

OPINION NO. 319

The individual requesting this opinion had been hired by a state department to coordinate a state planning program. The project was initially scheduled to be completed by June of 1977 but was extended to October 15, 1977; on that date the employee left state employment. Prior to that time, and in anticipation of the end of the program, he had discussed with the director of a private organization the possibility of his becoming associated with that organization. He and the director had collaborated on a proposal to the federal government to develop a particular program for Hawaii. If this proposal were adopted federal funding would be directed to the organization for studies in this area. He would be an employee of the organization and participate in this study as well as other programs. He asked the Commission to determine if the ethics code would have application to his employment with this organization.

The question he had raised came within the post-employment provision of the state ethics code, HRS §84-18 (Supp. 1975). The relevant portions of that section provide as follows:

(b) 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.

(c) 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.

As we had noted in many other opinions dealing with this area of the law, the ethics code does not generally prohibit a state employee from accepting employment with any person or business following termination from state service, but rather restricts the employee from engaging in certain activities. Within twelve months of the time an employee leaves state employment he may not assist or represent a person or business on 1) any matter in which he participated as a state employee, and 2) any matter requiring official action by the agency or subdivision of the agency by which he was employed. Although this organization was nonprofit it was nevertheless a person or business for purposes of the ethics code (HRS §84-3(1)).

The state planning program this employee had worked on had analyzed the possibilities for the development of a certain industry in Hawaii and had identified products that were best suited for commercial development. Both he and the private organization had been interested in one of these products for some time. His initial discussions with the director had centered around the possibility of his working with the organization in this area. However, the work of the organization appeared to have no relationship to the state plan; the proposal for funding was to the federal government rather than to the State although the organization indicated that it might seek state funds at a later time. The facts made it quite clear that the two projects were quite distinct and separate and were not the same subject matter. Therefore, we found that HRS §84-18(b) had no application to his working on this project at this organization.

He and the director had indicated that the organization might be required to solicit matching funds if the federal government accepted the proposal for the development of this product. One

of the sources for those funds would be the State and application might well be made to the department the employee had worked for. Should this be the case, we stated that he would be prohibited by HRS §84-18(c) from assisting or representing the organization on any application made to the department for funds. The granting of such funds would constitute official action. In addition, during the twelve-month period that followed his termination from state employment he was advised that he should not represent or assist the organization on any matter requiring the official action of the department.

We had learned that his duties to the organization would be wide-ranging and that he would in effect serve as an associate director. He anticipated that he would have very little contact with state government in most of his duties and, therefore, it appeared that the restriction we had placed upon his activities would have only a negligible effect on the duties he would be called upon to perform for his future employer.

We commended him for recognizing the ethical implications of his post-employment situation.

Dated: Honolulu, Hawaii, October 26, 1977.

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

Note: Commissioners Dorothy K. Ching and Gary B.K.T. Lee were excused from the meeting at which this opinion was considered.