

OPINION NO. 201

An employee of a state agency inquired whether his agency might enter into a consultant contract with a certain non-profit institution.

He indicated that his agency wished to secure the services of a certain individual as a consultant for one of the agency's research projects. The individual was the designer and principal coordinator of this project while he was an employee of the state agency. The individual had become a regional representative of the non-profit in situation.

The state employee further indicated that with the individual's concurrence and at the request of the head of the state employee's agency, the non-profit institution had agreed to release approximately 10% of the individual's time to the state agency for the next two years to work on the research project. The arrangement would be on a cost-reimbursable basis, with funds transmitted to the non-profit institution by the state agency as reimbursement for the individual's time.

Two sections of the ethics law had to be considered. The first provision was HRS §84-15(b), which states the following:

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.

In the instant case, the state agency proposed to enter into an agreement with the non-profit institution for the latter to provide consultant services on a matter in which the individual in question, an employee of the non-profit institution, formerly participated as a state employee.

We held that the exception of HRS §84-15(c), which states that HRS §84-15 "shall not apply to a personal contract of employment with the State," applied to the instant case. We were aware that the contract would be with the non-profit institution and not the individual. Nevertheless, we believed that the exception of HRS §84-15(c) applied because the contract provided for the individual in question, and not the non-profit institution as an entity or any of its employees, to provide the consultant services. Moreover, the state employee indicated that the proposed contract would be between the state agency and the non-profit institution and not the individual for administrative reasons. We have followed the exception even where a corporate entity is involved.

The second statutory provision that had to be considered was HRS §84-18(b). This section states:

No former legislator or 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.

As indicated *supra*, under the proposed agreement, the non-profit institution would provide consultant services to the state agency on a matter in which one of its employees participated as a state employee. We concluded, however, that the proposed contract was not prohibited by the statutory section.

HRS §84-18(d) states:

This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

In our earlier discussion of HRS §84-15(c), we stated that we viewed the proposed contract as a "personal contract of employment." We noted that under the proposed agreement, the individual in question, and not any employee of the non-profit institution, would assist the state agency and that the contract was between the state agency and the non-profit institution for administrative reasons. Under these circumstances, we concluded that HRS §84-18 did not prohibit the proposed agreement.

We expressed appreciation for the state employee's concern for ethical considerations relating to matters within his province.

Dated: Honolulu, Hawaii, December 23, 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.