

## OPINION NO. 215

A former state employee requested an advisory opinion relating to his acceptance of a position with a certain company. He indicated that as a state employee he was responsible for carrying out the rules and regulations of a certain state agency. He was also responsible for directing the technical staff of the agency.

The individual stated that his new employer had a sister company which was subject to the jurisdiction of his former state agency. His employer furnished certain services to this sister company. His employer itself was not subject to the jurisdiction of his former state agency.

The individual raised the following questions:

1. Would he be permitted to conduct studies of the sister company's operations, which, in turn, might result in an appearance by the company before his former state agency?
2. Would he be permitted to be called by the sister company as a witness in a proceeding before his former state agency on studies prepared by him or under his supervision?
3. Would he be permitted to participate in the planning, analysis, and review of the sister company's operations to determine a matter of interest to his former state agency?
4. Would he be permitted to assist another employee of his company, who, in turn, would be responsible for furnishing information to an employee of the sister company?

HRS §84-18(a) 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 asked the individual to note that this statutory section pertained only to information which by law or practice was not available to the general public.

Before answering the specific questions that the individual raised, we stated that we would like to outline the relevant sections of the ethics law. At this point, we also stated that the ethics law did not prohibit the individual from joining his company as an employee. We said that the ethics law, however, prohibited him from assisting his employer or its sister company on certain types of matters.

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.

The individual indicated that he had participated as a state employee in a matter that was still open and on which hearings would be held in the future. We said that HRS §84-18(b) would prohibit his participation in this case as an employee of his new company for one year.

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."

We said that HRS §84-18(c) would prohibit the individual for a period of one year from representing or assisting his employer or its sister company in a specific matter that would require his former state agency to take some discretionary action in the matter. We stated that this section would not preclude him from assisting these companies in a matter that involved ministerial action by his former state agency. Also, we pointed out that this section would not preclude him from assisting his employer or its sister company in a matter that would not come before his former state agency for a period of one year. We stated that we construed HRS §84-18(c) to prohibit a former state employee from assisting someone for a fee only in those matters involving official action by his former state agency that come up for action within a period of one year from his termination of state employment.

In answer to the specific questions that the individual had raised, we held that he might not conduct studies of the sister company's operations; appear as a witness on behalf of the sister company in a proceeding before his former state agency; participate in the planning, analysis, and review of operations of the sister company to determine a matter of interest to his former state agency; and assist another employee of his company on a matter if any of these actions were taken with respect to a matter that would be before his former state agency before one year had elapsed from his termination of state service. We said that he might undertake these actions in connection with a matter that would be before his former state agency after the one-year period. As we stated *supra*, the ethics law did not prohibit him from assisting his employer or its sister company in a matter in which he had not participated as a state employee and which would not come before his former state agency for a period of one year from the termination of his state employment.

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 had 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. It was also our belief, however, that HRS §84-18 was not intended to restrict activities of former state employees to such an extent that people were discouraged from public service.

In this case, we stated that HRS §84-18(c) did not prohibit a former state employee from assisting a person or a business in a matter that would not come before his former agency for one year from the termination of his state employment. We believed that this construction of HRS §84-18(c) was consistent with the rationale behind HRS §84-18, discussed *supra*. It was our opinion that the primary intent of HRS §84-18(c) was to provide for a "cooling off" period after an employee left state service to prevent him from using influence derived from contacts and

associations that he made while in government for his personal gain or for the benefit of others.<sup>†</sup> Our construction of HRS §84-18(c) carried out this intent.

We expressed appreciation for the individual's concern for ethics of public servants and for ethics in government.

Dated: Honolulu, Hawaii, April 21, 1975.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
Gwendolyn B. Bailey, 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.

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<sup>†</sup>On the other hand, we stated that the primary intent of HRS §84-18(b) appeared to be to guard against the use for personal gain of knowledge that a former employee obtained while in state service.