

## OPINION NO. 444

We received a request for an advisory opinion from an employee who had considered leaving state service to accept a job with a private nonprofit association to direct its government affairs office. Because the employee was now associated with a legislative agency, he wished to know the application of the post-employment provisions of the ethics code to his potential employment with the private association.

In his request, the employee noted that the agency was nonpartisan and provided research and bill drafting services to the legislature upon the request of individual legislators or legislative committees. In his position, the employee's responsibilities included drafting bills and resolutions as well as reviewing work done by the rest of the research staff. Most of the bills and resolutions the employee had drafted had fallen within a particular area. Further, upon request, the employee had also advised certain legislative committees about the particular subject for which he was responsible.

The employee's new position would have involved assisting the association in preparing policies for presentation to government agencies and drafting bills proposed by the association to be introduced in the legislature. In addition, the employee's responsibilities would have included acting as a lobbyist on behalf of the association since, in some instances, he would have been required to testify on bills of interest to the association or to prepare testimony to be presented by other members of the association.

HRS §84-18(b) prohibits former employees, within twelve months' termination of their employment, from assisting any person or business or acting in a representative capacity for a fee or other consideration on matters in which they participated as employees. Generally, in determining which "matters" an employee was precluded from working upon, the Commission had limited the prohibition to the specific projects which were the responsibility of the employee and had not included the general type of work with which an employee may have been occupied. Because the employee reviewed all work done by the research staff, including memoranda, studies, bills, and resolutions drafted at the agency, it was conceivable that HRS §84-18(b) would have required him to refrain from assisting the association on all such matters for a year. The Commission, however, determined that this was too broad an application. Instead, the Commission decided that since a major portion of the employee's drafting responsibility fell in only one subject area, the prohibition should be limited to work on those policies or proposals. Accordingly, the employee was advised to refrain from drafting proposed legislation or advising the association on affairs within his particular area of expertise for a period of one year. The employee was not, however, precluded from assisting the association with any other matters which may have come to the attention of the legislature.

In addition, the employee expressed some concern about his ability to act as a legislative lobbyist on behalf of the association. The applicable section of the code, HRS §84-18(c), prohibits former employees, within one year of leaving state service, from assisting any person or business on matters involving official action by the particular state agency or subdivision thereof with which they actually served. In his request for an advisory opinion,

he stated that the agency was a nonpartisan research and reference agency which served the legislature by responding to legislative requests. The employee also noted that the agency was not directed by outside sources and was responsive only to the legislature. As a consequence, the Commission noted that any lobbying efforts on the employee's part would have been directed to members of the legislature and their staffs, rather than to employees of the agency. The prohibition in HRS §84-18(c) applied solely to the employee's present agency, and did not include the legislature, which was a separate governmental body. In summary, the Commission concluded that the employee could assist the association in its preparation of legislative policies to be presented to the legislature, participate in the drafting of bills to be presented to that body, and serve as a legislative lobbyist to the association, so long as he refrained from activity in his particular area of expertise for one year.

We appreciated the employee's sensitivity to the ethical questions involved and wished him well in his future endeavors.

Dated: Honolulu, Hawaii, July 28, 1981.

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

Note: Commissioner Dorothy K. Ching was excused from the meeting at which this opinion was considered.