

OPINION NO. 253

A part-time employee with the State was assigned to a certain division in a large department. The employee was about to leave his state position to begin work with a private agency. In his new position he would have some indirect contact with his state division. The employee asked the Commission to determine if the post-employment provisions of the state ethics code would apply to his position with the private agency.

In his work for the division, he spent approximately 16 hours per week researching legal issues in support of hearings officers and performing certain other tasks. He had only very limited contact with other divisions of the department. He was first employed by the department in the summer of 1975 through August and then resumed his employment in November of that year.

Under the terms of his position with the private agency, he would not have direct contact with employees of the division. He would have some input into the work performed by some agency employees who would appear before the division. His contact here, however, would be with a full-time staff member who supervised these employees.

The employee indicated to the Commission that those matters he had worked on in his state position would have been concluded by the time he began his duties with the private agency.

HRS §84-18 had application to the question he had raised. HRS §84-18(b) (Supp. 1975) provides:

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.

Because the matters he had participated in with the division would have been concluded by the time he began his duties with the private agency, we found that this subsection had no application to this matter.

We then commented on the application of HRS §84-18(c) (Supp. 1975) to this matter. That section 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.

First, every employee of the State is made subject to the provisions of the ethics code by HRS §84-3(4). Then, as the individuals with whom he worked in the division made decisions on matters brought before them, their action was "official action" as that term is defined in HRS §84-3(7). Finally, we pointed out that this section applied to assistance rendered to a person or business as well as to the act of representing a person or business before the subdivision or agency of the former state employee.

A representative of the private agency indicated that the employee would not be acting in behalf of the agency for several months following the termination of his services to the department. Additionally, that representative indicated that his assistance to the employees who would appear before the division would occupy, at most, ten percent of his work time. Finally, we noted that the assistance he would provide would be quite removed from the division.

It was our view that the assistance the employee would provide the agency in matters requiring official action by the division would be of such minimal nature and so far removed from the division that it could not be seen as the kind of activity encompassed by the language of HRS §84-18(c). In Opinion No. 236, the Commission stated that:

... [L]imitations on a former employee's activities should not be so severe that the general public loses the benefit of experience and knowledge that the individual acquired while in government service.

We believed that to apply the language of HRS §84-18(c) to his employment with the private agency would require an overly strict reading of this provision of the ethics code. Accordingly, we stated that he might proceed to begin employment with the agency as that employment had been outlined to the Commission. We advised him that should the circumstances of his services to the agency be changed significantly within 12 months of the time he left state employment such that he would be required to have more extensive contact with the division, then he should request another opinion of the Commission.

We commended this employee for bringing this matter to the attention of the Commission at an early time and for the concern he had shown for ethics in government.

Dated: Honolulu, Hawaii, May 14, 1976.

STATE ETHICS COMMISSION
Audrey P. Bliss, Chairman
Paul C.T. Loo, Vice Chairman
Dorothy K. Ching, Commissioner
Gary B.K.T. Lee, Commissioner

Note: Commissioner I.B. Peterson was excused from the meeting at which this opinion was considered.