

OPINION NO. 224

A state employee asked us several questions relating to the application of the ethics statute to his future employment plans.

The employee indicated that he had been with his state agency for approximately ten years. He further indicated that to the best of his recollection he had been assigned to about ten state agencies or divisions of agencies. Of the ten agencies to which he had been assigned, he had not met with or worked for five of these agencies.

The employee asked the following questions:

1. Do the prohibitions of HRS §84-18(c) apply to matters involving official action by a state agency to which an individual was "assigned" but which he did not "actually serve"? Does work on one case for a state agency mean that he "actually served" that agency?

2. Would his association (sharing of office expenses, [rent, secretarial, and supplies], but not income) with other individuals subject his associates to the proscriptions of HRS §84-18(c)?

3. If the answer to question 2 is affirmative, would his leasing of office space from a firm, space that is physically separated from the other premises of the firm, and paying for secretarial services as needed subject the firm to the proscriptions of HRS §84-18(c)?

4. If he should obtain a contract with a state agency to provide the agency with certain services, would the proscriptions of HRS §84-18(c) apply after his termination of the contract?

5. If he should have a contract with a state agency to provide the agency with certain services, would an associate of his be prevented from appearing before the agency? Would members of a firm from which he rented space that was physically separated from the other premises of the firm and to which he paid for part-time secretarial services be prohibited from appearing before the state agency?

Question 1, supra.

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 held that this section prohibited a state employee from assisting or representing a business for a fee for a one-year period after his termination of state service on matters involving official action by a state agency or a subdivision of a state agency which he had actually served. We said that it did not prohibit a state employee from assisting or representing a business on matters involving official action by a state agency or a subdivision of a state agency to which the employee had been assigned to provide services but to which he had not in fact provided such services. We believed that this conclusion was consistent with the primary intent of HRS §84-18(c), which, in our opinion, is to provide for a "cooling off" period after an employee leaves 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.[†] We noted that if a former employee did not actually work for a state agency, he would not have had the opportunity to develop contacts or associations in the agency.

While we held that HRS §84-18(c) was not applicable with respect to state agencies to which a former state employee had been assigned but which he had not in fact actually served, we held that it was applicable with respect to any state agency which the former state employee had served, even if he had been involved in only one case of the agency. We believed, however, that the prohibitions of HRS §84-18(c) should only apply to state agencies or subdivisions of state agencies that a former employee served within the one-year period immediately preceding the date of his termination of state service.

Questions 2 and 3, supra.

We held that HRS §84-18(c) was applicable neither to someone who was an associate of his (an individual who shared office expenses but not income) nor to someone from whom he rented office space and obtained secretarial services. Our opinion was limited to these two cases.

We said that if an associate of his or someone from whom he rented office space should assist or represent someone on a matter involving official action by one of the state agencies before which he was prohibited from appearing, he should not assist his associate or the person from whom he rented office space on the matter.

Question 4, supra.

We were not able to answer this question on the basis of the facts that he presented; we believed that this question could only be answered in the context of an actual case. It was our opinion that the question of whether an individual who has a contract with a state agency is a state employee for purposes of the ethics law must be answered on a "case-by-case" basis, with consideration of the provisions and terms of the contract that the individual has with the state agency and the actual working relationship between the individual and the agency. We said that if we should conclude that an individual who has a contract with a state agency is a "state employee," then HRS §84-18(c) would be applicable to him when the contract terminates.

We suggested to the employee that he seek our advice when a specific factual situation arises in the future.

Question 5, supra.

We held that even if we were to conclude that under a contract that he had with a state agency he was a "state employee" for purposes of the ethics law, someone who was his associate or from whom he rented office space and obtained secretarial services would not be prevented from appearing before the state agency.

[†]The primary intent of HRS §84-18(b), on the other hand, appears to guard against the use for personal gain of knowledge that a former employee obtained while in state service.

We added that if an associate of his should represent a client in a case before a state agency of which he was an employee for purposes of the ethics law, HRS chapter 84 would not, on the basis of this fact alone, prohibit him from taking official action in the case. We said that he might, however, wish to consider voluntary disqualification if he felt that he would be unable to take impartial action because of bias or prejudice.

We commended the employee for his concern for ethics of public servants and in government.

Dated: Honolulu, Hawaii, July 16, 1975.

STATE ETHICS COMMISSION
Vernon F.L. Char, Chairman
Gwendolyn B. Bailey, Vice Chairman
Paul C.T. Loo, Commissioner
I.B. Peterson, Commissioner

Note: Commissioner Audrey P. Bliss was excused from the meeting at which this opinion was considered.