

## OPINION NO. 541

A branch chief left state employment and became employed by a private corporation. Because the work would be in the same industry, the former branch chief asked this Commission if there were any restrictions that were applicable to him under the State Ethics Code.

The applicable provision of the ethics code, the post-employment section, was HRS §84-18. In past advisory opinions, the Commission had stated that the rationale of HRS §84-18 was to prevent former employees from using influence derived from contacts and associations made while in government for their personal gain or for the benefit of others. The Commission pointed out that the first part of this section, HRS §84-18(a), prohibits former employees from disclosing or using any information acquired in the course of their official duties which by law or practice is not available to the public. The Commission noted that this section guards against the use for personal gain of knowledge that former employees have obtained in cases where they have participated. The Commission also commented that it clearly would not be appropriate for employees to disclose this kind of information for their own personal benefit or the benefit of others.

The Commission stated that the next two subsections of the post-employment section, HRS §84-18(b) and HRS §84-18(c), mandate a "cooling-off" period after employees leave state service to diminish the possibility that employees will receive unfair treatment derived from contacts and associations made while in government. HRS §84-18(b) prohibits employees for a one-year period after their termination with the State from assisting any person or business or acting in a representative capacity for a fee or other consideration on matters in which they participated as employees. The Commission recognized that although the former employee may not have been personally involved in specific actions taken by his former branch, his responsibilities as chief included overall administrative review and approval of the branch's work. Therefore, the Commission told the former employee that if the branch were required to review any matters in the next twelve months that initially had been considered while he had served with the branch, he would be required to disassociate himself from all participation on behalf of the corporation. The former employee had stated, however, that it was unlikely that he would be required to assist the corporation on any matters that may have come under review or consideration by the branch during his tenure as its chief.

Finally, the Commission informed the former employee that HRS §84-18(c) contains a broader prohibition; for the period of a year after termination of state service, a former employee would not be able to assist any person or business or act in a representative capacity for a fee on matters involving official action by the particular state agency or subdivision with which he actually had served. Accordingly, the Commission concluded that this section prohibited the former employee from assisting or representing his new employer, its subsidiaries, and its foreign operations before his former branch on any matters involving discretionary action by the branch. In reviewing the former employee's job description, the Commission recognized that most of his duties would focus on in-house management responsibilities, such as developing and preparing guidelines for storage and disposal of materials, workers' safety, and guidelines for the corporation's foreign operations. The former employee also would be responsible for developing guidelines for new uses of the

corporation's products, although it was unlikely that the former employee would be involved in developing guidelines in the near future. Additionally, the former employee had listed the governmental agencies he thought he would be involved with. The former employee had stated that he did not believe that his responsibilities would include communicating with his former branch, and that he had the assurance of his employer that this would not be required in the next twelve months.

The Commission commended the former branch chief for his sensitivity to the ethical considerations involved and wished him well in his new endeavor.

Dated: Honolulu, Hawaii, September 14, 1984.

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

Note: Commissioner Arnold J. Magid was not present during the discussion and consideration of this opinion.