

OPINION NO. 529

The Commission received a request for an advisory opinion on whether a state office could enter into a contract to purchase statistical equipment from a company whose staff included an individual who was then under a personal service contract with the office. The individual was a former employee of the office who had left state service several months earlier, after serving as the person in charge of the statistical section for the last ten years.

The most applicable section of the State Ethics Code was HRS §84-15(b), a portion of the contracts section, which states as follows:

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.

This section essentially provides that a state agency may not enter into a contract with an individual who has been involved in the contract in both a state capacity and a private capacity. The Commission, therefore, had to determine whether the individual had participated in the matter and whether he had assisted his employer in pursuing this contract.

The Commission first considered whether the individual had participated in this matter by reviewing his former responsibilities as a state employee and his present responsibilities under his personal service contract. In past opinions, the Commission had determined that "participation" was a broad term that included any significant employee contact with the subject matter of a contract as well as discretionary or official action regarding that subject matter. During his tenure with the State as the person in charge of the statistical section of the office, the individual's responsibilities had included but had not been limited to planning for statistical centers throughout the State, overseeing an entire data-processing system, redesigning the statistical system, developing and maintaining all statistical systems and manuals, and conducting evaluations and studies for new statistical systems and equipment. Under the terms of his personal service contract, the individual was responsible for coordinating and directing all data-processing activities in this office. This included meeting with the appropriate agency, vendor, and data-processing personnel and coordinating the acquisition and use of related supplies. He was also responsible for establishing statewide statistical centers, assisting in the review and analysis of center expenditures, and recommending future system improvements. In light of the above, it was clear to the Commission that the individual's former and present responsibilities with the office had involved substantial discretionary action with respect to statistical and other data-processing tasks. Accordingly, the Commission concluded that he had participated in the decision making regarding an appropriate data-processing system for the office.

The Commission then looked at the question of whether the individual had assisted or represented the company he worked for in its attempt to obtain a state contract for the purchase of its equipment. The head of the office had stated that in the course of discussions with prior vendors, other agencies, and his office regarding the equipment requirements, the

individual had proposed that the type of equipment carried by his company might be able to handle certain statistical requirements. The company then set up two sessions to demonstrate the system. While most of the formal presentation at the sessions had been conducted by other members of the company, the individual had answered questions pertaining to the office's requirements and cost estimates. In the Commission's opinion, these actions assisted the company in its attempt to secure a contract for the purchase of its equipment. As a consequence, the Commission advised that the office would be prohibited by HRS §84-15(b) from entering into a contract to purchase equipment from the individual's employer.

The Commission also noted that because the individual had been rehired under a personal service contract, he fell within the definition of "employee" as set out in HRS §84-3(4), and the general provisions of the ethics code, including the conflicts-of-interests section, applied to him for the duration of his contract.

The Commission commended the head of the office for his interest in promoting and preserving ethics in government.

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