's products as a fundraising program.

The former principal was familiar with the company's program because as the principal of her former school, she had worked with her school's PTA board and with the local representative for the company in connection with the program. The Commission learned that as principal, she had recommended to her school's PTA board that it participate in the company's program, that she scheduled school assemblies to enable the company's local representative to explain the company's program to students, that she encouraged students to participate in the program, and that she assisted in forwarding questions about the program from parents to the company's local representative.

Several months after the former principal retired from her state position, the company's local representative asked her to assist him, for compensation, in representing the company at various schools. The former principal informed the Commission that her duties for the company would include contacting the schools, through their principals and PTA boards, to explain the company's program and to solicit the schools' participation in the program; assisting participants in the program by distributing literature and other materials, and conducting assemblies at participating schools; and assisting the company with its accounting and bookkeeping activities.

The former principal appeared at a Commission meeting to provide additional information and to discuss her opinions in connection with this matter.

The sections of the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"), that were relevant in this case were sections 84-18(b) and (c) of the post-employment laws. HRS section 84-18(b) provides as follows:

No former legislator or employee shall, within twelve months after termination of the former legislator's or employee's employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters in which the former legislator or employee participated as an employee.

The Commission held that section 84-18(b) prohibited the former principal, for a period of twelve months following termination of her state employment, from assisting or representing any person or business for compensation on matters in which she had participated as a state employee. The Commission noted that it had previously held that the restrictions of section 84-18(b) do not apply to general areas of work that occupied an employee during state employment, but rather apply to specific projects that continue after the employee leaves state employment.

During her state employment, the former principal had participated in the company's program at her school. However, the Commission was informed that every year, each PTA board that participates in the company's program must decide whether or not to renew its enrollment in the program. Because her former school's enrollment in the program had to be renewed for the current school year and because the former principal would not be participating in this decision as

a state employee, the Commission concluded that HRS section 84-18(b) would not prohibit her assistance to, or representation of, the company in connection with the company's program.

HRS section 84-18(c) provides as follows:

No former legislator or employee shall, within twelve months after termination of the former legislator's or employee's 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 the former legislator or employee had actually served.

The Commission held that this section of the ethics code prohibited the former principal, for a period of twelve months following termination of her state employment, from assisting or representing any person or business for compensation on matters involving official action by the subdivision of the state department with which she had actually served. "Official action" is defined by the ethics code as a decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

The Commission was informed that although it was a school's PTA board that decided whether or not to participate in the company's program, a principal could recommend to the PTA board that it either adopt or not adopt the program. Further, it was the Commission's understanding that a principal could recommend to his or her school's PTA board that it continue or discontinue the program based upon the principal's assessment of the program and of the services provided to the school by the company. The Commission believed that such action on the part of a principal involved the use of discretionary authority and therefore constituted official action within the meaning of HRS section 84-18(c). Therefore, the Commission held that this section of the ethics code prohibited the former principal from assisting or representing the company in connection with the company's program at the subdivision of the department with which she had served.

In determining what "subdivision" of her former department the former principal had served as a state employee for purposes of section 84-18(c), the Commission was guided by the intent of this section to provide a "cooling off" period after an employee leaves state employment so that the relationships made and influence gained as an employee are not used to advantage one's self or others.

The Commission was aware that within the department, each school, as headed by its principal, was accorded a certain degree of independence. The Commission had also learned, however, that there existed interaction between principals on a regular and recurring basis within each school district. For example, the former principal informed the Commission that during her tenure as principal, she attended monthly meetings of the principals of all schools within a particular school district. These meetings were held with the District Superintendent who headed the district office for that school district. The former principal also stated that she attended monthly meetings for the principals of certain schools located within a particular geographical area ("complex") within a school district. It was the Commission's understanding that at the district meetings and the complex meetings, both administrative and substantive matters were discussed, and that the former principal participated by serving as chairman at some of these meetings.

The Commission was also informed that as the principal of a school located within a particular school district, the former principal's actions were subject to the supervision of the district office for that school district. Further, the former principal indicated to the Commission that

principals must consult with the district office regarding problems or questions they may have concerning their respective schools.

Based upon this information, the Commission concluded that for purposes of HRS section 84-18(c), the department subdivision with which the former principal actually served was her former school district. Therefore, the Commission held that she was prohibited by section 84-18(c) from assisting or representing the company for compensation at her former school and at all other schools within her former school district. The Commission further held that the former principal was prohibited by section 84-18(c) from assisting or representing the company for compensation on matters involving official action by her former school district office, which she had also served as principal of a school within that particular district.

The Commission noted that it had previously held that section 84-18(c) prohibited those activities that one could reasonably believe might influence official action to be taken by an employee's former state agency or subdivision. In this case, the Commission believed that section 84-18(c) prohibited the former principal from engaging in any activity on behalf of the company that would be subject to evaluation or review by any school within her former school district or by the district office. Thus, the Commission advised the former principal that she was prohibited from contacting those schools within her former school district to explain the company's program or to solicit the schools' participation in the program, and that she could not conduct assemblies or otherwise promote the program at those schools. The Commission held that the former principal could, however, assist the company with its bookkeeping activities *provided* such activities would not be subject to evaluation or review by any of the schools within her former school district or by the district office.

The Commission noted that the restrictions of section 84-18(c) applied to the former principal for a period of twelve months following termination of her state employment. After that period, section 84-18(c) no longer prohibited her from assisting or representing the company before her former district office or before other schools within her former district.

The Commission also reminded the former principal that HRS section 84-18(a) prohibited her from disclosing any information which by law or practice was not available to the public and which she acquired during the course of her official duties as a state employee. This section further prohibited her from using such confidential information for her personal gain or the benefit of the company or anyone else's benefit.

The Commission thanked the former principal for bringing this matter to its attention and also commended the former principal's interest in state ethics.

Dated: Honolulu, Hawaii, September 23, 1987.

STATE ETHICS COMMISSION
Laurie A. Loomis, Chairperson
K. Koki Akamine, Commissioner
Cynthia T. Alm, Commissioner
Rev. David K. Kaupu, Commissioner

Note: Vice Chairperson Arnold J. Magid participated in the Commission's decision but was unable to be present at the signing of this opinion.