

OPINION NO. 426

We received a request from a former employee of a division who provided legal counsel and representation for division employees involved in certain cases. Since he had left state service, he had begun a private law practice and wished to know if it was permissible, within the provisions of the State Ethics Code, for him to accept court appointments to represent persons in new cases which involved his former division.

The applicable section of the code was HRS §84-18(c) which stated:

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.

In his request, the former employee noted that the court-appointed representatives and the employee representing the division typically took the same position. The similarity of positions, in his view, made it unlikely that he would receive an added benefit as a consequence of his recent association with the division. It was the employee's position, therefore, that the intent of HRS §84-18(c), to provide for a "cooling off" period after employees left state service to prevent their using influence derived from their government work for their personal gain or for the benefit of others, did not apply to his situation and, therefore, the restriction should be waived.

While the Commission accepted the view that both the State's representative and the court-appointed representatives in these cases may have had a particular standard as their objective, we noted that how this was to be accomplished might be perceived differently by them. We commented that such differences might well be expected, since the State representatives defended the State's interest in the cases, and such interest would not necessarily coincide with the interest of the person represented by the court appointee. In fact, it was reasonable to assume that it was for this very reason that a judge would choose to exercise his or her discretion by appointing a representative to protect the interests of the person involved.

We found, therefore, that while the court-appointed representative might be expected, for the most part, to act in conjunction with the state employee, he or she would play a different role in the court proceedings by representing and protecting a particular party's interest and not the State's interest in protecting such persons generally.

Further, "official action," as defined in HRS §84-3(7), included all action involving the use of discretionary authority, and this Commission recognized that discretionary action was an integral part of the negotiations which surrounded such cases. As a consequence, the former employee was advised that he could not accept a court appointment in any case where the State was represented by an employee from his former division. This restriction was for a period of one year from the date of his departure from state service.

We commended him for bringing this matter to our attention at the beginning of his new practice and wished him well in his endeavor.

Dated: Honolulu, Hawaii, October 22, 1980.

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