

OPINION NO. 488

We received a request for an advisory opinion from a branch chief who considered accepting a position as the administrator of grants and contract development and management of a private institution. Because the private institution had four contracts with the branch, the branch chief wished to know the extent of any restrictions to which he would be subjected, under the State Ethics Code, if he accepted the position with the private institution.

Before reaching the employee's question, the Commission first looked at the circumstances surrounding his contemplated move to the private institution. The employee had stated that he had become aware of the position, which had been vacant for two years, because he had served as a staff member of the private institution. The employee noted that he did not seek an interview with the private institution until the early part of this year, and that state contracts with the institution were developed and signed prior to July 1, 1982. In addition, the employee had pointed out that any future contracts with the institution would not be developed and negotiated until some time toward the end of April or May of this year. Accordingly, the Commission found that the employee did not contravene HRS §84-13(1), a portion of the fair treatment section of the ethics code, in his pursuit of the position with the private institution.

In his state position, the employee was responsible for the administration of a state branch which included, among other things, the development and administration of contracts for services to or for the branch's programs. As stated above, the branch had four contracts for such services with the private institution. As the administrator of grants and contracts development management at the institution, the employee's duties would have included the development of grants and contracts with the State of Hawaii, as well as general responsibility for managing all grants and contracts at the institution. A part of the employee's new responsibilities, therefore, would have required him to seek official action from his former branch.

HRS §84-18, the post-employment section of the ethics code, and HRS §84-15(b), a portion of the contracts section, contain the guidelines for state officials and employees who leave state service. The first subsection, HRS §84-18(a), governs the use of confidential information and prohibits state officials and employees not only from disclosing this information but also from using such information for their own personal gain or the benefit of anyone. The Commission noted that "confidential information" is information employees have acquired in the course of their official duties which by law or practice is not available to the public. Consequently, the Commission advised the employee that if he accepted the position with the private institution, he should refrain from disclosing or using this kind of information in the discharge of his new responsibilities.

State officials and employees also are prohibited by HRS §84-18(b), for a period of one year, from assisting any person or business or acting in a representative capacity for compensation on matters in which they have participated. Accordingly, the Commission advised the employee that he would be required to refrain from assisting the private institution with implementing or fulfilling any of its current contracts with the state branch. Because the

employee's new responsibilities as administrator of grants and contract development and management would require him to set up an overall program with respect to the private institution's grants and contracts, the employee stated that he intended to initially concentrate on developing a model format for his department at the institution. The employee, therefore, would not be involved in work regarding the current contracts or any other contracts with the branch during the year that followed his departure from state service.

The Commission also pointed out that HRS §84-15(b) would prohibit the employee, for a period of two years after he left state service, from negotiating any future contracts on behalf of the private institution if he had participated in developing these contracts in his present position. The Commission recognized that this was not likely to pose a problem since the branch had not begun to develop or negotiate any future contracts with the private institution.

The last subsection of the post-employment section that was applicable, HRS §84-18(c), prohibits state officials and employees, for the period of one year, from assisting any person or business or acting in a representative capacity for compensation on matters involving official action by the particular state agency or subdivision thereof with which they have actually served. The Commission has determined that "official action" encompasses all discretionary action taken on behalf of the State. Furthermore, when the Commission has applied this section in the past, we generally have tried to narrow the scope of the restriction to those subdivisions affected by any discretionary action taken by state officials or employees, or those subdivisions that state officials or employees have discretionary input into. Because he served as the branch chief, the Commission stated that the employee would be prohibited from seeking any discretionary action from his branch. The Commission also reviewed the employee's interaction with the other branches in the division to determine whether there was significant discretionary input by the employee into the programs or actions of the other branches within the division. While the employee regularly interacted and consulted with his colleagues, he emphasized that these meetings were informational in nature and, for the most part, focused on an exchange of ideas on administrative procedures, rather than on substantive, programmatic matters. The employee stated, and the division chief agreed, that the branch chiefs were solely responsible for their own programs and did not receive significant input from their counterparts in the division. In light of these circumstances, the Commission concluded that the employee would not be required to refrain from seeking official action from the division, but would only be limited to not seeking official action from his branch. The employee indicated that, although his new responsibilities at the private institution might eventually require him to work with the branch on behalf of the private institution, the institution was agreeable to isolating him from all contact with the branch for a year.

Finally, until the employee actually left state service, the Commission advised him to be aware of the provisions of HRS §84-13, the fair treatment section of the ethics code, which prohibits state officials and employees from using or attempting to use their official positions to secure unfair treatment for themselves. The Commission recognized that the employee had been sensitive to the ethical issues involved and advised him to continue his

efforts to separate his state responsibilities from his private negotiations or contracts with the private institution.

The Commission appreciated the employee's bringing this matter to our attention at an early time, and wished him well in his new endeavor.

Dated: Honolulu, Hawaii, March 10, 1983.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Allen K. Hoe, Commissioner
Gary B.K.T. Lee, Commissioner

Note: Vice Chairman Paul C.T. Loo and Commissioner Robert N. Mitcham were excused from the meeting at which this opinion was considered.