

OPINION NO. 365

A former employee wished to know if the ethics law would prohibit him from representing clients before state agencies. We had previously responded to a similar question in Opinion Nos. 224 and 226 which had been issued in 1975. Our review of those opinions indicated that the conclusions we drew then were fully applicable to his own case.

He had held a supervisory position in the department. While he was in a position to set overall policy, in most cases the functions of the department were actually carried out by other employees who were specifically assigned to serve certain designated agencies. The relevant sections of the statute, HRS §84-18(b) and (c), 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.

HRS §84-18(b) essentially provides that a former employee may not represent or assist any person or business, for compensation, on any matter in which he had personally participated.

HRS §84-18(c) has broader application and provides that a former employee may not represent or assist any person or business, for compensation, on any matter requiring the official action of a particular state agency he had actually served.

As we had held in Opinion Nos. 224 and 226, and as we reiterated in this opinion, this section prohibits only that activity which requires the official action of an agency the former employee actually served rather than an agency with which he had simply a technical relationship. While as a supervisor he was one of the persons who had overall responsibility for the providing of services to other state agencies, we realized that in most instances he had no actual contact with those agencies. Accordingly, in determining whether or not he might accept certain employment or represent certain persons or businesses, he had need to pay particular attention to those agencies he had actually served in his state capacity. Where he had not actually served a state agency in his former capacity, he would be permitted to assist or represent persons or businesses having matters before it. Conversely, he could not, for a period of 12 months from the time he left state service, represent such persons or businesses before those agencies he had actually served.

We pointed out that, as to his own former agency, he could not assist or represent any person or business on any matter that would require its official action or that of its employees.

We pointed out that our opinion was of general application. We recognized that it might not always be clear that he had or had not served a specific state agency in his former capacity. We advised him that where there should be any ambiguity in a specific situation he should advise us

of the particular facts so that we might determine if he had actually served the state agency that would be involved in any contemplated employment.

We commended him for bringing this matter to our attention before taking action before any state agency and wished him success in his future endeavors.

Dated: Honolulu, Hawaii, March 2, 1979.

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

Note: There was one vacancy on the Commission.