

## OPINION NO. 218

A former employee of a state agency asked us (1) whether his affiliation with a certain corporation was prohibited by the ethics law and (2) whether a proposed company that he would be affiliated with might apply to two state agencies for loans.

### **His Affiliation With "Corporation A".**

At a meeting with the Commission, the former state employee indicated that he was an officer of Corporation A, which served as the exclusive broker in the State of Hawaii for Corporation B, a company that had received loans under a loan program of the State. As the exclusive broker in Hawaii for Corporation B, Corporation A received commissions on all sales of products of Corporation B in Hawaii. The former employee inquired whether he might serve as an officer of Corporation A without violating the ethics law (HRS ch. 84).

HRS §84-18(b) (Supp. 1974) 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.

The former state employee indicated that as an employee of his former agency, he was a member of another state agency which had recommended that loans be made to Corporation B. The former employee had been a member of the agency's executive committee, which worked out the financial details of the loan.

We held that because Corporation A was the *exclusive* broker in Hawaii for Corporation B and because the former employee was an officer of Corporation A, he would be assisting and representing Corporation B on a matter in which he had participated as a state employee. We said that this was a violation of HRS §84-18(b).

We stated that we did not find a violation of the ethics law in the fact that the former employee served as an officer of Corporation A and that this company served as a broker for Corporation B. We believed that the illegality arose out of the exclusive broker relationship between Corporation B and Corporation A. We stated that we would not find a violation of HRS §84-18(b) if this exclusive relationship were terminated.

We asked the former state employee to notify us of the corrective action that he would take.

### **Requests for State Loans by a New Company with which the Former State Employee Would Be Affiliated.**

At the meeting with the Commission, the former state employee also indicated that he was planning to establish within the period of one year from his termination of state employment a certain corporation. He would hold about 25% of the stock and would be the company's president and chief executive officer.

The former employee asked the following two questions relating to the new company:

1. May the proposed company apply for a state loan from a program whose funds are administered by his former agency?
2. May the proposed company apply to another state agency for a loan?

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.

We pointed out that official action was 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 a business on a specific matter which would require an employee of his former agency to take some discretionary action on the matter. We said that 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 his former agency, did not require any action to be taken by an employee of the agency.

We answered question 1, *supra*, in the negative. As indicated *supra*, he would be the president and the chief executive officer of the company. We believed that as the chief executive officer, the former state employee would inevitably assist the company on any application to his former agency for loan funds. Moreover, because disbursements of funds would be made under an account supervised by his former agency, we believed that he would be continually assisting and representing the company on loan matters involving official action by his former agency. We said that his assisting and representing the proposed company before his former agency on loan matters requiring official action by the agency would involve a violation of HRS §84-18(c).

We answered question 2, *supra*, in the affirmative. The former state employee indicated that the loan program of the other state agency was independent from the loan program of his former agency. Thus, we said that his former agency would not be involved in the making of a loan to the company, and, if a loan should be granted, it would not be necessary for him to return to his former department on any matter relating to the loan.

We enclosed a copy of Opinion No. 215 for the individual's information. In this opinion, we discussed the rationale of HRS §84-18.

Dated: Honolulu, Hawaii, June 13, 1975.

STATE ETHICS COMMISSION  
Gwendolyn B. Bailey, Vice Chairman  
Audrey P. Bliss, Commissioner  
Paul C.T. Loo, Commissioner  
I.B. Peterson, Commissioner

Note: Chairman Vernon F.L. Char disqualified himself from consideration and preparation of this opinion.