

## OPINION NO. 221

The head of a division of a state agency informed us that he might take early retirement from his state job to establish a consultant firm. He asked us to advise him on his post-employment plans.

As the head of his division, he had the responsibility of planning and developing systems and programs for the administration of certain functions of his agency. He indicated that his division was responsible for the development of guides, rules and regulations, etc., which were used by members of another division of his agency.

He raised the following questions:

1. As a consultant, would he be able to conduct education classes for members of the public on matters relating to the program of his division?
2. As a consultant, would he be able to assist an individual in completing a form of his agency?
3. As a consultant, would he be able to assist or represent an individual on a matter that may involve official action by an employee of his division or of the division whose members used guides and regulations prepared by his division?

Initially, we outlined the relevant sections of the ethics law.

First, HRS §84-18(a) (Supp. 1974) 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 employee to note that this 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.

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 in our opinion HRS §84-18(c) would prohibit him for a period of one year from the date on which he left state service from assisting a person or a business on a specific matter which would require an employee of his division or the division whose members used guides and regulations prepared by his division 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 employees of these divisions.

**Question 1, *supra*.**

We held that HRS §§84-18(b) and (c) would not prohibit him from conducting classes on general matters relating to the program of his division. However, we said that he would be prohibited for the one year period from assisting an individual on a specific matter (petition, application, appeal) that would be or was before his division or the division whose members used guides or regulations prepared by his division and that would require official action by employees of these divisions.

**Question 2, *supra*.**

We held that HRS §§84-18(b) and (c) would not prohibit him from assisting an individual on a form that would involve only ministerial action and not official action by an employee of the two divisions in question. (As we indicated *supra*, official action is action which involves the use of discretionary authority.) We said, however, that he should not assist an individual on any form if he had reason to believe that the two divisions in question would question its contents or take other official action with respect to it at a later time. We stated, moreover, that if he should assist an individual on a form, the ethics law would prohibit him from assisting or representing the individual on the form if its contents should later be questioned by the two divisions.

**Question 3, *supra*.**

We believed that the post employment restrictions of the ethics law applicable to the employee would make it impossible for him to assist an individual as a consultant on certain matters relating to his division's program. It was our opinion that these matters would inevitably require official action by the two divisions in question. As we pointed out earlier, HRS §84-18(c) would prohibit him for a period of one year from the date on which he terminated his state employment from assisting or representing someone before the two divisions in question on such matters.

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

We expressed appreciation for the employee's concern for ethics of public servants.

Dated: Honolulu, Hawaii, June 25, 1975.

STATE ETHICS COMMISSION  
Vernon F.L. Char, Chairman  
Audrey P. Bliss, Commissioner  
Paul C.T. Loo, Commissioner

Note: Vice Chairman Gwendolyn B. Bailey and Commissioner I.B. Peterson were excused from the meeting at which this opinion was considered.