

OPINION NO. 273

A former state employee requested our opinion on the applicability of the post-employment restrictions to his new position. As a state employee, he had been assigned to provide services to a particular department. He wished to know (1) if he could represent private clients before employees of one of the department's divisions to whom he had provided advice, and (2) if he could represent private clients before an appeals board which he had appeared before on behalf of the State.

The section of the statute most applicable to both of his questions was HRS §84-18(c) (Supp. 1975). 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.

We stated that the intent of this section of the statute "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 the benefit of others." (Opinion No. 226.) The former employee stated that although he did not appear before the employees of a certain division in the department he had provided advice to them. This advice, given in his state capacity, constituted actual service. Further, we found the matters he would present before that division's employees in his new private role would involve official action by them. Therefore, as HRS §84-18(c) was applicable, we found that he should not represent any client before that division for a period of twelve months from the date of his separation from government service, nor should he assist any other person, including a member of his new business, in his or her representation of any client before that division during that same time period.

We stated that the post-employment provision, however, would not prevent him from representing clients before the appeals board. HRS §84-18(c) applied to only those divisions of his former department which he *actually served*. By statute the board was part of the department to which the employee was assigned for administrative and funding purposes only. The employee had never been called upon to render advice to the members, and, in fact, his association with this board had been limited to an adversary position. As an adversary, he had not, in our view, *actually served* the board. Therefore, we found that he could represent persons before the board.

We also brought the language of HRS §84-18(b) to his attention. That section prohibits a former employee from assisting any person or business or acting in a representative capacity for a fee or other consideration on any matter in which he participated as a state employee. As applied to this employee this section prohibited him from representing a client at a board proceeding if he had previously advised a division employee on the matter when it was being heard at the division level. This also precluded him from assisting another person in his or her representation of any party to that matter during the restricted period.

We appreciated the employee's very complete presentation of the relevant facts necessary for our determination. It was apparent that he had read the statute and certain of our past opinions before making his request. We commended him for his concern for ethics in government.

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

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