

OPINION NO. 236

A former state employee, who had been an administrator of a state facility, requested the Commission to advise him on the guidelines he would be required to follow in seeking employment in the private sector.

He indicated to the Commission staff that he had retired from his position on August 1, 1975. In his official capacity he administered and negotiated contracts for certain services and performed those other duties commonly associated with an administrative position. His contact with private industry was solely related to certain enumerated areas.

Initially, we pointed out that the ethics law did not prohibit him from seeking a position in the private sector in his area of expertise but did prohibit him from assisting businesses on certain types of matters. We directed his attention to HRS §84-18(b), which states:

No former ... 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.

We advised him that he should, in any future employment, avoid assisting his employer on matters or transactions on which he had worked as a state employee until the twelve-month period had passed.

We also directed him to HRS §84-18 (c), which states:

No former 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." He would, accordingly, be prohibited from assisting any employer on any matter involving official action by an employee of the facility he had administered for a period of one year from the date of his termination from service.

We stated that we believed the purpose of these two statutory provisions was to prevent a former state employee from engaging in immediate "influence peddling" based upon contacts and associations made while in government service either for his own personal gain or for that of others. These provisions were also intended to prevent the use for personal gain of knowledge that a former state employee had of matters in which he had participated. Then, these provisions were intended to discourage a state employee from using a state position to obtain a future job in the private sector by providing a cooling-off period. At the same time, it was the Commission's belief that activities of former state employees should not be so restricted that people would be discouraged from public service. In addition, limitations on a former employee's activities should not be so severe that the general public loses the benefit of the experience and knowledge that the individual acquired while in government service.

We also noted an additional restriction set forth in HRS §84-18(a):

No former ... 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.

Accordingly, we told him that he might proceed with his efforts to secure a position in the private sector while keeping in mind that his future employment would be subject to the restrictions noted in our opinion. We advised him further that if upon gaining a position, he should be concerned as to whether a specific activity might conflict with the provisions of HRS §84-18, he should seek an additional advisory opinion from the Commission.

We hoped that the guidelines we had set forth would provide sufficient guidance to him in his search for private employment. We commended the concern for the ethics of public officials evidenced by his bringing this matter to our attention and we wished him success in his future endeavors.

Dated: Honolulu, Hawaii, November 25, 1975.

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