

OPINION NO. 333

A retiring division head requested our advice as to the application of the ethics code to his prospective employment. He had accepted a position as manager of a body that he had provided important services to as a state employee. He wished to know if the post-employment provisions of the ethics code would restrict him to any significant degree in carrying out his responsibilities to this body.

The relevant sections of the statute were HRS §84-18(b) and HRS §84-18(c). They provide that a former employee may not assist or represent, for a fee, any person or business on any matter in which he participated as a state employee or on any matter requiring official action by the agency that employed him. These restrictions apply for the twelve months following termination from state service.

Our decision in this matter turned upon the words "person" or "business." It was our view after reviewing the federal regulations that pertained to this body that it was so highly characterized as a federal body that it could not be considered to be a person or business within the meaning of the statute.

Several years prior to his request for this opinion, a Hawaii industry began operating under a federal order that had been issued pursuant to federal statute. The basic purpose of the statute and order was to permit businesses in certain industries to organize themselves so as to promote the industry.

This particular body had been mandated by the order to administer regulations governing the industry. The body consisted of representatives of the industry who were appointed by a federal cabinet officer from nominations submitted to him by handlers of the product involved. The terms of office, powers, and responsibilities of the members were detailed in federal regulations.

When the body was first formed and the industry was at its beginnings there was neither need nor the funds to hire a full-time manager and he had provided that service on a part-time basis as a state employee. As the industry had progressed significantly since that time, this body had determined that it required a full-time manager. The state department that had employed him had encouraged the members in this direction. Because of the time he had spent in this area in his state position he was a logical choice to be offered the position of manager.

As we had noted, the body had been formed pursuant to federal law and operated under rules promulgated by the federal government. The federal cabinet officer appointed the members, and the body was required to file periodic reports with him. Its recommendations concerning the regulation of the industry was also to be reported to him, and he had the power to put the regulations into effect. He was also empowered to remove any member or employee of the body at any time. Further, he could disapprove any rule or regulation at any time and could terminate any part of the order or the order in its entirety.

While the manager's salary was paid from funds contributed by the members of the industry, the workmen's compensation and unemployment insurance benefits for the position came from the federal government.

We concluded that regardless of how little the federal secretary might intrude in the day-to-day operations of the body, a reading of the regulations indicated that it was no more than an agent of the secretary and subject to the powers of that office in everything that it did. It had no life or sovereignty of its own. For this reason we concluded that it was a federal entity and that the post-employment provisions would not apply to his employment with it.

We commended him for bringing this matter to our attention at an early time.

Dated: Honolulu, Hawaii, February 22, 1978.

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

Note: Vice Chairman I.B. Peterson and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.