

OPINION NO. 511

The Commission received a request for an advisory opinion from a board member who asked the Commission to determine whether he could enter into a contract with a state agency for which he had formerly worked. The compensation he was to receive under the contract exceeded \$1,000. The board member stated that he had left his former state agency about eighteen months ago.

The section of the ethics code most pertinent to the board member's request was HRS §84-15, the contracts section of the ethics code. This section, in its entirety, reads as follows:

§84-15 Contracts. (a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract has been awarded through an open, public process. A state agency may, however, enter into such contract without resort to a competitive bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding; provided that written justification for the non-competitive award of such contract shall be made a matter of public record and shall be filed with the state ethics commission at least ten days before such contract is entered into.

With respect to members of boards, commissions, and committees, this subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a state agency which has jurisdiction over the board, commission, or committee to which he is appointed.

(b) 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 state office or employment in the matter with which the contract is directly concerned.

The first paragraph of HRS §84-15(a) requires a state agency to go through an open, public process before awarding a contract to a state employee when the contract amount exceeds \$1,000. However, the second paragraph of HRS §84-15(a) provides that the requirements of the first paragraph do not apply to a board member unless the board member is contracting with a state agency that has jurisdiction over his board. Since the board member's former agency did not have jurisdiction over his board, the Commission informed the board member that his former office could award the contract to him without first going through an open, public process.

The second part of the contracts section, HRS §84-15(b), prohibits a state agency from entering into a contract with a person or business who is assisted in the matter by a person

who has been an employee of the contracting agency within the preceding two years and has participated while in state office in the matter with which the contract is directly concerned. Although the board member had been employed by his former agency within the preceding two years, the board member stated that he was not involved in any way with the formulation of the contract. The Commission informed the board member that HRS §84-15(b) would therefore not prohibit him from entering into the contract with his former office.

Two sections of the post-employment section of the ethics code, HRS §84-18(b) and (c), were also relevant to the board member's question. These sections read 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.

These two provisions of the ethics code prohibit a former state employee for a period of twelve months from representing a client before the employee's former state office or helping a client on matters that the employee participated in while in state office. However, since the twelve-month period had passed, these provisions were no longer applicable to the board member's case.

Finally, the Commission informed the board member that the fair treatment section of the ethics code, HRS 84-13, prohibits state employees from misusing their official positions to grant or obtain favorable treatment. Since the board member stated that the contract had not been offered to him under circumstances indicating a misuse of position, the Commission told the board member that this provision likewise would not bar him from accepting the contract.

In summation, the Commission stated that the board member could accept the contract with his former office because he was in compliance with the above provisions of the ethics code. The Commission also pointed out to the board member that opinions issued by the Commission were based on and limited to the facts set forth in the opinion.

The Commission commended the board member for bringing this matter to the attention of the Commission at an early date and told the board member that it appreciated his candor in discussing the facts of the case.

Dated: Honolulu, Hawaii, October 12, 1983

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Allen K. Hoe, Vice Chairperson
Mildred D. Kosaki, Commissioner

Note: Commissioners Gary B.K.T. Lee and Arnold J. Magid were excused from the meeting at which this opinion was considered.