

OPINION NO. 463

The Commission received a request for an advisory opinion from a state employee who worked for a certain department. The employee had been offered a position as a part-time consultant by a private company that appeared to be directly affected by the sort of work the employee did in his state capacity. The employee therefore asked the Commission to determine whether work as a consultant for the company would violate any of the provisions of the ethics code. Since there was a possibility that the employee might quit his state position to join the company, he also asked the Commission to determine if the post-employment restrictions of the code would prohibit him from working for the company for twelve months after leaving his state position.

In his state capacity, the employee's major responsibility had been the formulation of guidelines that would help the State facilitate the supply of a certain commodity in an efficient and economical manner. Essentially, the employee's input into the guidelines constituted a recommendation, since the guidelines were reviewed by other committees.

In the guidelines, the employee had advised the State as to the amount and nature of assistance it should provide to a number of industries that were involved in the production or supply of the commodity. Since the industries produced or supplied the same commodity, they competed directly with one another. The company that offered the part-time position to the employee was a member of one of the industries mentioned in the guidelines. Although the employee had completed the guidelines, the guidelines were still subject to revision by the employee.

In accordance with HRS §84-2, the employee was subject to the restrictions of the ethics code because of his status as a state employee. In regard to the acquisition of the outside consulting work, the most relevant section of the ethics code was HRS §84-14(b), which states:

No employee shall acquire financial interests in any business ... which he has reason to believe may be directly involved in official action to be taken by him.

Official action is defined in HRS §84-3(7) as a decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority. The Commission found that since the employee would be involved in updating and revising the guidelines, HRS §84-14(b) prohibited him from engaging in the sort of outside consulting work he wished to do. Although his recommendations for the revision of the guidelines would affect his company's industry on the whole, the Commission was of the opinion that his own company would be directly and substantially affected by any recommendation he would make, as would any of the industry's companies. The Commission told the employee that it sympathized with his desire to do outside work in the area of his expertise; however, the Commission also noted that it was incumbent upon the Commission to apply the restrictions of the ethics code in order to prevent public confidence in state employees from being undermined.

In regard to post-employment, HRS §84-18(b) and HRS §84-18(c) provide as follows:

(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.

In accordance with these provisions, the Commission informed the employee that he could work for the company immediately after quitting his state position on condition that for twelve months he not assist the company on matters in which he had participated as a state employee or on matters that involved official action to be taken by his office. The employee had informed the Commission's staff that the sort of work that he planned to do for the company would not raise ethical problems in regard to the post-employment provisions of the ethics code. The employee stated that as a company employee his duties would be limited to marketing equipment that produced or supplied the commodity. Since the employee's state responsibilities were limited to the revision of the guidelines and since it appeared that the company would not be seeking action from the employee's office, the Commission was of the opinion that the post-employment restrictions found in HRS §84-18(b) and HRS §84-18(c) would not be contravened.

Finally, the Commission drew the employee's attention to HRS §84-18(a), which provides as follows:

No former ... 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.

The Commission commended the employee for promptly bringing these matters to the Commission's attention. It has been the Commission's experience that this kind of attention to ethical matters furthers public confidence in state employees and thus contributes to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, April 22, 1982.

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

Note: Commissioner Dorothy K. Ching and Commissioner Robert N. Mitcham were excused from the meeting at which this opinion was considered.