

OPINION NO. 272

A recent retiree from state government was approached by an organization to become one of its employees. The retiree asked the Commission if his acceptance of this position would place him in conflict with the post-employment restrictions in the ethics code. We found that, with certain restrictions on his activities, he would not be in violation of the code by accepting this position.

We pointed out that the Commission had never construed the post-employment section of the code to prohibit the acceptance of a position. These provisions merely indicated certain activities that the former employee should not engage in for a period of twelve months following termination of service. It was conceivable that these restrictions might prevent a person subject to them from accepting a particular position. A review of past Commission opinions in this area, however, indicated this to be a quite rare outcome and one that should not result from this opinion.

The pertinent sections of the code were HRS §§84-18(b) and (c). HRS §84-18(b) (Supp. 1975) states that:

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.

A business is defined by HRS §84-3(1) to include "any ... organization carrying on a business, whether or not operated for profit." The organization was then a business for purposes of the ethics code. As the retiree would be compensated for the services he would render, his activities on behalf of the organization would be subject to the restrictions set forth in the section. Accordingly, we stated that he would not be able to represent or assist the organization or any employee of the organization on matters in which he had participated as a state employee.

We were aware of at least one major project which very possibly would involve the organization in the future and in which the retiree had participated as a state employee. He stated that the organization had submitted a proposal to the department for a contract for a certain program. He had already retired from his position with the department when the department sent out solicitations for proposals to organizations, such as the one in question, which showed an interest in participating in these programs. However, he was very instrumental in obtaining the funds for these programs from the legislature. From two pilot programs which he had initiated the previous year he had prepared informational material and given testimony before legislative committees. Without his input, it was likely that the funds for this program would never have been allocated. This action on his part constituted participation in the program. For that reason we found that he should not represent or assist the organization or any employee of the organization on any matter dealing with that certain program until twelve months following his retirement date.

In addition, we stated that HRS §84-18(c) (Supp. 1975) also restricted his activities in those and certain other projects. It states that:

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." We understood that the retiree's former division would be monitoring the programs if the organization was awarded a contract for them. This monitoring, even if limited to reading the reports and financial statements submitted by the organization, involved discretionary authority. The retiree pointed out that he would have contacted the organization on any questionable matter involved in its contract work if he had felt it necessary; his successor surely had the same opportunity with the same discretion. Therefore, HRS §84-18(c) also precluded him from working on matters concerning the contracts for the programs during that same twelve month period.

We found that HRS §84-18(c) also applied to two contracts which the organization had entered into with the department and the division to provide services for a special group. Those contracts were for continuing programs which were in operation while the retiree was employed by the division. Because those contracts were renewed after he left the division we did not believe that HRS §84-18(b) applied. But we were of the view that the division did take official action with regard to them. He stated that while he was an employee of the division he reviewed the reports filed with the department for those programs while another member of his division checked the financial statements. Again, we had no reason to believe that his successor would not or could not do the same. Those two contracts would therefore be subject to the official action of the division he served as a state employee. Accordingly, we found that he should not represent or assist the organization or employees of the organization on matters concerning those contracts until the twelve months after his retirement date had elapsed.

In summary, we found that until the twelve month period was over the retiree should not represent or assist the organization or any of its employees in matters relating to the two contracts for services to certain groups that the department had recently renewed with the organization; nor should he assist or represent the organization or any of its employees in matters involving the new programs should the organization's proposal for participation in those programs be accepted by the department. We pointed out that if there were other projects with which the organization became involved that required official action by employees of the retiree's former division, he should also refrain from any involvement in those projects until the expiration of the restricted twelve month period.

We stated that the post-employment provisions of the ethics code were not designed to prohibit former employees from seeking positions commensurate with their skills and with the expertise they had acquired while in state government. Instead, the intent was merely to provide a "cooling off" period for the employee to prevent immediate "influence peddling" based upon the contacts and associations made while in government service. (Opinion No. 236.) While we realized that a person of the retiree's reputation in the community, especially in his field, would command a special respect no matter what length of time was involved, we felt this period of a year would provide a necessary time for all parties with whom he had previously worked to become more familiar with and comfortable in their new positions with respect to him.

We realized that at first blush it might have appeared to him that we were prohibiting him from engaging in a substantial portion of the work required of the offered position with the organization. We understood, however, that the organization had recently hired an associate director who was capable of handling those activities with the department in question which would be prohibited to the retiree. We pointed out that this was quite acceptable under the statute which attempts only to minimize the influence of the individual upon his or her former department and

division associates. Further, the post-employment provisions would not restrict his activities in those matters at the organization which did not involve the retiree's former department. Specifically, we were aware that the organization had extensive contact with the other departments within the state government. We stated that HRS §84-18 would not apply to his dealings with those or any other state agencies.

In drafting this particular section it was clear that the legislature did not wish to deny to the public the benefits that employees such as the retiree could provide after leaving state employment. We took particular note of his long experience in working with certain groups and we were aware that the loss of his expertise and dedication at this time would be a significant one. Even with the restrictions that HRS §§84-18(b) and (c) placed on his activities, we felt he should be able to make a significant contribution to the organization and, through it, to the citizens of this State.

We appreciated the assistance of the chairman of the board and the present executive director of the organization in this matter, and we thanked the retiree for his candor and his willingness to provide information necessary for our consideration. We commended his sensitivity to the ethics question involved in his selection of a new position.

Dated: Honolulu, Hawaii, September 14, 1976.

STATE ETHICS COMMISSION
Paul C.T. Loo, Vice Chairman
Gary B.K.T. Lee, Commissioner
I.B. Peterson, Commissioner

Vote: Chairman Audrey P. Bliss and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.