OPINION NO. 206

A former state employee requested us to advise him on the ethical considerations relevant to his acceptance of a position with a certain company.

Initially, we pointed out that the ethics law did not prohibit the individual from joining the company in question. We said, however, that the law prohibited him from assisting the company on certain types of matters.

HRS §84-18(b) states the following:

> 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.

The individual informed our staff that in his former state position, he participated in the readjustment of the rates for leased space at a state facility for his new employer. Thus, we said that his company lease for space at this facility was a matter that HRS §84-18(b) would prohibit him from assisting his company for a period of one year from termination of his state service.

Then, HRS §84-18(c) 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 involving official action by the particular state agency or subdivision thereof with which he had actually served.

Official action is defined in HRS §84-3(7) as "a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." The individual, therefore, was prohibited from assisting his company on any matter involving official action by his former state department for a period of one year from the date of his resignation.

We stated that the rationale of the two statutory provisions discussed above appeared to be the prevention of a former state employee from using influence derived from contacts and associations that he made while in government for his personal gain or for the benefit of others. We said that the provisions also appeared to guard against the use for personal gain of knowledge that a former state employee had of cases in which he participated. Finally, an intent of the provisions appeared to us to be the discouraging of a state employee from using his state position to obtain a future job in the private sector. In applying HRS §§84-18(b) and (c) to the instant case, we considered each of these points. It was also our belief, however, that activities of former state employees should not be restricted to such an extent that people were discouraged from public service. Moreover, we stated that any limitation on a former employee's activities should not be so severe that the general public loses the benefit of the experience and knowledge that the individual acquired while in government service once he moves into the private sector.

We brought one last statutory provision to this individual's attention. HRS §84-18(a) provides as follows:

No former legislator or employee shall disclose 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 use the information for his personal gain or the benefit of anyone.

We expressed appreciation for the individual's concern for ethics of public officials.

Dated: Honolulu, Hawaii, January 20, 1975.

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.