OPINION NO. 212

A former head of a state agency asked us to advise him on the ethical considerations relevant to several employment opportunities that he had.

The former state employee raised the following questions:

1. Would a conflict exist or arise if he accepted employment as an employee in a capacity where his duties might include advising higher level management on appropriate actions to take on matters relating to programs of his former agency? Would it make a difference if the position were in the order of an officer with direct responsibility for decision making?

2. a. Would a conflict exist or arise if he were to offer his services as a consultant for a fee to conduct analyses of management, administrative, and operational policies and practices relating to programs of his former agency and to make recommendations for actions that might result in financial benefit to his employer?

2. b. Would a conflict exist or arise if a county government were to contract for his services relating to programs of his former agency?

3. Would a conflict exist or arise if he were to be employed in a capacity where his knowledge and experience gained as a state employee not only on programs administered by his former agency but also knowledge of general government structure and operations would be used to benefit the employer? For example, would a conflict exist or arise if he were to design a curriculum and conduct education classes for individuals to improve their ability to better represent their constituents or themselves in proceedings before governmental organizations, including the officials of his former state agency?

4. Would a conflict exist or arise if he were to accept a managerial position with a company that had been the subject of official action by him? Would a conflict exist or arise if he were to limit his employment in a non-managerial position?

Before answering the specific questions that he raised, we outlined the relevant sections of the ethics law.

First, we brought to his attention HRS §84-18(a) which states:

> 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 pointed out that the statutory section pertained only to information which by law or practice was not available to the general public.

Then, HRS §84-18(b) provides 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.

Finally, 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."

Thus, we stated that HRS §84-18(c) would prohibit the former state employee from assisting a person or business on a specific matter which would require an employee of his former agency to take some discretionary action on the matter. This section would not preclude him from assisting someone on a matter that involved only ministerial action by his former agency or on a matter that, although concerned with rules or policies of the agency, did not require any action to be taken by an employee of the agency.

Question 1, supra.

We believed that the post-employment restrictions of the ethics law applicable to him would probably make it impossible for him to accept employment in these situations. In our opinion, such employment would inevitably involve specific matters (petitions, applications, etc.) that would require discretionary action by his former agency.

Question 2 a., supra.

We concluded that HRS §§84-18(b) and (c) would not prohibit him from serving as a consultant to conduct analyses and make recommendations on management, administrative, and operational policies and practices relating to programs of his former agency. We stated that he would be prohibited, however, from serving as a consultant to a company on a specific matter (petition, application, etc.) that would be or was before his former agency and that would require official action to be taken by an employee of the agency.

Question 2 b., supra.

We answered this question in the negative. We said that the restrictions of HRS §84-18 did not apply when services were performed for a county or any of its agencies.

Question 3, supra.

We said that HRS §§84-18(b) and (c) would not prohibit him from designing a curriculum and conducting classes on matters relating to programs of his former agency. However, as indicated *supra*, we said that he would be prohibited from assisting individuals on a specific matter (petition, application, etc.) that would be or was before his former agency and that would require official action to be taken by an employee of the agency.

Question 4, supra.

We concluded that he might accept either a managerial or a nonmanagerial position with such a company. He would not, however, be able to assist his employer on any matter that required discretionary action by his former agency.

We pointed out to the former state employee that in a recent opinion, we stated that the rationale of HRS §84-18 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 also said that the statutory section appeared to guard against the use for personal gain of knowledge that a former state employee had obtained in cases in which he participated. Finally, we stated that an intent of HRS §84-18 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 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.

We expressed appreciation for the individual's concern for ethics in government.

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.