

OPINION NO. 467

A former state employee requested an advisory opinion from this Commission as to how the ethics code applied to his private business interest in a certain company. Specifically, the employee wished to know whether any of the code's provisions would restrict him from selling the company's goods to his former department, for which he had worked part-time. The employee explained to the Commission that he worked for his present company as a franchisee.

In regard to the employee's question, HRS §84-18(c), a part of the post-employment section of the ethics code, was relevant. This provision states that former employees shall not, within twelve months after termination of their employment, assist any person or business or act in a representative capacity for a fee or other compensation on any matter involving official action by the particular state agency or subdivision thereof with which the employee had actually served. Thus, this provision prohibited the former employee for twelve months from assisting or representing his company in regard to any matter in which his former department would be required to take official action. Of course, this restriction included the negotiation and award of a contract for goods. Official action, as used in HRS §84-18(c), refers to discretionary action on the part of a state agency. Actions that are merely ministerial, that is, actions that do not require the exercise of discretion, are not prohibited under this provision. In its opinion to the employee, the Commission emphasized that HRS §84-18(c) prohibited him from assisting his company only in regard to business transactions between his company and his former department.

The Commission also drew the employee's attention to the other post-employment provisions of the State Ethics Code. The Commission informed the employee that HRS §84-18(a) states that former employees shall not disclose any information which by law or practice is not available to the public and which they acquired in the course of their official duties or use the information for their personal gain or for the benefit of anyone. Further, the Commission explained that HRS §84-18(b) prohibits former employees, within twelve months after termination of their employment, from assisting any person or business or acting in a representative capacity for a fee or other compensation on matters in which they participated as state employees. The Commission also pointed out to the employee that, in accordance with HRS §84-18(d), a state agency may contract with a former employee to act on a matter on behalf of the State within the period of limitation set forth in the post-employment section. Finally, the Commission noted that HRS §84-15(b) provides that a state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in office or employment in the matter with which the contract was directly concerned.

The Commission commended the employee for bringing this matter before the Commission at an early time. The Commission has found 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, June 14, 1982.

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

Note: Chairperson Edith K. Kleinjans and Commissioner Dorothy K. Ching were excused from the meeting at which this opinion was considered.