

## OPINION NO. 396

This request for an advisory opinion concerned the application of the post-employment provision of the ethics code. In his state position the employee had been primarily involved with the monitoring and maintenance of a technical system. After leaving his state position he had accepted a position with a private company that supplied the equipment for the system. Because he realized that he might be asked to represent the company in matters related to the state system, he had asked the Commission to determine the implications of the post-employment provision of the state ethics code for his private employment.

The former employee had originally been involved in training department personnel to deliver services that were provided by his agency. Through this involvement he had become aware of the system which at that time was under the jurisdiction of another division in the department that employed him. This system had actually been established by a private group which had then turned it over to the department. Through his training position he had learned of deficiencies in the system and had become aware of the fact that it was not being properly maintained.

Though the funding for the system remained with the state division that maintained overall control, he gradually took over responsibility for maintaining and monitoring the system and for purchasing equipment when required to keep it operating properly and for improving it where necessary. To an extent, he had become a liaison between the department, which was responsible for the operation of the system, and the company, which had a service agreement to maintain it when problems were reported. Though he had no technical background when he began, he had, in the course of carrying out his responsibility, developed a good deal of expertise with respect to how this system functioned and the equipment used to operate it. He had, among other things, become responsible for seeing that the private company honored its contract to maintain the equipment and, accordingly, he had extensive contact with the company.

The scope of his work with his new employer had not been specifically set out and was to be dependent, to some extent, upon the advice the Commission gave to him in this opinion.

He had asked three specific questions in addition to seeking general guidelines: (1) A private agency had been retained by the department to train certain technicians. If this agency should be asked to maintain the system, a very real possibility, and should then request assistance from his employer to either procure services or equipment, he wished to know if it would be permissible for him to service that client. (2) In the event responsibility for the system was transferred to another state department, would it be permissible for him to work with that other state department on matters concerning the system? (3) Would it be permissible for him to work with another divisional unit in the department on matters that were not related to the technical system?

First, we outlined the provisions of HRS §84-18 and indicated the general impact those provisions had upon former employees in situations such as the one he had described to us. HRS §84-18 provides as follows:

- (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use the information for his personal gain or the benefit of anyone.

(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.

The intent and meaning of HRS §84-18(a) was quite simple and straightforward and required no further advice from the Commission except to note that should he find, as he carried out his new duties, that information not generally available to the public was known to him, he should maintain the confidentiality of that information. Further, we noted that the application of HRS §84-18(a) was not limited by the time periods that applied to HRS §84-18(b) and (c).

HRS §84-18(b) and (c) provided essentially that, within the 12-month period that followed his termination from state employment, he might not assist or represent any person or business on (1) any matter he had participated in as an employee and (2) any matter requiring the official action of any subdivision of a state agency he had actually served while in state service. Therefore, HRS §84-18(b) prohibited him from assisting or representing his employer on any particular matter that he had participated in while he was employed with the department. The Commission had not interpreted this phrase to include the general areas of work that occupied the employee during the time of state employment but, rather, the specific projects that continued after the employee left state employment. For example, it was our opinion that the post-employment provision would not prohibit him from working on matters that concerned the system generally. However, it did prohibit him from servicing a contract that he had been specifically involved in drafting or negotiating. In addition, this provision restricted him from selling equipment that he had had a part in requisitioning while he was with the department.

The second part of the provision, HRS §84-18(c), prohibited him from assisting or representing his company on any matter that required the official action of either of the two divisions he had served during his state employment. We also noted that official action was not restricted to final decision making but included all discretionary action that influences decision making.

We also pointed out that the post-employment provision was not aimed solely or even substantially at the particular areas of work he had been engaged in as a state employee but was primarily concerned with the relationships that he had developed during the time he was carrying out his state responsibilities. The post-employment provision established a "cooling off" period so that the possible influence of friendships and contacts that he had developed would have a chance to be mitigated by the passage of time. Quite clearly, it was also intended to prevent an employee from using inside information and knowledge to unfairly advantage either him or herself or a future private employer.

Our responses to the specific questions he had raised were as follows:

1. It was our understanding that the private agency had received a contract from the department to train technicians. We had also learned that while the agency would take over

responsibility for the training of technicians and would maintain the technical system, the department would monitor the contract and would be involved in decision making. Further, the department indicated that it would review the purchase of equipment for the system.

Because of the department's continuing role in those aspects of the system that were being subcontracted, it was our opinion that, for the 12-month period following his termination from state service, he should not represent or assist his company on those matters involving the private agency that arose from its contract with the department.

2. The restrictions of the post-employment provision generally applied only to the state offices an employee actually served during the course of his or her employment. Because it was our view that he was not prohibited from working on matters related to the system, so long as that work did not concern the specific divisions he served in the department, we stated that he could work with any other state agency that should assume responsibility for the operation and maintenance of this system. However, if the department should retain a supervisory role in such an assignment of responsibility, we indicated that our response to question (1) would also apply here to restrict his activities on behalf of his new employer.

3. As we had indicated in our discussion of HRS §84-18(c), the restrictions of this provision had more to do with the persons he had worked with in his state capacity than with the subject areas he had been engaged in during that period of time. Accordingly, we stated that he could represent his company before any of the department's divisions that he had not actually served as a state employee so long as such representation did not concern specific matters he had worked on.

In summarizing our conclusions, we stated that the former employee could not assist or represent his company on any matter that would require the official action of the divisions he had served. Further, he could not assist or represent the company on any matter in which he had participated as a state employee. As we had indicated, it was our view that the term "matter" referred to specific contracts and projects rather than the general area he had worked in.

We anticipated that, if the company assigned him to represent it in matters that might concern the technical system, additional questions would arise. We advised him that, should this be the case, he should contact the Commission for further guidance. We commended him for bringing this matter to the attention of the Commission. We also commended an administrator in the department with whom he had discussed this matter and who had suggested that it be raised with this office.

Dated: Honolulu, Hawaii, November 14, 1979.

STATE ETHICS COMMISSION  
Gary B.K.T. Lee, Chairman  
Dorothy K. Ching, Commissioner  
Edith K. Kleinjans, Commissioner  
Robert N. Mitcham, Commissioner

Note: Vice Chairman Paul C.T. Loo was excused from the meeting at which this opinion was considered.