

OPINION NO. 284

A state legislator requested an advisory opinion from the Commission concerning the application of the post-employment restrictions of the state ethics code to a former legislator's appointment as a legislative assistant by one of the counties. The former legislator had been appointed to his position within twelve months of his leaving state office. In an interview with the Commission he indicated that in his position with the county he was expected to identify and monitor all bills and resolutions introduced in the coming legislative session that pertained to the county; to ensure that applicable time limits were met by those departments of the county desiring to file documents with the Legislature; to keep abreast of the status of bills and resolutions; and to brief county officials with regard to the processing of bills.

The relevant section of the state ethics code, HRS ch. 84, was HRS §84-18. Subsections (b) and (c) of this provision prohibit a former legislator or employee from assisting or representing a person or business for a fee or compensation (1) on any matter in which the former legislator or employee participated during state service, and (2) on any matter involving official action by the particular state agency or subdivision thereof with which the former legislator or employee actually served. These restrictions apply for the twelve-month period following the individual's termination date. As the foregoing description of the former legislator's duties indicated, he would not be acting as a lobbyist nor would he be personally representing the county before the legislature. His responsibility was limited to assisting the county on legislative matters. However, we pointed out here that the statute applied not only to personal representation but to assistance as well. HRS §§84-18(b) and (c) make no distinction between providing assistance and acting in a representative capacity and each of these functions is treated in exactly the same way.

For reasons indicated later in this opinion, the primary question for our decision was whether the county was a "person" or "business" within the meaning of the post-employment provision. Regardless of our decision on this question, however, it was our view that HRS §84-18(b) would not apply to this matter. This subsection is concerned solely with work that a former legislator or employee performs on matters in which he *participated* while employed by the State. The matters with which this individual would be concerned in his new position would involve bills and resolutions to be introduced at a new legislature. As bills from the previous legislature did not carry over to this session, he would not be assisting or representing the county on bills in which he participated as a legislator in the prior legislature.

HRS §84-18(c) was the subsection that had application to the question raised in this request. It provides that:

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, this individual was a former legislator; further, his employment would occur during the twelve-month period following his termination from the state legislature; and the matters he would be employed on, bills and resolutions, would clearly involve official action by the legislature. The sole question for decision then was the status of the county as a "person" or "business."

Two statutory definitions of these terms were relevant here. Under HRS §84-3(1) the term "business" includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit." The word "person" is defined in HRS §1-19 to "signify not only individuals but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, a neighborhood, or persons known or unknown, and the public generally, where it appears from the subject matter, the sense and construction in which such words are used, that such construction is intended."

The county was organized as a body politic and corporate, and was styled as a "municipal corporation."

The terms in HRS §§1-19 and 84-3 that could apply to the county were "corporation" and "organization carrying on a business."

In determining whether these terms could be applied to the county, we gave consideration to what constitutes the essential character of a county government. As stated in numerous authorities in this area "in its governmental aspect a municipal corporation or municipality is an agent, instrumentality, or political subdivision of the State. A municipal corporation is a body politic created by organizing the inhabitants of a prescribed area, under the authority of the legislature, into a corporation with all the usual attributes of a corporate entity but endowed with a public character by virtue of having been invested by the legislature with subordinate legislative powers to administer local and internal affairs of the community and by virtue of its creation as a branch or agency of the state government to assist in the administration of the government of the State." While the county functioned under its own charter, it was nevertheless a political subdivision of the State and subject to the will of the State as expressed through the legislature. We recognized that the modern county, as well as the modern state, possessed many of the attributes and characteristics of a business. But the fact that a municipal corporation exercised the functions in some respects of a private business did not cause the municipal corporation to lose its distinctive municipal character. It is endowed with a public character which distinguishes it from other bodies. In light of this essential public character, we did not believe that a municipal corporation could be considered to be an "organization carrying on a business." It was not a business in the sense that that term is commonly used.

We believed the same held true for the word "corporation." A municipal corporation is quite distinct from the usual corporation despite the fact that a municipal corporation may have some of the attributes of a private corporation. But its essential nature as a public body, representing the voice of the citizens of a designated area, made it an entity quite distinct from a corporation, as that term is commonly used. Those court cases that have included the term "municipal corporation" within the word "corporation" were colored by the fact that the courts reaching this conclusion were generally faced with situations in which the exclusion of a municipal corporation from a particular law would have either caused an injustice or led to a result that seemed totally at odds with legislative intent. The matters at issue in those cases treating municipal corporations as private corporations and persons were quite distinct from the question raised here. At the same time, we noted that there had been many court decisions which had excluded municipal corporations from the terms "corporation" and "person."

As the statutory language makes clear, the restrictions contained in HRS §84-18(c) are already quite broad. It was our view that the nature of a county government is so far different from that of a corporation or business that the language of HRS §84-18 could not be applied to the

employment of a former state legislator or employee by one of the counties. Such application would be well beyond the language of the statute.

Our conclusion was consistent with our decision in Opinion No. 12 where the Commission had also stated that the counties were not included within the language of HRS §84-18. It was our view there, which we affirmed, that the post-employment restrictions were intended to curb a former state servant's use of his past position to gain advantage in the private sector. Without more specific language in the statute, we could not conclude that service to another governmental body was to be restricted in the same manner as employment by a business, corporation, or other private body.

We were of the further view that HRS §84-18(d), which specifically limits the application of the post-employment provision, would also exclude the county from these restrictions. That section states that the post-employment section shall not "prohibit any *agency* from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein ..." (emphasis supplied). The word "state" is used throughout the chapter to define and limit the word "agency" except in this particular subsection where the word "agency" appears alone. As stated earlier, cities and counties are widely recognized as agencies and subdivisions of their state governments. We believed here that the word "agency" standing alone included the county governments as well as state departments. Accordingly, under this section, all governmental agencies are free to contract with former legislators and employees on matters on behalf of the State.

For all of the foregoing reasons, we held that this former legislator's employment as a legislative assistant to the county was not subject to the restrictions of the post-employment provisions of the state ethics code.

We thanked the legislator for requesting an opinion in this matter so that the issues involved could be raised and decided at an early time. We also took note of and commended this legislator for what was a long-standing and continued interest in the ethics of government officers and employees.

Dated: Honolulu, Hawaii, December 28, 1976.

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

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered.