

OPINION NO. 384

We received a request for an advisory opinion from a state employee who wished to accept a position in the private sector that would be related to some extent to the work he had been doing in a state capacity. He wished to know how the ethics code would apply to his post-state employment plans.

In his state position he had exercised a number of duties related to a program of conservation and preservation. Among these duties, he was responsible for reviewing the effects of federal, state, county and private undertakings on property located within the state. His division reviewed numerous public and private undertakings to determine the impact of such developments and to recommend ways of mitigating such effects.

Only particular kinds of property came within the jurisdiction of his agency. When a project would affect such property, the agency had to be notified. His division would then conduct a review and might recommend that an analysis be made of the property. The government agency involved had then to hire a private firm to do the survey. His office reviewed the survey and then might make recommendations as to the conservation work that should be done. In the case of state projects the office could actually draft the scope of the work that was to be followed by the private firms hired to conserve the property to be developed. When the work was actually completed the firm had then to make a final draft report to the developer. The developer had then to submit the report to his office for review to determine if the proper work had been accomplished. It was our understanding that until the conservation work had been reviewed and approved the firm might not be paid its full fee. Our discussions with a number of the firms that performed this kind of work indicated to us that the review by his office was significant and not merely a matter of form.

The relevant sections of the ethics code were contained in HRS §84-18(b) and (c) which provides:

(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) prohibited him from working in a private capacity on any matter that he had participated in in a state capacity. Accordingly, if he had been involved, for example, in preparing a scope of work for a particular project he could not work on that project in a private capacity. We did not believe that this prohibition should apply to a participation that was of only a minimal nature and did not involve action that would have given him some control or particular insight into the project involved. At the same time we recognized that he had occupied a pivotal role in his division and that most of the review work he had been involved in would have required his taking official action.

HRS §84-18(c) essentially prohibited him from working on projects that would require the official action of the office he had worked for within the 12-month period that followed the termination of his state service.

We were aware that almost all of this particular conservation work done in the State concerned the state and federal preservation program he had been involved with. The post-employment provisions had the potential, therefore, of preventing his employment in the private sector. We directed our staff to work closely with him, his former office and his private employer to determine the true nature of the relationships that existed between the private employer and his former state employer. It was our holding that only those activities would be prohibited that would bring about the unfair advantages that were the concern of HRS §84-18.

While the application of the post-employment section might seem particularly severe in his case, we pointed out that the provision attempts to achieve ends that, in our opinion, served public ends. The concern of HRS §84-18(b) was that if an employee was employed privately to assist on a matter that he or she had acted upon in a state capacity the new employer and the employee might be unfairly advantaged by the inside information that that former employee had acquired in a state capacity. We commented that HRS §84-18(c) attempts to prevent a private employer and former state employee from gaining favorable treatment from the persons the former employee might have been associated with while in the employ of the State. The section is also concerned with the favorable attitude that might be engendered toward a former employee even by those he or she had not worked with as a state employee but who worked in the state office with which he had been associated.

We anticipated that it might be necessary for us to issue a supplemental opinion as the former employee and the staff determined his actual responsibilities to his new employer.

We appreciated the candor of his presentation and commended him for raising this question with us.

Dated: Honolulu, Hawaii, May 17, 1979.

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

Note: Commissioner Dorothy K. Ching was excused from that part of the meeting at which this opinion was considered. Commissioners Edith K. Kleinjans and Robert N. Mitcham had not been sworn in at the time this opinion was considered.