

OPINION NO. 415

A former employee of a state division, who had become associated with a private law practice, received an offer to do some work for a private company. Because the division would also be involved in the matter, he wished to know if it would be permissible, within the ethics code, for him to accept the company as a client.

The company wished to employ his services in drafting documents which would be presented to a state commission in conjunction with the implementation of a statute. As a part of the commission's rule-making procedure, it solicited recommendations and comments from various private companies as well as the state division. Therefore, the commission could choose to incorporate in its formulation of proposed rules the suggestions it received. The proposed rules would then go to a public hearing in accordance with the Hawaii Administrative Procedure Act.

HRS §84-18(b) and (c) prohibit an employee, within twelve months after leaving state service, from assisting any person or business, or from acting in a representative capacity for a fee or other consideration, on matters in which he participated as an employee or on matters involving official action by the particular state agency, or subdivision thereof, with which he had actually served.

Prior to leaving state service, the employee had represented a particular position before the commission and had been involved in two preliminary rule-making matters relating to the statute. We found that the restriction of HRS §84-18(b) applied to these two matters since he had participated in them as a state employee. Therefore, he was prohibited from assisting or representing the company in those matters for a period of twelve months from the date of his departure from state service.

This Commission determined, however, that the restriction did not apply to the new preliminary rule-making matter which the commission planned to initiate shortly, because the commission, itself, viewed each preliminary rule-making matter as a separate entity. The commission intended to handle the implementation of each section of the statute separately. Proposed recommendations for each section had been and continued to be solicited as separate preliminary rule-making matters, and rules for each section were to be promulgated separately under the Hawaii Administrative Procedure Act. Therefore, we found that the employee could represent the company in the new preliminary rule-making matter or any other such matters initiated after his departure date.

We also noted, however, that, under HRS §84-18(c), he was prohibited, for twelve months, from assisting or representing the company on any other matter requiring the official action of the state division that had employed him. "Official action" was defined by HRS §84-3(7) to include a "decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority." It was our understanding that such action on the part of the division that had employed him would not be required by the company with respect to the preliminary rule-making matters, since the various parties simply submitted their separate recommendations directly to the

commission. Negotiation or discussion among the parties that submitted recommendations was not a part of this process. We advised him, therefore, that he could represent the company in any new matters to come before the commission with respect to the statute.

We commended him for his sensitivity to the ethical questions involved and for bringing this situation to our attention for a determination.

Dated: Honolulu, Hawaii, September 3, 1980.

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

Note: Commissioner Robert N. Mitcham was absent from the meeting at which this opinion was considered.