

OPINION NO. 208

A member of the state legislature requested an advisory opinion on whether he might bid for certain consulting contracts required by state agencies. He indicated to us that in the past he had worked on sub-contract jobs for the State of Hawaii.

He indicated that because of his many years of experience in his field and several years as a practicing consultant, he could influence the passage of legislation through a certain committee and on the floor of the house of which he was a member. He stated that this legislation could call for evaluations in several areas of interest to him.

The state representative inquired whether he might enter into consulting contracts relating to certain subject areas of interest to him. He indicated that the legislature could pass legislation that would allocate funds for such studies or surveys. He stated that there were several potential state agencies that would be administering the consulting contracts.

HRS §84-15 states the following:

(a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

(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 our opinion that HRS §§84-15(a) and (b) would be applicable to many of the consulting contracts that he would be interested in obtaining from state agencies. It was our further opinion, however, that the exception in HRS §84-15(c) for personal contracts of employment would apply. Thus, we concluded that HRS §84-15 would not prohibit a state agency from entering into a consulting contract with the legislator.

We pointed out that while he might enter into contracts with state agencies for consulting work, he should be careful not to violate HRS §84-13. We said he should not use his position as a legislator to secure unwarranted advantages, contracts, or treatment for himself. This would mean that he should not solicit a contract from any agency under circumstances in which a reasonable man could infer that he was using or attempting to use his official position to obtain unwarranted treatment or advantages for himself. For example, HRS §84-13 might be violated if the legislator were to solicit a consulting contract from a state official who might feel that granting certain contracts to him would facilitate continued funding or support for his state programs or activities.

We expressed appreciation for his concern for ethics of public officials.

Dated: Honolulu, Hawaii, February 28, 1975.

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.