

## OPINION NO. 407

The head of a state division requested the Commission's advice on a possible offer of a position to him by an organization he enjoyed a relationship with in his state capacity. In his state position, he had played a significant role in the formation and administration of a group of governmental councils. Most of the support work for these organizations had been provided by his department. However, it now appeared that these councils might be in need of a full-time administrator. Because he had worked so closely with them, it was possible that he might be offered this position. He wished to know if the ethics code would prohibit him from accepting such an offer.

In his position with the department he had provided the major part of the staff support for these organizations and served on their boards. We had previously discussed the structure of these organizations in Advisory Opinion No. 317.

The pertinent portions of the ethics code were HRS §84-18(b) and (c) which provide that a former state employee may not, within twelve months of his or her termination from state employment, assist or represent a *business* on a matter in which the employee participated or on a matter which would require the official action of the subdivision with which he or she had been employed.

He had indicated that if he did accept a position as executive director of these organizations he would have some contact with the department but that most of his state contacts would be with other state and private agencies. While the State's financial support of the organizations would be funneled through his department, he indicated that that funding was set by the State's commitment to the organizations and would not be negotiated between him and the department.

As we had concluded in Advisory Opinion No. 317, it was our view that the organizations were, in reality, governmental entities. While for logistical reasons they might be organized as nonprofit corporations, it was clear that they were extensions of the governments that formed them, all of which were still involved in directing these entities. Since they did not constitute businesses, as we viewed them, his activities on their behalf would not be restricted by HRS §84-18. Accordingly, he was advised that he could accept an offer of a position as a full-time staff member with any or all of these organizations.

We did request that he advise us if an offer was made to him which he found acceptable. We commended him for bringing this matter to our attention at an early time so that we could fully review the facts necessary to reach a decision.

Dated: Honolulu, Hawaii, March 12, 1980.

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

Note: Vice Chairman Paul C.T. Loo and Commissioner Robert N. Mitcham were excused from the meeting at which this opinion was considered.